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BOOK REVIEW

ADVOCACY AS HISTORY? THAT TAKES THE PRIZE!

Gulag: A History by Anne Applebaum. New York City: Doubleday, 2003. Pp. 677. Hard Cover. \$35.00.

*Reviewed by Dana Neacșu**

I. INTRODUCTION

*Gulag: A History*¹ (“*Gulag*”), the recipient of the 2004 Pulitzer Prize for general non-fiction,² may be particularly well-received by lawyers and law students because they can appreciate author Anne Applebaum’s writing skills. *Gulag* reads like a lawyer’s product: a conclusion replete with facts and arguments. Those who enjoy perfecting their legal skills while reading for pleasure should read this review.

Gulag is, in essence, a successful legal brief.³ It persuaded seventeen honorable judges⁴ to accept the author’s

* The author is a reference librarian at Columbia Law School Library and a New York attorney. I am grateful to Jody, Phil, Karin, and Charles, as well as to Marc Hasen and Abed Aladien for their constant support. I am grateful also to Travis Krepelka and the editorial staff of the Santa Clara Law Review for their professionalism and detailed assistance with this review.

1. ANNE APPLEBAUM, *GULAG: A HISTORY* (Doubleday 2003).

2. The Prize awarded Anne Applebaum’s *GULAG: A HISTORY* was in the general non-fiction category: “For a distinguished book of non-fiction by an American author that is not eligible for consideration in any other category, ten thousand dollars (\$10,000).” *See The Pulitzer Board Presents The Pulitzer Prize Winners 2004*, at <http://www.pulitzer.org/year/2004/general-non-fiction> (last visited Nov. 5, 2004).

3. *See* Orlando Figes, *Reconstructing Hell*, *THE NEW YORK REVIEW OF BOOKS*, June 12, 2003, at 48. “*Gulag: A History* is the first comprehensive study of the camps to be written in the West.” *Id.*

4. The seventeen current members of the Pulitzer Prize Board are: Lee C. Bollinger, President, Columbia University; Jim Amoss, Editor, *Times-Picayune*, New Orleans, La.; Andrew Barnes, Chairman, Poynter Institute for Media

twofold argument, despite its tenuous evidence.

Lawyers may find *Gulag* useful because it presents them with a skill that, while not acknowledged in school, is expected to be mastered by the time they write their first legal brief: making winning arguments out of untenable ones. While a lawyer has a double duty, one to her client, whose cause she is expected to win,⁵ and one to the court, which she must assist “in deciding the case justly,”⁶ she will rarely shy away from trying to win a weaker case, which may require making untenable arguments.

The first part of Applebaum’s argument rests on the author’s statement that the Gulag was equal to none except the Nazi camps.⁷ While she acknowledges the differences between a victim’s experience at the Nazi camps and the Gulag, her argument is about the camp systems’ compatibility and similarity.⁸

The second part of the argument rests on what critics have pointed out as Applebaum’s representation that the Gu-

Studies, St. Petersburg, Fla.; Amanda Bennett, Editor and Executive Vice President, *The Philadelphia Inquirer*; Joann Byrd, Former Editor of the Editorial Page, *Seattle Post-Intelligencer*; Kathleen Carroll, Executive Editor and Senior Vice President, Associated Press; Henry Louis Gates, Jr., W.E.B. DuBois Professor of Humanities, Harvard University; Donald E. Graham, Chairman, *The Washington Post*; Anders Gyllenhaal, Editor and Senior Vice President, *Star Tribune*, Minneapolis-St. Paul; Jay T. Harris, Wallis Annenberg Chair, Director, Center for the Study of Journalism and Democracy, Annenberg School of Communication, University of Southern California; David M. Kennedy, Donald J. McLachlan Professor of History, Stanford University; Nicholas Lemann, Dean, Graduate School of Journalism, Columbia University; Ann Marie Lipinski, Senior Vice President and Editor, *Chicago Tribune*; Richard Opiel, Editor, *Austin American-Statesman*; Mike Pride, Editor, *Concord Monitor*; Paul Steiger Managing Editor, *The Wall Street Journal*; Sig Gissler, Administrator, Graduate School of Journalism, Columbia University (since 2002 the Pulitzer Prize has been affiliated with the Graduate School of Journalism at Columbia). See *Current Members of the Pulitzer Prize Board*, at <http://www.pulitzer.org/CurrentBoard/CurrentBoard.html> (last visited Sept. 27, 2004). The Board has broad discretion in deciding the prizes, and today, “in fact, the independent board makes all the decisions relative to the prizes.” See *History of the Prizes*, at <http://www.pulitzer.org/history.html> (last visited Nov. 5, 2004).

5. EDWARD D. RE & JOSEPH R. RE, BRIEF WRITING AND ORAL ARGUMENT 11 (8th ed. 1999).

6. *Id.*

7. APPLEBAUM, *supra* note 1, at 50. The word “Gulag” is an acronym that means “Main Camp Administration,” or, in Russian, *Glavnoe Upravlenie Lagerie*. *Id.*

8. *Id.* at xv.

lag was a mirror image of the Soviet society,⁹ enabling her to indict the entire Soviet system. As if such a task were not difficult enough, she also accuses all theoretical constructs tied to the founding fathers of the mainstream anti-capitalist ideology¹⁰ of immorality¹¹ because they allegedly prevented the exposure of the Soviet horrors.¹² While Applebaum's sweeping conservative agenda is obviously welcome, rewarded, and expected in the United States, it is unusual internationally. Applebaum points out that Europe's conservatives tend to withhold their anti-Soviet instincts and instead describe the Cold War as "one of the most unnecessary conflicts of all time."¹³

Gulag's anti-Soviet thesis soberly piggybacks the emotionally charged view that the Soviet camp system was similar to the Nazi concentration camps.¹⁴ Critics swallowed it as

9. Figes, *supra* note 3, at 48.

10. The founding fathers of mainstream anti-capitalist ideology include Karl Marx and Friedrich Engels.

11. This argument made by Applebaum is questionable because the founding philosophers of the Western Left, including Marx and Engels, were also the founding philosophers of the Soviet Union. Therefore, it appears that condemning the Soviet Union too thoroughly would consequently condemn the Western Left. APPLEBAUM, *supra* note 1, at xx-xxi.

12. It was not until the late 1980s, under the initiative of Mikhail Gorbachev, that material about the Gulag was released. Applebaum is hopeful that a Hollywood director will feature the Gulag in a movie, much like Steven Spielberg did for the Holocaust in *Schindler's List*. See *id.* at xviii.

13. *Id.* at 576 (quoting Andrew Alexander's article published in the "conservative British *Spectator* magazine").

Like others of my generation, I hugely enjoyed the film *Dr Strangelove* when it came out in 1963, despite my orthodox view of the Cold War and its causes. But as I came to visit the United States and meet American politicians and military men, it struck me that General Jack D. Ripper is not such a total parody. This set me on a long and reluctant journey to Damascus. As I researched, through the diaries and memoirs of the key figures involved, it dawned on me that my view of the Cold War as a struggle to the death between Good (Britain and America) and Evil (the Soviet Union) was seriously mistaken. In fact, as history will almost certainly judge, it was one of the most unnecessary conflicts of all time, and certainly the most perilous.

Andrew Alexander, *The Soviet Threat Was Bogus*, THE SPECTATOR, April 20, 2002, at 14.

14. Sober styles often impress critics and give the appearance of objectivity. Applebaum's, of course, is a different sort of book. It is not as angry or argumentative, not as subjective or polemical, and not as sprawling as Aleksandr I. Solzhenitsyn's tour de force in *The Gulag Archipelago: 1918-1956*. Solzhenitsyn combined oral history with ideological analysis and his own personal memoirs of the

they lauded and rewarded the book, and, consequently, endorsed both theses: Applebaum's indictment of Soviet camps as comparable to Nazi camps and her indictment of the entire Soviet system by association. Given the evidence presented, it is difficult to know whether the judges have been duped or persuaded.

Applebaum's argument, however, is flawed to the extent that it thrives on a simplified comparison between the Soviet and Nazi camp systems. Applebaum assigns a straightforward moral choice to her readers. She reduces the debate to a choice between Good and Evil, when the choice is more nuanced and difficult to make given all the facts surrounding the Soviet camps.¹⁵

The Nazi camps sought to rid the German race of Jewish, Roma, and other similarly well-defined impurities,¹⁶ making Applebaum's Nazi-resemblance theory far-reaching.¹⁷ In con-

camps. Applebaum is more historical, drawing research subsequent to 1956.

Figes, *supra* note 3, at 48 (referring to ALEKSANDR I. SOLZHENITSYN, *THE GULAG ARCHIPELAGO*, 1918–1956 (Thomas P. Whitney trans., Harper & Row 1974-75)).

15. From the pre-Stalinist humble beginnings, through the Stalinist terror, the end of the camps and the release of the prisoners under Nikita Khrushchev, and the dislike of dissidents and their exile under Leonid Brezhnev, the periods are too distinctive to call them "the time of the Soviet camps," which critics seem to believe lasted from 1917 through 1986. See Figes, *supra* note 3, at 48. "She has written an excellent account of the rise and fall of the Soviet labor camps between 1917 and 1986." *Id.* In support of a more nuanced approach, see "Defining the Parameters," in NANJI ADLER, *THE GULAG SURVIVOR*, 5-42 (Transaction Publishers 2002) (examining the survivors' return from the Gulag).

16. See First Supplementary Decree of November 14, 1935 of The Reich Citizenship Law of September 15, 1935, promulgated on September 16, 1935 and entered in force on September 30, 1935, *available at* <http://www.mtsu.edu/~baustin/nurmlaw2.html> (last visited Nov. 5, 2004). "ARTICLE 5 (1) A Jew is an individual who is descended from at least three grandparents who were, racially, full Jews . . . ARTICLE 5 (2) A Jew is also an individual who is descended from two full-Jewish grandparents [under certain circumstances]." *Id.*

17. Applebaum does mention the distinctions between the Nazi and the Soviet camps. See APPLEBAUM, *supra* note 1, at xxxvii. "Above all, however, two differences between the systems strike me as fundamental. First, . . . no Jew inside a [Nazi] camp could reasonably expect to escape death . . . [w]hile . . . there was no single category of [Soviet prisoners] whose death was absolutely guaranteed." *Id.* at xxxviii. However, her passing references to the distinctions between the camps are limited to the Introduction and merely stress her thesis that, although not identical, these camps were similar. See *id.*

trast, the Soviet camps were not ethnic slaughterhouses.¹⁸ They were places where “enemies” of the new regime were humiliated through hard, menial work,¹⁹ and during the Stalinist era the camps indeed transformed into inhumane environments.²⁰ Between 1929 and Stalin’s death in 1953, approximately 18 million people passed through the labor camps.²¹ It is estimated that 4.5 million people never returned.²² Although these statistics are remarkable and impressed the public and the critics alike,²³ *Gulag* is not a book about Stalinist labor camps. Rather, it merely uses evidence about the nefarious Stalinist camps, which lasted for twenty-four of the eighty years of Soviet history, to build a sweeping moral argument against the Soviet system.

The labor camps helped build the Soviet industrial revolution.²⁴ Meanwhile, the remaining Soviet population faced warfare: the First World War, the short-lived Allied Invasion,²⁵ and the Second World War. If one accepts that the Gulag lasted until the 1980s, rather than Applebaum’s asserted time period, then the Gulag discourse should focus on a different type of war that the Soviet population faced: the Cold War.²⁶ Whether using forced labor to bring a feudal country to modernity is moral or not is a most valid question. But it is different from Applebaum’s because her thesis is focused on blame distribution: the Soviet system alone bears the responsibility. The only item open for discussion is the level of that blame—and she opines that the Soviet system is as much to blame for inhumanely treating millions of people as the Nazi

18. *Id.*

19. *Id.*

20. See APPLEBAUM, *supra* note 1, at xvii (the camps were dismantled soon after Stalin’s death).

21. *Id.* at inside flap.

22. *Id.*

23. “Far more people were affected by the Stalinist repressions than by the Nazi Holocaust – an estimated eighteen million people were sent to the Soviet labor camps, one quarter of whom died.” Figes, *supra* note 3, at 48.

24. “[T]he primary purpose of the Gulag, according to both the private language and the public propaganda of those who founded it, was economic.” *Id.*

25. The Allied Invasion of Russia started in 1918 and involved fourteen countries. Japan sent over 60,000 men, Britain almost 40,000, and the United States 10,000. See NICHOLAS VALENTINE RIASANOVSKY, *A HISTORY OF RUSSIA* 483 (Oxford University Press 5th ed. 1984). For a brief description of the Second World War’s impact on Soviet Russia, see *id.* at 518-23.

26. For a history of the Cold War, see, for example, ANDRE FONTAINE, *HISTORY OF THE COLD WAR* (Pantheon Books 1968).

system. This is a sweeping and deeply flawed argument. It does not aid in understanding war generally or the Soviet camps, nor does it help us write their history. And when the Pulitzer Prize Board recognizes *Gulag* as non-fiction,²⁷ then deconstructing *it* becomes a necessary, though challenging, exercise.

II. WHAT IS A BRIEF?

Lawyers must excel in writing agreements, briefs, memoranda, and letters.²⁸ A brief is the formal written argument in a court case. Normally, it includes a statement of facts, an explanation of the relevant issues, and an argument. The argument is “*replete with references to previously decided cases supportive of the desired conclusion.*”²⁹

Lawyers write briefs to explain their views, to persuade the judge, an allegedly neutral party, and to counter the opposition’s arguments.³⁰ A persuasive legal brief enables a judge to use the lawyer’s proposition when constructing the outcome of the case. This convoluted deception occurs because in our legal system “the decision making process at the trial court level is broken down into three distinct functions”³¹ performed by three different actors. The jury discerns the facts, the judge hears the legal arguments and issues the opinion, and the lawyers advocate their clients’ interests in a variety of forms, including legal briefs.³²

Judges rely on lawyers to assist them in reaching their legal determination. Lawyers are not expected to be entirely objective, they are rightfully perceived as their clients’ hired guns. In our adversarial system, lawyers may play the role of hired gun because a judge has access to at least two sets of equally persuasive biased arguments: the plaintiff’s and the defendant’s. Unfortunately, *Gulag* offers only one set of biased arguments by which the seventeen-member panel of judges awarded it the Pulitzer Prize: the plaintiff, Applebaum’s, indictment.

27. See *The Pulitzer Prize Winners*, available at <http://www.pulitzer.org> (last visited Nov. 5, 2004).

28. GEORGE D. GOPEN, *WRITING FROM A LEGAL PERSPECTIVE* 109 (1981).

29. *Id.* at 119 (emphasis added).

30. DIANA V. PRATT, *LEGAL WRITING: A SYSTEMATIC APPROACH* 259 (2004).

31. GOPEN, *supra* note 28, at 119.

32. *Id.*

Furthermore, because *Gulag* is considered non-fiction, non-legal writing, it faces a different truth-finding standard than legal brief writing. Journalists and historians are expected to uncover the whole truth in their writing, whereas lawyers uncover the truth most beneficial to their clients' interests in their legal brief writing.

III. GULAG: A BRIEF SUMMARY

Gulag is an indictment of Soviet labor camps and, on a grander scale, of the Soviet system. Yet, it is not the product of an objective presentation of facts uncovering the truth because it does not mention contrary facts that may either exculpate the Soviet system of some of the crimes Applebaum tries to tie to it or assign responsibility to others.

Truth, as Michel Foucault persuades us,³³ can be achieved only when facts are presented from multitudinous points of view. Foucault both raised and answered the question of who is served by such discourse.³⁴ He acknowledged that behind any public discourse ("the posing of the question"³⁵), there is socio-political power. By allowing only certain questions to be posed, Foucault explained, the receiver is encouraged to assume that they are the important questions.³⁶ The very absence of other questions implies that both they and their respective answers are irrelevant. In other words, the omission of all the facts in Applebaum's work tells her readers that the undisclosed Gulag facts are irrelevant to her indictment of the Soviet camps and, by extension, of the Soviet regime.

Gulag presents selective facts that fit only a discrete niche within the anti-Soviet ideology shared by Winston Churchill,³⁷ the United States,³⁸ and others. But patron di-

33. MICHEL FOUCAULT, "Truth and Power," *POWER/KNOWLEDGE* 109-33 (Colin Gordon trans. & ed., Pantheon Books 1980). For a more detailed analysis of Foucault's "regime of truth," see, e.g., Dana Neacșu, *The Political Value of Knowledge and the Elite Schools' Curricula: To Ignore or Not to Ignore Marxism?*, 82 *UNIV. OF DETROIT MERCY L. REV.* (forthcoming 2005).

34. FOUCAULT, *supra* note 33, at 115.

35. *Id.* at 116.

36. *Id.* at 116-33.

37. "The day will come when it will be recognized without a doubt throughout the civilized world that the strangling of Bolshevism at birth would have been an untold blessing to the human race." Winston Churchill to the House of Commons, May 11, 1953, in RICHARD GOLDHURST, *THE MIDNIGHT WAR: THE AMERICAN INTERVENTION IN RUSSIA, 1918-1920* at title page (McGraw-Hill

versity does not cure a position of unilateralism, especially since, as even Applebaum concedes, the anti-Soviet ideology is much larger. It includes anti-Soviet Marxists:³⁹ those who do not dismiss the validity of a Marxist theory simply because Russia's poorly conceived socialist/communist experiment failed. *Gulag*, as argued below, contains almost nothing that will validate the anti-Soviet Marxist position. Applebaum's raw number of sources⁴⁰ certainly impressed critics, yet failed to satisfy Foucault's standard of truth because it failed to present facts supporting points of view that go beyond a provincial anti-Soviet ideology.

Gulag covers the "Origins of the Gulag,"⁴¹ "Life and Work in the Camps,"⁴² and the "Rise and Fall of the Camp-Industrial Complex."⁴³ All this in 586 pages.

The *Introduction*⁴⁴ and the *Epilogue*⁴⁵ explain Applebaum's ideological position. For example, early on Applebaum has a choice of pinning the inhumane roots of the camps on either the pre-Soviet penitentiary, or the hardships experienced by the Soviet society at large, or both. The Gulag system, like any social institution, could not emerge "fully formed, from the sea." However, Applebaum chooses to limit the camps' ontology to the Soviet regime at large and does not consider the pre-Soviet penitentiary. Applebaum writes:

By belongs to the history of the Soviet Union, I mean something very specific: the Gulag did not emerge, *fully formed, from the sea*, but rather reflected the general standards of the society around it. If camps were filthy, if the guards were brutal, if the work teams were slovenly,

1978).

38. See e.g., Robert Frazier, *Acheson and the Formulation of the Truman Doctrine*, 17.2 JOURNAL OF MODERN GREEK STUDIES 229, 230 (1999). "From the time of its enunciation, however, [the Truman Doctrine] was interpreted by many as an attack on Soviet communism." *Id.*

39. APPLEBAUM, *supra* note 1, at 485.

40. "Applebaum has brought together much of the new material from Russia. Her book is mainly based on published memoirs (250 are listed in the bibliography), but Applebaum has also done some interviews, traveled to the former Gulag settlements, labored through archives, and read a huge amount of secondary literature." Figes, *supra* note 3, at 48.

41. APPLEBAUM, *supra* note 1, at 3-115 (Part I).

42. *Id.* at 121-408 (Part II).

43. *Id.* at 411-563 (Part III).

44. *Id.* at xv-xl.

45. *Id.* at 564-86.

that was partly because filthiness and brutality and slovenliness were plentiful enough in other spheres of Soviet life.⁴⁶

Yet, Applebaum does not further investigate the Soviet filth and brutality. She does not try to explain it. Thus, her expected objectivity suffers.

Part One reveals Applebaum's belief that the camps were a Soviet child whose birth coincided with that of the entire Soviet system.⁴⁷ The focus is primarily on Solovetsky, identified by Applebaum as the first camp, because it used forced labor for perceived Soviet profit.⁴⁸ This section ends in 1939 during the Stalinist era.

Part Two paints a different picture of prisoners' lives in the Stalinist camps as compared to those in the pre-Stalinist era. It begins with the random arrests and follows the victims through the vicissitudes of imprisonment. Conceivably, if the reader limits her reading to this part, she would agree with Applebaum's thesis: the Soviet camps were so atrocious, they were second only to the Nazi concentration camps.

Part Three develops chronologically through Stalin's death and the camps' dismantling, and brings the reader to the 1980s when the Russian people seemed to have done little more than smashing statues of previous leaders.

The *Epilogue* contains rhetorical questions about the Cold War and denounces the lack of mobilization of Western forces after the collapse of the Soviet Union. Perhaps the author discusses this because she has difficulty remembering who the United States' enemy was during the Second World War.

IV. WHY DOES *GULAG* RESEMBLE A LEGAL BRIEF?

Legal briefs are usually structured to include three modes of discourse: narration, exposition, and persuasion.⁴⁹ Narration introduces the bare facts, reserving opinion, infer-

46. *Id.* at xxvii (emphasis added) (internal citation omitted). "Applebaum has no doubt that the basic nature of the Gulag system was shaped by the Bolshevik regime." Figes, *supra* note 3, at 48.

47. "This is a history of the Gulag. By that, I mean that this is a history of the Soviet concentration camps: their origins in the Bolshevik Revolution" APPLEBAUM, *supra* note 1, at xxv.

48. *See id.* at 54.

49. *See* GOPEN, *supra* note 28, at 120.

ence, and interpretation for the exposition. Persuasion, the main part of a brief, details the lawyer's arguments.⁵⁰ A lawyer's job is well done if the judge accepts her arguments and incorporates them in the final decision. An author can also win over her judge—the public, including critics.

Applebaum masterfully mixes the three key components found in legal briefs and persuades the public and critics to accept her twofold argument. First, Applebaum indicts the Soviet regime by arguing that the Soviet concentration camp system, Gulag, was similar to the Nazi camps. Second, as part of her anti-Soviet theory, Applebaum alleges that the Gulag was a mirror image of Soviet society, lasting as long as Soviet history.⁵¹ The Gulag thus comes across as having been instituted shortly after the Russian Revolution, expanded through the years, reaching its height in the early 1950s, and finally disappearing decades later.⁵²

There is no clear consensus on the Gulag's origins.⁵³

50. *Id.*

51. Soon after Stalin's death, the Gulag as a system of labor camps was dismantled. See APPLEBAUM, *supra* note 1, at 477-515. When Stalin's death became public, life in prisons became humane again: "the chief accountant . . . suddenly rushed into the accounting office where prisoners were working, cheered, hugged [the prisoners], and shouted, "Take off your numbers, girls, they're giving you back your own clothes!" *Id.* at 270 (internal citation omitted).

52. In the introduction Applebaum talks about "their dismantling after Stalin's death," only to immediately add that political prisoners were still released in the 1980s. APPLEBAUM, *supra* note 1, at xxv. See also *id.* at 561 (discussing "the political prisoners released in 1986 and 1987"). Thus, the obvious conclusion is that the camp system still existed in the 1980s.

53. For other authors, the Gulag has a different birth date. For example, Nanci Adler states that work camps were born in 1918, when Lenin legalized them in a decree, but the birth of "large scale forced labor as a method of reeducation" was in 1926. ADLER, *supra* note 15, at 14, 19 (internal citation omitted). It seems that Applebaum's theory about the origins of the Soviet camp system is not shared by the French author Alain Besançon either, although his book translated from French, under the misleading English title *The Rise of the Gulag: Intellectual Origins of Leninism*, (Sarah Matthews trans., Continuum 1981) is mentioned in *Gulag's* bibliography. APPLEBAUM, *supra* note 1, at 644. The English version of *Les Origines Intellectuelles du Leninisme* (Calman-Levy 1977) does not index either the word "Gulag" or "camp," perhaps because the book is about ideology, generally, and the role the Soviet ideology played in building a new society, in particular. See BESANÇON, *supra*, at 32, 320. The closest Besançon gets to a theory about the rise of the camp system is when he identifies the origins of the Stalinist concept of "enemy of the people," which was used to describe the Gulag's prisoners, in Leninism and asserts: "Modern scholarship . . . has had no difficulty in showing that what is understood as Stalinism, a repression which can strike anybody who can be set in any ideological

Even Applebaum admits that the Gulag's origin was "hazardous."⁵⁴ However, she connects the Gulag's birth to that of Cheka's, the police body in charge of arresting "enemies" of the Soviet system⁵⁵ and placing them in "special" prisons.⁵⁶

Applebaum's argument then becomes more controversial in light of its supporting evidence. The evidence Applebaum offers, identifying the pre-Stalinist camps as being second only to the Nazi camp system, strikes a clear difference between the Stalinist and Nazi camps.

For example, in the 1920s, the Soviet forced labor regime was governed by an eight-hour workday, with "extra hours and night work allowed only in agreement with the labor code."⁵⁷ Such work ethics surely humiliated the "formerly well-off" Russians by "giving them a taste of the workers' lot."⁵⁸ The camps became major tools of revenge upon and re-education of the rich.⁵⁹ Furthermore, in what Applebaum identifies as the first Gulag camp, the Solovetsky camp, tea was served in teapots, sugar was served in sugar bowls, the cells of political prisoners were full of light and air, and the windows had no bars.⁶⁰ Operas, operettas, acrobatic performances, and films were performed in Solovetsky's theater.⁶¹ Evenings were dedicated to art personalities like Sarah Bernhardt.⁶² These conditions are clearly different from those in the Nazi camps.

In support of her thesis, Applebaum notes that the Soviet camp banners read "'Through Labour – Freedom!' a slogan which reminds us of the one hanging above the gates of Auschwitz: '*Arbeit Macht Frei*,' 'Work Makes You Free.'"⁶³ But as a historian Applebaum surely is aware that both

category—'opportunist,' 'enemy of the people' and simply 'rowdy'—derives directly from the principles of Leninism." *Id.* at 268.

54. APPLEBAUM, *supra* note 1, at 51.

55. *Id.* at 533; *but see id.* at 51 (noting that the "secret police who planned the expansion of the Gulag also seem, initially, to have been no clearer about their ultimate goals"). Cheka, political police, was established in 1917 to protect communist power. *See* 26 THE NEW ENCYCLOPÆDIA BRITANNICA 996 (Encyclopædia Britannica, Inc. et al. eds., 15th ed. 1998).

56. APPLEBAUM, *supra* note 1, at 8.

57. *Id.* at 10 (internal citation omitted).

58. *Id.* at 10-11.

59. *Id.*

60. *Id.* at 21.

61. *Id.* at 25.

62. APPLEBAUM, *supra* note 1, at 26.

63. *Id.* at 175.

Marxist values and Soviet propaganda described work as the only way to human fulfillment, freedom, and dignity.⁶⁴ Moreover, originally, before the Nazi camps' atrocities had been exposed, the Nazi slogan could arguably have meant something different from the horror it evokes today. Additionally, hard work is a well-established value in the United States.⁶⁵ Today, Americans continue their efforts to instill the value of work in what is perceived as the less productive segments of our population. The only difference between the Soviet and American perceptions of the idle is that, unlike the Soviets, Americans equate poverty with idleness.⁶⁶

There is little, if any, dispute that the Stalinist camps were unforgiving to their occupants. Thus, their description as second only to the Nazi camps is feasible.⁶⁷ The Great Trials of the 1930s, followed by the purges of Yezhovshchina,⁶⁸

64. See FRIEDRICH ENGELS, *THE PART PLAYED BY LABOUR IN THE TRANSITION FROM APE TO MAN* (International Publishers 1950).

65. "[D]uring Reconstruction, [f]reedpeople [sic] interiorized an individualized sense of self-regulation characterized by punctuality, order, ambition, hard work, cleanliness, and domesticity. These technologies of the self became the credentials that Northern officials looked for when considering whether and, if so, when freedmen had proven themselves eligible for citizenship." Katherine M. Franke, *The Domesticated Liberty of Lawrence v. Texas*, 104 COLUM. L. REV. 1399, 1424-25 (2004).

66. See President Clinton's Welfare Reform: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 104 Pub. L. No. 193, 110 Stat. 2105 (1996) (codified at 42 U.S.C. § 1305 (2000)).

Between 1994 and 1998, welfare rolls declined 37 percent. Fewer people are staying on welfare, and fewer are applying for benefits Simply put, welfare reform should move people from dependence to self-sufficiency. Of course, there is ample room for debate over what constitutes a decent job and self-sustaining wage.

Jack A. Meyer, *Assessing Welfare Reform: Work Pays*, 136 THE PUBLIC INTEREST 113, 113 (1999), available at 1999 WL 9357574.

67. "[P]hysical torture came into use, probably in 1937, although it ended again in 1939." APPLEBAUM, *supra* note 1, at 140. We should remember that the international legal system and the human rights discourse were very different during the Gulag system. For example, the United Nations Convention Against Torture did not exist until 1984, and entered into force in 1987. The USSR ratified it in 1987. See *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 39 U.N.T.S. 119-20 (1984), available at <http://www.un.org/documents/ga/res/39/a39r046.htm> (last visited Nov. 5, 2004).

68. The term Yezhovshchina (or Ezhovshchina) defines the most severe stage of the great purges of 1936 to 1938, which were carried out at Stalin's behest by the chief of the Soviet security police (NKVD) Nikolay Yezhov (or Ezhov), who himself eventually became a Soviet victim and was purged. See Amy Knight, *The KGB, Perestroika, and the Collapse of the Soviet Union*, 5 JOURNAL OF COLD WAR STUDIES 67, 68 (2003). Perhaps this period can be best

are also well-known horrors that occurred in the Gulag camps.⁶⁹

Yet, it remains a difficult task to simply indict the Stalinist camps as second only to the Nazi camps, when prisoners were given substantially more freedom than those in the Nazi camps. For example, prisoners were allowed to meet with relatives without guards present, and by the 1940s, such meetings occurred in a building constructed for this purpose.⁷⁰

Additionally, by 1943, it was recommended that the Soviet camps employ staff members to serve as librarians and film technicians. A *kultorganizator* was responsible for organizing cultural events that would teach the prisoners about the contemporary politics of communist Russia.⁷¹

At most, the Nazi camps employed gas technicians.⁷²

If hard facts weaken Applebaum's argument, the personal narratives she uses to give a detailed account of the prisoners' detention life,⁷³ from arrests to daily camp events, also weaken her argument because they emphasize what victims thought about their arrest rather than why it actually happened. For example, from Lev Finkelstein's account we learn what he thought about the reason of his arrest. Applebaum describes Finkelstein's arrest in the late 1940s as Finkelstein's *impression* that he was given a short camp sentence to demonstrate that the arresting system never makes a mistake, even though no one was able to invent a plausible

described by Anna Akhmatova's (1889-1966) poem, *Requiem 1935-1940*:

During the terrible years of Yezhovshchina I spent seventeen months in the prison queues in Leningrad. One day someone recognized me. Then a woman with lips blue with cold who was/ standing behind me, and of course had never heard of my name, came out of the numbness which affected us all and whispered in my ear – (we all spoke in whispers there): "Can you describe this?" I said, "I can!" Then something resembling a smile slipped over what had once been her face.

These words open Applebaum's book. APPLEBAUM, *supra* note 1, at v (full poem available at <http://www.english.eku.edu/Pellegrino/worldpoetry/akhmatova.htm>) (last visited Nov. 5, 2004).

69. See ADLER, *supra* note 15, at 5-42 (examining the survivors' return from the Gulag).

70. APPLEBAUM, *supra* note 1, at 253.

71. *Id.* at 240.

72. To this author's knowledge, the Nazi camps merely employed gas technicians.

73. *Id.* at 41-137.

case against him.⁷⁴ And, from Tatyana Okunevskaya's account we learn again what her belief about the arrest was, not why it happened. As one of Russia's most beloved actresses, Tatyana Okunevskaya was arrested, *she believed*, for refusing to sleep with Viktor Abakumov, the wartime head of Soviet counter-intelligence.⁷⁵

Of course, not all of Applebaum's evidence comes from personal narratives. Anonymous jokes adequately convey the Stalinist terror.⁷⁶ Additionally, she uses secondary sources, including what Applebaum acknowledges to be "an unorthodox biography of Stalin,"⁷⁷ to comment on Stalin's personality. Applebaum writes that Stalin would force others to confess to crimes that he committed because his experience as an agent of the Czarist police gave him a particular need to see people confess to being traitors.⁷⁸

The Gulag's factual and narrative potpourri did not affect its warm public reception. It did not diminish the power of Applebaum's indictment of the Stalinist camps – and by association, of the Soviet regime. The book's achievement is especially noteworthy in light of the historic facts *Gulag* fails to mention. Some of them will be briefly outlined below.

In February of 1917, when Czar Nicholas II was deposed, Russia was at war with Germany.⁷⁹ It is estimated that upwards of five million Russian soldiers were killed in this war.⁸⁰ While tragic for Russia, this was a blessing for the Allies because the carnage kept two million Germans occupied on the Eastern Front.⁸¹ The United States quickly pledged economic and technical support to the provisional pro-

74. *Id.* at 137 (emphasis added).

75. *Id.* at 125 (emphasis added).

76. "There is a very old Soviet joke about the terrible anxiety Ivan and his wife Masha experienced when the knock on the door came – and their relief when they learned it was only the neighbor come to tell them that the building was on fire." *Id.* at 127.

77. APPLEBAUM, *supra* note 1, at 139 (referring to ROMAN BRACKMAN, *THE SECRET FILE OF JOSEPH STALIN* (Frank Cass 2001)).

78. APPLEBAUM, *supra* note 1, at 139.

79. For a personal view of the last years of Czar Nicholas II and his family, see, for example, PIERRE GILLIARD, *THIRTEEN YEARS AT THE RUSSIAN COURT: A PERSONAL RECORD OF THE LAST YEARS AND DEATH OF THE CZAR NICHOLAS II AND HIS FAMILY* (F. Appleby Holt trans., G. H. Doran 1921).

80. PETER NEVILLE, *RUSSIA: THE USSR, THE CIS AND THE INDEPENDENT STATES*, 171 (The Windrush Press 2000).

81. ROBERT WILLETT, *RUSSIAN SIDESHOW: AMERICA'S UNDECLARED WAR, 1918-1920* at xxi-xxii (Brassey's Inc. 2003). This fact is not mentioned in *Gulag*.

Western Russian government,⁸² which had promised the Allies that Russia would continue its fight against Germany.⁸³ However, when the Bolsheviks (Lenin's political party) took over on a promise to end the war and a delegation headed by Leon Trotsky secured a treaty,⁸⁴ Russia's previous allies on both sides of the Atlantic refused to provide military and financial assistance to the Bolsheviks,⁸⁵ and launched both a blockade⁸⁶ and an invasion⁸⁷ in support of the internal civil war between the Bolsheviks and the anti-Bolsheviks.⁸⁸

Nowhere in *Gulag* does Applebaum mention the Allies' war against Soviet Russia that took place only "[t]wo months before World War I ended with an armistice on the Western Front."⁸⁹ Such an omission is not due to a lack of sources.⁹⁰

82. GOLDHURST, *supra* note 37, at 2 (McGraw-Hill 1978). This fact is not mentioned in *Gulag* either.

83. *Id.* This fact is not mentioned in *Gulag* either.

84. *Id.* This fact is not mentioned in *Gulag* either.

85. DAVID FOGLESONG, *AMERICA'S SECRET WAR AGAINST BOLSHEVISM: U.S. INTERVENTION IN THE RUSSIAN CIVIL WAR, 1917-1920* at 37 (Univ. of North Carolina Press 1995). This fact is not mentioned in *Gulag* either.

86. *Id.* at 244. This fact is not mentioned in *Gulag* either.

87. For example, the French were supporting anti-Bolshevik armies on the southern and western frontiers of Russia. *Id.* This fact is not mentioned in *Gulag* either. Although "[a] little known episode in American history is the landing of American troops in Russia to fight the communists," a quick Google search brings up information that "[t]he United States, along with Canada, Great Britain, France, and Japan became entangled in the civil war which followed the Bolshevik revolution." *The American Expeditionary Force and the Red Army*, at <http://www.historywiz.com/invasionrussia.htm> (last visited Nov. 5, 2004).

88. *See, e.g.*, EVAN MAWDSLEY, *THE RUSSIAN CIVIL WAR* (Allen & Unwin, Inc. 1987). This fact is not mentioned in *Gulag* either.

89. GOLDHURST, *supra* note 37, at xiii.

President Woodrow Wilson sent five thousand American soldiers to the north Russian port of Archangel on the White Sea. He sent another eight thousand troops to Vladivostok on the Bay of the Golden Horn at the eastern tip of Siberia, and long after their buddies in France had gotten home, these soldiers continued to fight a desperate, forgotten war.

Id.

90. *See, e.g.*, DONALD E. CAREY, *FIGHTING THE BOLSHEVIKS: THE RUSSIAN WAR MEMOIR OF PRIVATE FIRST CLASS DONALD E. CAREY, U.S. ARMY, 1918-1919* (Neil G. Carey ed., Presidio Press 1997); *see also* VICTOR M. FIC, *THE COLLAPSE OF AMERICAN POLICY IN RUSSIA AND SIBERIA, 1918: WILSON'S DECISION NOT TO INTERVENE (March-October, 1918)* (Eastern European Monographs 1995) (applauding President Wilson's "policy of intervention"); BENJAMIN D. RHODES, *THE ANGLO-AMERICAN WINTER WAR WITH RUSSIA, 1918-1919: A DIPLOMATIC AND MILITARY TRAGICOMEDY 18-29* (Greenwood Press 1988).

While brief and not well known, it *is* the subject of books.⁹¹ Benjamin Rhodes, for example, described this war in foreboding words that would have been beneficial for readers before the United States commenced some of its more recent invasions: “[T]he weak Anglo-American intervention at Archangel in 1918-1919 was unusually inept based as it was upon misinformation, profound geographical and political misconceptions, and a generous supply of wishful thinking.”⁹² Unfortunately, historians, journalists, and others did not produce these illuminating words to the public.

The omission of this war in the *Gulag* is meaningful because the war the Allies launched against Russia defined the international hostility Soviet Russia faced during its entire existence. Information about this war might explain how Soviet Russia evolved from a democracy, which aimed to empower the poor through a thuggish dictatorship, to self-immolation. One could view the inept American aggressiveness as a catalyst of the “Soviet paranoia about the sinister designs of the western imperialists”⁹³ and subsequently as a reason for the creation of the labor camp system. This is especially the case in light of the fact that the connection between wide-spread fear and the human-rights abuses – “terror” – that occurred during the Stalinist era is a well-known argument: “[W]hat can be termed ‘terror’ arose out of a specific fear that began to grip the Bolshevik leaders in the early 1930s: fear of an uncontrollable, obstinate population, of disloyal party soldiers, and of enemies who were seen to have infiltrated party and state organs.”⁹⁴ So why did Applebaum omit this historic context that marked the birth of the Soviet camps? Perhaps she did so for the same reasons lawyers hired to tell a story may become inclined to omit facts that

91. For example, a brief search through Columbia Library’s online catalog produced several such books. See *Search LWeb*, at <http://www.columbia.edu/cu/lweb/> (last visited Nov. 5, 2004).

92. RHODES, *supra* note 90, at ix.

93. *Id.*

94. Jorg Baberowski, Review, *The Road to Terror: Stalin and the Self-Destruction of the Bolsheviks, 1932-1939*, and: *Stalinism as a Way of Life: A Narrative in Documents*, 4 KRITIKA: EXPLORATIONS IN RUSSIAN AND EURASIAN HISTORY 752, 753 (2003), available at <http://muse.jhu.edu/journals/kritika> (last visited Nov. 5, 2004) (on file with the Santa Clara Law Review) (citing THE ROAD TO TERROR: STALIN AND THE SELF-DESTRUCTION OF THE BOLSHEVIKS, 1932-1939 (J. Arch Getty & Oleg V. Naumov, eds., Benjamin Sher, trans., Yale University Press 1999)).

weaken their client's position.⁹⁵

In this case, the regime of incarceration in the 1920s, amidst the mayhem of war that dominated Russia, supports an argument more nuanced than the one made in *Gulag*. It supports an argument that denounces the violence and brutality of the Soviet regime, but assigns the blame to *both* the domestic and the international community. On the one hand, the Soviet domestic agenda was too ambitious to support a decent lifestyle for all in such a big and backward country. On the other hand, the international community was too determined to strangle the Bolshevik revolution in its infancy⁹⁶ to give the Soviets any respite from war and allow them to concentrate on their domestic agenda.

Applebaum's book is replete with other contextual omissions that would have enlightened the reader about the later structural changes in the Soviet system. For example, defeated in its invasion, the United States further sought the downfall of Soviet Russia through "humanitarian" aid.⁹⁷ By 1919, President Woodrow Wilson was planning a cure for Bolshevism, not through force, but through Christian humanitarian aid. The Soviet people soon learned that they could have their daily bread through international humanitarian relief intervention, if they revolted against their regime.⁹⁸

Furthermore, Applebaum's contextual information about the Soviet history during the Second World War is incomplete. It is common knowledge that the First World War brought unimaginable hardship on Soviet Russia, causing millions of combat deaths and millions of victims of starvation and other tribulations. Yet *Gulag* mentions only the 900-day German blockade of Leningrad, when its citizens lived on

95. Perhaps even lawyers try to stay away from such practice. *See, e.g.*, LAUREL CURRIE OATES ET AL., *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 280 (Aspen Law & Business, 3d ed. 2002).

In addition to presenting the rules and analogous cases in the light most favorable to your client, you also want to set out the arguments in the light most favorable to your client. As a general rule, you will want to set out your own arguments first, give your own arguments the most airtime, and use language that strengthens your arguments and undermines the other side's arguments.

Id.

96. *See supra* note 37.

97. FOGLESONG, *supra* note 85, at 240-42.

98. *Id.*

four ounces of bread per day.⁹⁹ Applebaum chooses to omit other more horrible Second World War death traps, such as the 1942-1943 siege of Stalingrad.¹⁰⁰ Over one million Russian soldiers were killed during that siege.¹⁰¹ Their bravery helped turn the tide of the war in the Allies' favor¹⁰² – one of which was the beleaguered USSR,¹⁰³ whose World War II losses translated into 25 million Soviets dead.¹⁰⁴

Perhaps Applebaum chose to omit these facts because too much contextual data would have cancelled the numbing effect of the numbers *Gulag* uses to ascribe responsibility to the Soviet regime. Conceivably, learning about the World War II horrors suffered by the Soviet citizens for the benefit of the entire humanity, including that of Russia's Western allies, would have canceled the effect of other data Applebaum does offer, such as the Gulag prisoners' punishment food ration. For example:

Officially, the daily punishment rations for prisoners who had failed to fulfill the norm consisted of 300 grams of 'black rye bread,' 5 grams of flour, 25 grams of buckwheat or macaroni, 27 grams of meat, and 170 grams of potato. Although these are tiny amounts of food, those resident in punishment cells received even less: 300 grams of 'black rye bread' a day . . . and 'hot liquid food' – soup, that is – once every three days.¹⁰⁵

There *is* undeniable evidence that the Soviet population

99. APPLEBAUM, *supra* note 1, at 415.

100. RIASANOVSKY, *supra* note 25, at 518 (discussing the impact of the Second World War on Soviet Russia). See also JOHN ERICKSON, *THE ROAD TO STALINGRAD*, 401-72 (Harper & Row 1975) (discussing the Stalingrad siege).

101. See 11 *THE NEW ENCYCLOPÆDIA BRITANNICA* 205 (Encyclopædia Britannica, Inc. et al. eds., 15th ed. 1998).

102. Jeffrey Herf, *The Nazi Extermination Camps and the Ally to the East: Could the Red Army and Air Force Have Stopped or Slowed the Final Solution?* 4 *KRITIKA: EXPLORATIONS IN RUSSIAN AND EURASIAN HISTORY* 913, 916 (2003), available at <http://muse.jhu.edu/journals/kritika> (last visited Nov. 5, 2004) (on file with the Santa Clara Law Review).

103. "As Gerhard Weinberg succinctly puts it, from 22 June 1941 to May 1945, 'the majority of the fighting of the whole war took place on the Eastern Front: more people fought and died there than on all the other fronts of the war around the globe put together.'" *Id.* at 914 (quoting GERHARD WEINBERG, *A WORLD AT ARMS: A GLOBAL HISTORY OF WORLD WAR II* at 264 (Cambridge University Press 1994)).

104. *Id.* at 915.

105. APPLEBAUM, *supra* note 1, at 245 (internal citations omitted).

was subjected to indoctrination¹⁰⁶ and repression of all sorts.¹⁰⁷ Nevertheless, at a minimum, it would have been educational to have access to the complex factual context surrounding the Gulag – which was only very briefly mentioned in Applebaum's work.

Contextual facts explain and educate the reader, and to the extent that they explain, they sometimes do exculpate the offender. Nothing could exculpate the Nazis, and that is why so much has been uncovered and publicized about their camps. However, Applebaum laments that there is less writing about the Gulag. A true revelation of the facts does to some extent exculpate the Soviets while potentially uncovering other wrongdoers.

V. CONCLUSION

Applebaum's *Gulag* has not succeeded in reaching its avowed intellectual goal. It does not establish a truly factual "social, cultural, and political framework for knowledge of the Gulag."¹⁰⁸ Yet, *Gulag's* success is phenomenal in light of the evidence produced. Its use of controversial data and its exclusion of non-supporting facts in persuading American critics that the Stalinist camps resembled the Nazi camps and, by extension, that the Soviet system, and any other ethos reliant on Marxist values, are indictable on similar grounds. The Pulitzer Prize *Gulag* received is a measure both of that success and of how inconsistent our American cultural values seem to be with those of the rest of the world.

106. The role of superstructure and its ideological component in Soviet Russia, especially at its beginning, was worth noting. For a clear picture of this situation, see BESANÇON, *supra* note 53, at 218-19.

107. *Id.* at 265.

108. APPLEBAUM, *supra* note 1, at xviii.