

## Oklahoma City University School of Law

---

From the Selected Works of Carla Spivack

---

2010

# Disappearing Civil Liberties: The Case of Post-9/11 Fiction

Carla Spivack, *Oklahoma City University School of Law*



Available at: [https://works.bepress.com/carla\\_spivack/34/](https://works.bepress.com/carla_spivack/34/)

# DISAPPEARING CIVIL LIBERTIES: THE CASE OF POST-9/11 FICTION

CARLA SPIVACK\*

**Abstract:** This Article examines several examples of so-called “post 9-11 literature” and questions their lack of concern with the attacks on civil rights perpetrated by the Bush administration in the wake of the attacks. The novels analyzed are: Helen Schulman, *A Day at the Beach* (2007), Claire Messud, *The Emperor’s Children* (2006), Ken Kalfus, *A Disorder Peculiar to the Country* (2006), and Ian McEwan, *Saturday* (2005). The Article discusses the ways in which the works reviewed both parody and to some extent take part in American society’s response to the attacks: its narcissism, its willful oblivion to world history, its need for the reassurance of happy endings and its longing for a myth of a perfect community. Ultimately, the author raises the question of art’s relationship to the world around it, and asks whether it can stand far enough outside of culture to critique its failings, or whether it must always also reenact them.

## INTRODUCTION

Critics are in the process of anointing a body of American and British fiction written after 2001 as “post September 11 literature”; that is, literature that explicitly addresses the impact of the effect of American society and culture. This Article discusses several of these works and their seeming lack of interest in what, to many of us, was the most dramatic repercussion of the 9/11 attacks; namely, the curtailment of civil and human rights both domestically and abroad by the Bush Administration.<sup>1</sup>

---

\* Assistant Professor of Law, Oklahoma City University School of Law.

1. Several websites are devoted to tracking developments in this regard. See, e.g., Loss of U.S. Civil Liberties: History Commons, [www.historycommons.org/timeline.jsp?timeline=civilliberties&startpos=300](http://www.historycommons.org/timeline.jsp?timeline=civilliberties&startpos=300) (last visited May 1, 2010); American Civil Liberties Union, [www.ACLU.org/search/post%209/11?show\\_aff=1](http://www.ACLU.org/search/post%209/11?show_aff=1) (last visited May 1, 2010). There are also law review articles on the topic. See, e.g., Jordan J. Paust, *Post-9/11 Overreaction and Fallacies Regarding War and Defense, Guantanamo, the Status of Persons, Treatment, Judicial Review of Detention, and Due Process in Military Commissions*, 79 NOTRE DAME L. REV. 1335 (2004); Judith Resnik, *Detention, the War on Terror, and the Federal Courts*,

The works I discuss are as follows, in reverse chronological order: Helen Schulman, *A Day at the Beach* (2007) (“*Beach*”); Claire Messud, *The Emperor’s Children* (2006) (“*Emperor’s Children*”); Ken Kalfus, *A Disorder Peculiar to the Country* (2006) (“*Disorder*”); and Ian McEwan, *Saturday* (2005).<sup>2</sup> These works, with the exception of McEwan’s, which is set in London with British characters,<sup>3</sup> to one degree or another satirize American society’s response to the attacks, skewering its narcissism,<sup>4</sup> its oblivion to world history,<sup>5</sup> the reassurance of happy endings<sup>6</sup> and its need for the myth of the perfect community.<sup>7</sup> I include McEwan’s work because it seems to similarly turn political violence into family drama. Why do none of them, then, address the many measures that deprived Americans and others of constitutional guarantees of security in both their homes and persons and protection against governmental spying and eavesdropping?<sup>8</sup> I make no argument that the novelists at issue *should* address these concerns;

---

110 COLUM. L. REV. 579 (2010); Dawinder S. Sidhu, *First Korematsu and Now Ashcroft v. Iqbal: The Latest Chapter in the Wartime Supreme Court’s Disregard for Claims of Discrimination*, 58 BUFF. L. REV. 419 (2010).

2. Readers who keep current on fiction will of course know that there are other novels published post-9/11 that arguably also address its impact on American society or at least seem to have been inspired partly by the attacks and their aftermath. See, e.g., LORRAINE ADAMS, *HARBOR* (2005); SUSAN CHOI, *A PERSON OF INTEREST* (2008); ANDRE DUBUS III, *THE GARDEN OF LAST DAYS* (2009); JONATHAN SAFRAN FOER, *EXTREMELY LOUD AND INCREDIBLY CLOSE* (2006). The focus of these works, however, is sufficiently different from the direct satire and critique of those I address in this Article that I exclude them from my particular concerns here.

3. I nonetheless include it here because of the close political relationship between Great Britain and the United States in the aftermath of the attacks and the strong support that President Bush received from the British Government. Moreover, given England’s longer history of experience with terrorist attacks on its soil, I would argue that it has faced similar concerns about rights and security for longer than the United States and that McEwan’s is a relevant voice in this discussion.

4. The classic work in this regard is Christopher Lasch’s *The Culture of Narcissism: American Life in an Age of Diminishing Expectations* (1991); see also JEAN M. TWENGE & W. KEITH CAMPBELL, *THE NARCISSISM EPIDEMIC: LIVING IN THE AGE OF ENTITLEMENT* (2009).

5. See generally *WHAT THEY THINK OF US: INTERNATIONAL PERCEPTIONS OF THE UNITED STATES SINCE 9/11* (David Farber ed., 2007).

6. The best account of the “positive attitude” aspect of American culture is Barbara Ehrenreich’s *Bright Sided: How the Relentless Promotion of Positive Thinking Has Undermined America* (2009). Ehrenreich notes that “positive thinking” is “part of our ideology” and a “discipline of trying to think in a positive way.” *Id.* at 4.

7. Ehrenreich shows how the obsession with positive thinking is a form of social control that she compares to Communism’s enforced optimism and punishment of dissenting voices that dared to express “defeatism.” *Id.* at 202.

8. See sources cited *supra* note 1.

creativity cannot and should not be channeled into political camps. Nor am I complaining about the artistry of these novels, all of which I enjoyed. Nonetheless, I think it is worth expressing surprise at this lacuna and trying to understand it, since it may tell us something about society, our art, and the relationship between them.

These works have garnered praise from critics as examples of an explicit genre of “post 9/11 fiction”: *The New York Times* called McEwan’s *Saturday* “one of the most powerful pieces of post-9/11 fiction yet published,” and *Elle* credited Schulman with “bravely and skillfully illuminat[ing] the domino effect of the falling towers on people’s psyches and lives.” *The Times Literary Supplement* described Kalfus’s *Disorder* “[t]he most original novel to be written about America’s moral climate in the aftermath of the 9/11 attacks,” and according to *The New Yorker*, “Kalfus skewers the pieties surrounding 9/11,” and to the *Los Angeles Times Book Review* he “free[s] the way we think about September 11” by his “interbleeding of public and private story lines and his lampooning approach.”<sup>9</sup>

What these works fail to address, however, as noted above, is the dismemberment of civil rights and constitutional protections that started almost immediately after the attacks. To summarize: shortly after September 11, 2001 the FBI significantly increased its warrantless wiretaps of U.S. citizens.<sup>10</sup> This facilitated procedures by which the National Security Agency began eavesdropping on international calls made by U.S. citizens, eventually assembling, with the help of AT&T, Verizon and Bell South, a database of over ten million Americans, none of whom were suspected of crimes or linked to terrorism.<sup>11</sup> Then on September 17, President Bush authorized the CIA to establish an international network of secret detention facilities for the interrogation of terrorism suspects known as “black sites.”<sup>12</sup> The International Committee of the Red Cross (“ICRC”) would later call these sites a “hidden global internment network” designed for secret detentions, interrogations, and ultimately torture.<sup>13</sup> Shorty

---

9. These quotes appear in the front pages of the editions of the books cited in the Article.

10. Dan Eggen, *FBI Papers Indicate Intelligence Violations: Secret Surveillance Lacked Oversight*, WASH. POST, Oct. 24, 2005, at A1; U.S. Civil Liberties: History Commons, *supra* note 1.

11. Leslie Cauley, *NSA Has Massive Database of Americans’ Phone Calls*, USA TODAY, May 11, 2006, available at [http://www.usatoday.com/news/washington/2006-05-10-nsa\\_x.htm](http://www.usatoday.com/news/washington/2006-05-10-nsa_x.htm).

12. Mark Danner, *U.S. Torture: Voices From the Black Sites*, N.Y. REV. OF BOOKS, Apr. 9, 2009, at 1, available at <http://www.nybooks.com/articles/archives/2009/apr/09/us-torture-voices-from-the-black-sites/>.

13. *Id.*

thereafter, Justice Department lawyer John Yoo wrote a memo asserting that Fourth Amendment protections against arbitrary infringement of a citizen's rights would be irrelevant if the President determined that the threat of terrorism was great enough; a few weeks later, President Bush authorized warrantless surveillance of electronic communications to and from the United States, a practice banned by federal law since 1978.<sup>14</sup> Most notoriously, perhaps, a detention facility for suspects was established at Guantánamo Bay, Cuba where detainees were held indefinitely without access to trials, legal counsel, or the evidence against them.<sup>15</sup>

While many of these acts were secret at the time, most had come to light by the time the works I discuss were written. Moreover, the atmosphere of repression and disregard for civil liberties had been apparent since early on: in September 2001, White House Press Secretary Ari Fleischer warned Americans that they needed to “watch what they say[,] watch what they do” in response to comments by television host Bill Maher about U.S. missile strikes on Afghanistan.<sup>16</sup> The backlash against Maher for expressing views securely protected by the First Amendment protections was alarming; advertisers withdrew commercials from his show,<sup>17</sup> and ABC cancelled it at the end of the season.<sup>18</sup> The highly publicized events surrounding Maher coincided with the less well-known firing of several journalists for criticizing President Bush.<sup>19</sup> Again, none of this is to suggest that the content of art can or should be dictated by current events or political agendas; it is merely to show that the attacks on civil liberties as well as the overall atmosphere of repression were amply present in the public arena when these works about the impact of 9/11 were being written.

These works certainly do critique American society. They have at least three themes in common in this regard: the culture of narcissism, obliviousness to history, and a hunger for the perfect community and happy endings.<sup>20</sup> They both parody these aspects of American culture and, at the same time, to some extent, participate in them. These three cultural quirks

---

14. Tim Golden, *After Terror, a Secret Rewriting of Military Law*, N.Y. TIMES, Oct. 24, 2004, at A1; Cauley, *supra* note 11.

15. John Barry et al., *The Roots of Torture*, NEWSWEEK, May 24, 2004.

16. Maher said “the hijackers were not cowards but that it was cowardly for the United States to launch cruise missiles on targets thousands of miles away.” Bill Carter & Felicity Barringer, *In Patriotic Time, Dissent Is Muted*, N.Y. TIMES, Sept. 28, 2001, at A1.

17. *Id.*; Editorial, *Free Speech in Wartime*, WASH. POST, Sept. 29, 2001, at A26.

18. *Incorrect to the End: It's Bye-Bye Brains as Bill Maher and Politically Incorrect Sign off*, TORONTO STAR, June 26, 2002, at F7.

19. Manuel Mendoza, *Media's Voices of Dissent May No Longer Be Welcome*, DALLAS MORNING NEWS, Oct. 3, 2001, at A27.

20. See *supra* notes 4-7 and accompanying text.

help explain what I find to be a surprising lack of engagement with these political issues and raise the question of how far artists can subvert the culture of which they are a part, which in turn raises the question of the interface of literature and the law.

### I. It's All About Us

These works portray how Americans transformed the September 11 attacks from acts of political-historical significance into acts of their own private dramas, ignoring their implications about the world around us and the forces in it that were, for whatever reason, committed to our destruction. As one character says, "Who knew what the Arabs were like, really? Who the fuck cared?"<sup>21</sup> To some extent—perhaps this is a risk of parody—the novels replicate that transformation. Messud, for example, allows the destruction of the Towers to work a rebirth—whether one that will be actualized is left untold—and renewal for at least one of the characters. McEwan also reworks the specter of terrorism into a form of spiritual and emotional renewal for a family. Both these authors seem to take the idea of world historical events as catalysts for rebirth at least somewhat seriously. Others, like Schulman and Kalfus, more openly parody the narcissism contained in such a notion.

In *Beach*, the Towers' fall becomes the culminating act in the drama between a husband and wife. The couple at the center of the story is Gerhard, a German immigrant and ballet choreographer, and his wife Suzannah, a former ballerina and the grandchild of Polish Jews. The marriage is fraught with financial worries, Gerhard's control issues and his ambivalence about the couple's young child, and Suzannah's emotional isolation. As the attacks are broadcast, and as the day disintegrates around them, Suzannah increasingly equates the events of the day with the drama of her marriage, ultimately screaming at Gerhard that "[y]ou made [our son] miss his first day of school. How will he ever forgive you?"<sup>22</sup>

In Kalfus's *Disorder*, the attacks explode into the lives of a divorcing Manhattan couple who, despite the fact that they now passionately hate each other, continue to share, for financial reasons, an "ill-lit, inadequately maintained, brilliantly located co-op in Brooklyn Heights."<sup>23</sup> The first reaction of each to the news of the fall of the Towers is the delighted—and in both cases futile—hope that the other has been killed in the catastrophe. Marshall (the husband) works in the Trade Towers, and as Joyce (the wife) watches the news among her shocked and horrified co-workers, she "fe[els] something erupt inside her, something warm, very much like, yes it was, a

---

21. KEN KALFUS, *A DISORDER PECULIAR TO THE COUNTRY* 150 (2006).

22. HELEN SCHULMAN, *A DAY AT THE BEACH* 192 (2007).

23. KALFUS, *supra* note 21, at 5.

pang of pleasure, so intense it was nearly like the appeasement of hunger. . . . She covered the lower part of her face to hide her fierce, protracted struggle against the emergence of a smile.”<sup>24</sup> Marshall, for his part, dares to hope that Joyce was on one of the planes that flew into the Trade Center since he did not know she had changed her plans to fly to San Francisco at the last minute. Once he escaped from the building, surrounded by wounded fellow survivors, he “head[s] for the bridge, nearly skipping.”<sup>25</sup>

The characters’ spinning of the attacks into the story of their personal lives continues. Joyce, envious of a colleague who is having an affair with a firefighter, muses that she, too, wants “some terror sex. After everything that had happened, to her city and to her marriage, she deserved it.”<sup>26</sup> Later, she muses, “her life hadn’t changed. She was still not divorced and she had lost hope of ever being divorced.”<sup>27</sup> Marshall, eavesdropping on a phone conversation from his bedroom in the apartment, hears her refer to his presence by saying, “I can’t talk. Osama’s holed up in Tora Bora.”<sup>28</sup> In the farcical culmination of this trend, Marshall wires himself with explosives and tries to detonate himself in the couple’s kitchen where Joyce is making lunch for the children and ignoring him. When the device fails to go off, they squabble over who can make it work:

“God is great,” he announced. He took a moment to inhale and brought the clips together.

She looked up, annoyed that he had spoken to her, apparently without necessity. It was against their ground rules.

. . .

“God is great,” he repeated, again touching the clips. He opened one and clipped it around the other, but it slipped off. He then squeezed both clips and snagged one in the other, jaw to jaw. They held.

“What are you doing? What is that?”

“A suicide bomb. . . . I made it myself. I have enough dynamite to blow up half the block. God is great.”

. . .

“Why doesn’t it work then?”

---

24. *Id.* at 3.

25. *Id.* at 20.

26. *Id.* at 23.

27. *Id.* at 63.

28. *Id.* at 76.

"I don't know," he said, irritated. "The wiring is tricky."

"Did you follow the instructions?"

"They were in Arabic. But there was a diagram."

She put down the carrot and the peeler and sighed wearily.

"Let me see."

"I can fix it myself," he declared.

"Don't be an asshole."<sup>29</sup>

McEwan's *Saturday* performs the least self-critical move in this regard. In *Saturday*, Henry Perowne, a successful neurosurgeon, wakes at 3:40 one February day and, fully awake, leans out of a bedroom window and sees what he thinks is a terrorist attack on an airplane coming into Heathrow:

The leading edge of the fire is a flattened white sphere which trails away in a cone of yellow and red. . . . As though in pretence of normality, the landing lights are flashing. But the engine note gives it all away. Above the usual deep and airy roar is a straining, choking banshee sound growing in volume—both a scream and a sustained shout, an impure, dirty noise that suggests unsustainable mechanical effort beyond the capacity of hardened steel, spiraling upwards to an end point, irresponsibly rising and rising like the accompaniment to a terrible fairground ride. Something is about to give.<sup>30</sup>

The fire turns out to be nothing more than that—a fire on a cargo plane, which lands without incident. But the fantasy of political violence turns into reality in the family's life that day when Perowne and his family are held hostage in their home by a thug with whom Perowne had had an altercation on the way to work that morning. The situation is ultimately defused, after a knife wielding and a threatened rape, by Perowne's daughter reciting Matthew Arnold's "*Dover Breach*," which, improbably, leaves one of the intruders so moved that he changes his mind about wishing to harm the family. The closest we get to an explanation for this about-face is the attacker's statement that the poem is "beautiful . . . [i]t makes me think about where I grew up."<sup>31</sup> This is as unconvincing in the book as it sounds here—its purpose here can only be to proclaim a meditation on art's power in the face of anarchy, a power that, the incredible nature of the episode tells us, is nonexistent.

---

29. KALFUS, *supra* note 21, at 188-89.

30. IAN MCEWAN, *SATURDAY* 14 (2005).

31. *Id.* at 231.

## II. History Attacks

Post-9/11 fiction depicts the planes that crashed into the Towers on September 11 as missiles history sent exploding into the midst of a nation happily oblivious to the world around it. Now the characters cannot escape it; one of them feels that “world history [is] hot on her trail, about to rap its knuckles on her door.”<sup>32</sup> Another character, “a burly sad-eyed general practitioner from some mysterious country of the East,” says to a patient, “Now you know what it’s like to live in history.”<sup>33</sup> This flight from history is part of the reason, I suggest, that these novels fail to engage the issue of post-9/11 assault on civil rights: if our government “disappears” people, spies on us, and eavesdrops on our phone conversations, we are no longer the “shining city upon a hill”<sup>34</sup> risen above the sins of history to create an exceptional nation of righteousness. On the contrary, we become no better than Argentina, Chile, or Guatemala; such a realization threatens our very notions of national selfhood. If this is the case, the parodies of Americans interpreting the attacks to be about their private lives also provide a degree of comfort: they save us from seeing that we as a nation are no different from anyone else—no more pure, no more free of sin.

The first pages of *Emperor’s Children* reveal, more directly than *Disorder*, history and the marks it has left on the various peoples of the world, “rapping its knuckles” on America’s door. The opening scene takes place at a literary soiree in Sydney, where one of the main characters, a New Yorker named Danielle, is visiting to research a potential documentary about the Australian government’s relationship with the Aborigines as a “lens” through which to view the idea of reparations for African Americans. Danielle subversively wonders, however, whether an American audience “could care less about the Aborigines? Were the

---

32. KALFUS, *supra* note 21, at 181-82.

33. *Id.* at 57-58.

34. This imagery is from John Winthrop’s 1630 sermon *City Upon a Hill*, in which he told his fellow pilgrims:

for wee must Consider that wee shall be as a City upon a Hill, the eies of all people are upon us; soe that if wee shall deale falsely with our god in this worke wee have undertaken and soe cause him to withdrawe his present help from us, wee shall be made a story and a by-word through the world, wee shall open the mouthes of enemies to speake evill of the wayes of god and all professours for Gods sake; we shall shame the faces of many of gods worthy servants, and cause their prayers to be turned into Cursses upon us till wee be consumed out of the good land whether wee are goeing.

NEW WORLD METAPHYSICS: READINGS ON THE RELIGIOUS MEANING OF THE AMERICAN EXPERIENCE 53 (Giles Gunn ed., 1981). For a general discussion of American exceptionalism, see Godfrey Hodgson, *The Myth of American Exceptionalism* (2009).

situations even comparable?”<sup>35</sup> Later at dinner, this act of displacement—Aborigines across the world taking the place of the American enslavement of Africans—is itself undermined by an allusion to the uncanny power of the colonial repressed to boomerang back on the colonizers. The guests are reminiscing about exotic vacation spots like Tahiti, where, as one of them says, it is “very Gauguin, and so sexy. I mean, the people on that island are *so* sexy, it’s to die.”<sup>36</sup> Danielle asks whether that was where “Captain Cook got killed, in the end?” and is firmly corrected—“Oh no, doll, that was Hawaii.”<sup>37</sup>

The appearance of Captain Cook in the pages of the literature of a colonial power is never a good sign. Recall the opening pages of Dickens’s *Bleak House*, a novel saturated with anxiety about the colonial encounter, when Esther, Richard and Caroline arrive at Bleak House and see their rooms:

Our sitting-room was green; and had framed and glazed, upon the walls, numbers of surprising and surprised birds, staring out of pictures at a real trout in a case, as brown and shining as if it had been served with gravy; at the death of Captain Cook; and at the whole process of preparing tea in China, as depicted by Chinese artists.<sup>38</sup>

As the specter of the revenge of the colonized, it is hard to beat Captain Cook, famously thought to have been devoured by the Hawaiian Island cannibals and thus a warning of the ultimate threat—dismemberment and destruction by the very objects of colonial power.<sup>39</sup> Cook’s appearance in the early pages of *Emperor’s Children*, I suggest, constitutes a literary foreshadowing of September 11, and it may also explain our aversion, shared with most other colonial powers, to facing our own history in our domestic spheres. Depictions of the power of the colonized to disrupt the colonizer’s world from within are not new—Paul Brown showed how Caliban, the “thing of darkness,” in Shakespeare’s *Tempest* interrupts Prospero’s famous speech at the end of the play in an act of disruption that attacks the very center of colonial power.<sup>40</sup> In all these cases, the message

35. CLAIRE MESSUD, *THE EMPEROR’S CHILDREN* 5 (2006).

36. *Id.* at 9.

37. *Id.*

38. CHARLES DICKENS, *BLEAK HOUSE* 86 (1853) (Nicola Bradbury ed., 1996).

39. For the theme of cannibalism and fear of dismemberment in the colonial imagination, see, for example, Harry Sewllall, *Cannibalism in the Colonial Imaginary: A Reading of Joseph Conrad’s “Falk,”* 22 *J. OF LITERARY STUDIES* 158 (2006) and Steven Slemmon, *Bones of Contention: Post-Colonial Writing and the ‘Cannibal’ Question,* in *LITERATURE AND THE BODY* 163 (Anthony Purdy ed., 1992).

40. See Paul Brown, *This Thing of Darkness I Acknowledge Mine; The Tempest as the*

is that the world we have made—thus, history itself—will come back to haunt us, hunt us, and maybe worse.

History erupts even more blatantly into Schulman's narrative in *Beach*. The couple, a German married to the descendant of Polish Jews, is exactly the kind of couple that America symbolizes—a union that transcends history, living in the present and future, released from Old World hatreds and blood feuds. After the attacks, they flee the city to take refuge in the wife's mother's beach house in the Hamptons. Amidst the chaos of escaping Manhattan, the husband befriends a young French woman with a baby, Martine, whose husband is missing and feared dead; Gerhard brings her along to the beach, and suddenly history casts its shadow: Jewish Suzannah becomes irrationally convinced that Martine's blue-eyed baby is Gerhard's:

"I've got eyes in my head," shouted Suzannah. "I've seen that baby's eyes!"

"Eyes, eyes? What are you talking about?"

....

"What? Martine? Wylie? Are you talking about Wylie?" Her inference was beginning to dawn upon him.

"He's got your eyes, Gerhard."

....

"Suzannah, you are out of your mind," said Gerhard. "You belong in a mental hospital."<sup>41</sup>

History's poison has infected others too—another character, Leah, accuses Gerhard of fathering the blue-eyed child as well. In fact, it is seeping in everywhere: Suzannah analogizes their flight to the Hamptons to her grandparents' flights from pogroms; Gerhard subconsciously addresses Martine when he finds her slumped on the floor of the ATM as "Fraulein"; Gerhard himself wonders, thinking about his son, "[t]he Jew and the German. Were they wrong after all to mix their unholy blood?"<sup>42</sup>

The most forceful explosion of history into American life, however, occurs in Kalfus's novel: the attacks occur in the midst, not only of Marshall and Joyce's divorce, but also in the middle of the wedding plans of Neal (a Jew) and Flora (an Anglican). After 9/11, Marshall becomes an Iago-like character set on fomenting sectarian strife between the couple and

---

*Discourse of Colonialism*, in *THE TEMPEST: A CASE STUDY IN CRITICAL CONTROVERSY* 205-29 (Gerald Graff & James Phelan eds., 2000).

41. SCHULMAN, *supra* note 22, at 191.

42. *See id.* at 194.

their families and between bride and groom as well. At the fiancé's bachelor party, he remarks that the hatred behind the attacks was partly caused by "fanatics from Brooklyn[,] . . . those Jewish settlers on the West Bank"<sup>43</sup> and calls Israel a "crappy little country,"<sup>44</sup> provoking an outburst from the fiancé's brother:

They'll never accept us, never. . . . That's why they fought so hard against you and don't want the least Jewish content in your wedding: no rabbi, a single lousy Jewish prayer, a huge argument just to get the chuppah. . . . [T]heir environment is totally inimical to everything you are.<sup>45</sup>

Finally, Marshall almost manages to sabotage the arrangements for the chuppah, and the wedding is saved only at the last minute by the groom, who arrives an hour late, dragging the canopy up the aisle, as his mother-in-law glares at "her imminent son-in-law, an hour late for his own wedding, with a fury that would resonate down through the decades."<sup>46</sup> So much for banishing blood feuds behind to the old country.

### III. Happy Endings and American Myths

These works offer a happy ending or, to one degree or another, satirize the wish for one, in uneasy complicity with the American insistence on optimism.<sup>47</sup> The endings occupy a spectrum between reflecting on and satirizing our refusal to acknowledge divisions in the body politic. On the milder side, Claire Messud offers the hope of rebirth for at least one of her characters, the misfit Frederick, also called Bootie, who has just written an exposé of another character in the novel, his uncle, a prominent New York intellectual, who has taken Bootie in, hired him as his assistant, and sought to mentor the young man. Not that we as readers are unsympathetic to Bootie's public exposure of a pompous hypocrite, but the result of his transgression is that he must leave the apartment and start afresh. He achieves this by faking his own death—or not contradicting the other characters' assumptions that he died—in the fall of the Twin Towers. In one of the last scenes of the novel, one of the other characters spots him working in a restaurant and, shocked to see him alive, insists he contact his mother and the family, but he refuses, saying he is just "doing what [he needs] to do to survive" and that "Frederick [no longer] exist[s]."<sup>48</sup> Packing

---

43. KALFUS, *supra* note 21, at 96-97.

44. *Id.* at 99.

45. *Id.* at 100.

46. *Id.* at 126.

47. *See supra* notes 6-7.

48. MESSUD, *supra* note 35, at 429.

to leave town after this encounter, he thinks “This person in motion was who he was becoming: it was something, too: a man, someday, with qualities. Ulrich New. Great geniuses have the shortest biographies, he told himself; and take them by surprise. Yes. He would.”<sup>49</sup>

This ending seems to offer some genuine hope to this one character, at least. Schulman’s *Beach* also presents the events of 9/11 as offering renewal and redemption to some of her characters, but the hollowness of their hopes is more apparent than it is in Messud’s text. The morning after their fight, Gerhard and Suzannah meet on the beach, where it becomes clear that Gerhard is hopelessly deluded about both the state of the country and that of his marriage, which have become one and the same:

“Now we know what we are made of and we are better for it. The world will come together. The world will heal itself of this shocking, brutal performance. The world will rise to the occasion. You’ll see, Suzannah. Don’t scoff.”

....

“You’ll see,” said Gerhard. “We will be better, Suzannah.”

....

He held his wife in his arms. He infused her with his strength. He believed himself.

He believed himself, that day at the beach.<sup>50</sup>

Even the British McEwan seems susceptible to the appeal of the happy ending. Despite its very personal violence, the novel ends in a bath of benevolence: the doctor decides to forgive the intruder and operate to cure his congenital disease instead. He and his wife reconcile themselves to their daughter’s pregnancy—discovered when the intruders made her strip in front of them—and the surgeon falls asleep in bed next to his wife, thinking, “[t]here’s always this . . . there’s only this. . . . this day’s over.”<sup>51</sup>

The most satiric conclusion is Kalfus’s *Disorder*. The ending savagely mocks the myth of community: the historical aspects of the story slide off the continuum of reality into historical fantasy; the Iraq war is swiftly won and the Americans impose a “Velvet Occupation”; Iraqis find Saddam but refuse to turn him over to U.S. forces and insist on executing him themselves to a chorus of “*The Star Spangled Banner*.” Soon entrepreneurs start selling t-shirts adorned with the silk-screened image of the dictator’s hanging corpse; American investigators uncover a caché of

49. *Id.* at 431.

50. SCHULMAN, *supra* note 22, at 212.

51. MCEWAN, *supra* note 30, at 289.

nuclear weapons in Iraq; soon thereafter, the Israelis and Palestinians make peace, and Bin Laden is captured. At this, crowds fill the streets of Manhattan, waving flags, throwing confetti and singing patriotic songs. Marshall suddenly feels consumed by “sudden love for his country . . . an honest, unalloyed, uncompromised white-hot passion.”<sup>52</sup>

It is clear that this fantasy of national unity leaves no room for the possibility that individuals should be singled out for treatment different from the rest—part of its allure is the erasure of difference. Marshall sings “*My Country Tis of Thee*” “squeezed between a young sari-wrapped woman and a tall man in dreads.”<sup>53</sup> In this context, to acknowledge that the “sari-wrapped woman” or the “tall man in dreads” might in the next moment disappear into a night and fog of indefinite detention is an unwelcome intrusion into a dream of unity and wholeness.

It is worth asking why this yearning for the perfect community holds such power that it makes it hard to face the destruction of the very constitutional values from which it stems. The Preamble to the Constitution calls for a “more perfect union,” a phrase whose solecism might be seen to reveal some anxiety about that union.<sup>54</sup> How can something become “more perfect?” Of course, the Framers believed, in harmony with their age, that true perfection did not exist on earth and could be found only “beyond the veil,” and thus the idea that we could and should keep striving, in this life, for “more perfection” makes philosophical sense, but grammatically, the

---

52. KALFUS, *supra* note 21, at 236.

53. *Id.*

54. For a discussion of this phrase, see Martin Diamond, *The Federalist on Federalism: “Neither a National Nor a Federal Constitution, But a Composition of Both,”* 86 *YALE L.J.* 1273, 1280-81 (1977) (asserting that “[t]he phrase . . . is no grammatical solecism, but an accurate description of the compromised, compoundly federal and national system that resulted from the [constitutional] Convention” a claim which, I argue, undermines itself) and A.H. Feller, Book Review, 51 *COLUMB. L. REV.* 537, 538 (1951) (reviewing HANS KELSEN, *THE LAW OF THE UNITED NATIONS*, (1950)) (referring to the phrase’s “celebrated solecism”). For the meaning of the phrase in constitutional interpretation throughout American history, see R.B. BERNSTEIN, *THE FOUNDING FATHERS RECONSIDERED* 168-69, 175-76 (2009) (noting that the phrase suggests that “the framers’ recognition that the Constitution not only was improving on the Union as defined by the Articles of Confederation but that both it and the Union were capable of further improvement” and noting that the idea of “perfecting the union has been a key theme of African American constitutional thought” and central to President Obama’s vision of American historical progress). I agree that the term was not a political or philosophical solecism as the Framers meant it, but I do maintain that grammatically it is still problematic, and that the contradiction it contains—the idea improving something that by definition cannot be improved—might both reflect and inspire anxiety. Indeed, the Framers had reason to be worried about the state of their fragile union at the time, as the very notion of sovereign states under a federal government seemed like an unstable concept.

phrase remains illogical. The Framers were indeed anxious about the union, both in their time and in times to come.<sup>55</sup> A popular graphic of the era shows a snake cut into eight pieces over the caption “Join, or Die.”<sup>56</sup> Clearly, union was a matter of life or death—both literally and figuratively. Does the phrase “a more perfect union” impose continual striving for the unattainable, the way the Calvinist God demanded ceaseless scouring of the world for ever new signs of salvation, never allowing for a definitive answer?

One way to reassure ourselves of our “more perfect union” is to decline to hold anyone out from that union as accountable for the civil rights violations that occurred after 9/11. Indeed, we as a nation have shown an alarming refusal to do so. For example, despite the fact that Human Rights Watch has collected over 330 reports of abuse implicating over 600 U.S. personnel, no CIA official and very few military members have been charged.<sup>57</sup> An internal memo declined to recommend the disbarment of John Yoo, the Justice Department official whose “torture memo” gave President Bush the legal authority to torture detainees and prisoners of war, finding him guilty of only “poor judgment.”<sup>58</sup> Another way is to look away from rights violations that target those in our midst who have Arabic sounding names or travel to suspect parts of the world.

#### CONCLUSION

Schulman notes in the afterword to *Beach* that a photograph of a man falling head first from the Towers “inspired and haunted” her through the writing of the book.<sup>59</sup> This seems to indicate that the story she tells is a kind of sublimation of that image, both inspiration and specter. How did this image of a person plunging to his death metamorphose into ballet, art and marriage? On the one hand, Schulman reveals as hollow the belief that art

55. See BERNSTEIN, *supra* note 54, at 41-49.

56. See *id.* at 110. The image of a snake became a popular symbol at the time, in part because of the superstition that a snake that had been cut into pieces could come back to life if someone joined the pieces together before sunset. In this cartoon, it is a plea for the colonies to stay alive by joining together in the face of threat from Great Britain. See Chris Whitten, *Don't Tread on Me: The History of the Gadsden Flag and How the Rattlesnake Became a Symbol of American Independence*, FOUNDING FATHERS.INFO, July 5, 2001, <http://www.foundingfathers.info/stories/gadsden.html#history>.

57. HUMAN RIGHTS WATCH, BY THE NUMBERS: FINDINGS OF THE DETAINEE ABUSE AND ACCOUNTABILITY PROJECT 2, <http://www.humanrightsfirst.info/pdf/06425-etn-by-the-numbers.pdf> (2006).

58. Posting of Michael Isikoff to Declassified NewsWeek Blog, <http://blog.newsweek.com/blogs/declassified/archive/2010/02/19/report-bush-lawyer-said-president-could-order-civilians-to-be-massacred.aspx> (Feb. 19, 2010, 20:16 EST).

59. SCHULMAN, *supra* note 22, at 214.

can ward off or make sense of destruction; on the other hand, the very act of sublimation that is the novel attempts this. Indeed, one might see certain images in the novel in this way: at one point Suzannah imagines that she and another character are “falling together forever down the black hole inside her head.”<sup>60</sup> Has the image of one man falling head first transformed itself into this internal fall in a way that is at once both reassuring—because it is now psychological rather than external—and disturbing—because it is no longer cabined in its slot in time but “forever”?

While *Beach* is a meditation on sublimation and the role of art, to what extent is it itself—and the other works I discuss here—an act of sublimation that replicates what it seeks to satirize? As the narrator of *The Reluctant Fundamentalist* puts it:

As a society, you were unwilling to reflect upon the shared pain that united you with those who attacked you. You retreated into myths of your own difference, assumptions of your own superiority. And you acted out these beliefs on the stage of the world, so that the entire planet was rocked by the repercussions of your tantrums, not least my family, now facing war thousands of miles away. Such an America had to be stopped in the interests not only of the rest of humanity, but also in your own.<sup>61</sup>

As a society, we were oblivious before 9/11 to the degree of hatred toward us in parts of the world; after it, as these works show, we were reluctant to acknowledge ways that those very powers that had caused that hatred were attacking our own cherished rights and freedoms, and to hold accountable those responsible. Instead, reflecting and reenacting our anxious longing for that perfect union, we made it all about ourselves. The question that emerges for the interface of law and literature is, to what extent can art stand outside of culture; can it highlight its failings without to some extent reenacting them?

---

60. *Id.* at 183.

61. MOHSIN HAMID, *THE RELUCTANT FUNDAMENTALIST* 168 (2007).

\*\*\*