Yet when reading Overy's work, and particularly its straightforward description of the institutions of the two regimes, there are so many echoes of other eras and other regimes—even contemporary regimes—that it is impossible not to wonder whether this really was such a unique moment after all. Overy describes, for example, one of the more notorious phenomena of totalitarianism: the thousands of letters that ordinary Germans and Russians sent to their governments, denouncing their neighbors and co-workers for co-habiting with Jews or telling jokes about Stalin. In January 1940, one letter to the local Nazi party office in Eisenach demanded to know "why the Jew Fröhlich ... is still able to share a six-to-seven room apartment," when so many non-Jews were cramped into smaller spaces. Russian archives document the case of a Gulag prisoner who wrote more than three hundred letters of denunciation even after he had been sentenced.

The notion of a society that made millions of its citizens into informers may seem inimical to us. But was it historically unique? Here is Kanan Makiya describing Iraqi society under the former Baathist regime in his book *The Republic of Fear*:

> Writing various reports is an important activity of party members. The most coveted tell on friends and colleagues.... For the most part, they are routine gossip sheets tailored to what the next man up wants to read. Still, they form the essential backbone in a system designed to suppress storytelling through the elevation of lies, hypocrisy, innuendo, malicious slander, and betrayal. For the system to work the truth value of a report is irrelevant.

The echoes of the 1930s are not lost on Makiya, who explains both that "Stalinism is the 'original' Third Worldism that Baathism ... sought to emulate" and that the Baathist notion of leadership was close "in spirit" to the Nazi theory of political authority as well.

But Iraq is not special either. Overy also mentions one of the more absurd aspects of Soviet society, namely the insistence that prisoners in camps, who were often working themselves to death, should listen quietly to the same kinds of propaganda imposed on ordinary citizens. "The Soviet government does not punish, it reforms" was a classic slogan; a famous sign over the entrance to one of the Vorkuta camps read "Work in the USSR Is a Matter of Honor and Glory." Germany's labor camps—as opposed to its death camps—also exhorted prisoners to work on behalf of the Fatherland; the sign over the entrance to Auschwitz read "Work Makes You Free." This impulse to make your enemies celebrate their own repression also has contemporary echoes, as the recent testimony of a North Korean defector, a former camp inmate, illustrates: "The prisoners are instructed to memorize 15 officially designated songs praising Kim Jong Il and sing the songs on the way to work, and while working. They are beaten if they do not sing loud enough and a brief pause in singing is taken as an indication of political discontent. The prisoners must sing the songs as loudly as possible even though they are usually very tired."

It was not Overy's intention to write a work of moral philosophy, and that is part of his book's power: this is a history, not a treatise on human nature. It treats political and cultural institutions, not ethical questions. Yet the straightforward, matter-of-fact manner in which Overy lays out the structure of two spectacularly horrifying systems cannot help but lead a reader back to questions about human nature and human evil. Over and over again, regimes that claim to have found a formula for truth, regimes that create ostensibly united communities that demonize or murder outsiders, have achieved enormous popularity. Every historian who tries to explain how this happens expands our knowledge of why it happens. This, in the end, is the real value of the Nazi-Soviet comparison, and the real value of this book. It looks ahead as much as it looks back. ■

Cass R. Sunstein

The Rehnquist Revolution

A COURT DIVIDED: THE REHNQUIST COURT AND THE FUTURE OF CONSTITUTIONAL LAW
By Mark Tushnet
(W. W. Norton, 384 pp., $27.95)

LEARNED HAND, AN INFLUential federal judge from New York, used to be famous for saying, in the middle of World War II, that "the spirit of liberty is the spirit which is not too sure that it is right." Hand practiced what he preached. A leading apostle of judicial restraint, Hand was reluctant to strike down the decisions of state and federal governments. Sharply critical of the liberal Warren Court, which he thought unduly activist, Hand was a conservative icon, simply because he believed that judges should give the benefit of every doubt to the elected branches of government.

The Supreme Court has long been firmly under conservative control, but it has not been following Learned Hand. Consider a simple fact. In its first seventy-five years, the Supreme Court struck down only two acts of Congress. In the eighteen years since Ronald Reagan nominated William H. Rehnquist as chief justice, the Court has invalidated more than three dozen. Under Rehnquist, the Court has compiled a record of judicial activism that is, in some ways, without parallel in the nation's history. Its most controversial majority opinions have usually been produced by its two moderate conservatives, Sandra Day O'Connor and Anthony Kennedy, and its three more extreme conservatives, Rehnquist, Antonin Scalia, and Clarence Thomas.

Rehnquist is now extremely ill, and it is widely rumored that he will be leaving the Supreme Court soon. An unfailingly gracious and generous man, Rehnquist must be counted as one of the giants of American law, because he has presided over and greatly contributed to a Supreme Court that has radically revised previous understandings of the Constitution. Since joining the Court as associate justice in 1971, Rehnquist

has had a clear agenda for constitutional interpretation: to renew limits on Congress's power under the commerce clause, to increase the protection of private property, to strike down affirmative action programs, to scale back the use of the Constitution to protect those accused of crime, to reduce the protection of privacy, to stop the use of the equal protection clause to assist members of disadvantaged groups (disabled people, the elderly, illegitimate children, women), and much more. The Rehnquist Court has not always acted in accordance with the views of William Rehnquist, but it has moved dramatically in his preferred directions. What complicates the picture is that O'Connor and Kennedy have frequently insisted on caution. In some cases, the result has been to lead the Rehnquist Court to respect for precedent, to restraint, and to a modest but unmistakable degree of continuity with the rights-protecting decisions of the Warren Court.

In Mark Tushnet's account, the division between the two sets of conservatives on the Court corresponds to a deeper division, one that has played a large role in modern American politics. O'Connor and Kennedy represent the older and more traditional wing of the Republican Party, and Scalia, Thomas, and Rehnquist represent the modern Republican Party as it has been transformed by Barry Goldwater and Ronald Reagan. The latter side of the party is far more radical, for it rejects "the principles that animated our government from the New Deal through the Great Society." Tushnet thinks that we have an emphatically Republican Supreme Court whose majority is split between the party's two wings.

In his view, the old Republicans on the Supreme Court have worked with the new ones to produce significant constitutional change, above all by limiting the power of the national government. But the new Republicans, including the chief justice, have been abandoned by the older ones on the social issues: thus the Court has refused to move in radically conservative directions on such issues as abortion, affirmative action, gay rights, and the separation of church and state. Tushnet's conclusion is that "the Court's economic conservatives won and its cultural conservatives lost." And the reason is that in politics, too, economic conservatives have been winning and cultural conservatives have been losing. The outcomes on the Rehnquist Court reproduce the outcomes in the American political process.

The bulk of Tushnet's discussion is divided into two parts, the first exploring individual members of the Rehnquist Court, the second focusing on particular areas of constitutional law. He offers a detailed treatment of Kennedy, stressing an underappreciated fact: this Reagan appointee wrote both of the Rehnquist Court's key decisions protecting gay rights. The first, in 1996, struck down a weird Colorado amendment to the state constitution, forbidding states and localities to protect gays and lesbians against discrimination. The second, in 2003, invalidated a ban on homosexual sodomy (and heterosexual sodomy, too).

In both cases, Kennedy wrote in bold and ambitious terms, describing a constitution whose meaning changes over time. He began his opinion in the Colorado case in this way: "One century ago, the first Justice Harlan admonished this Court that the Constitution 'neither knows nor tolerates classes among citizens.' Unheeded then, those words are now understood to create a commitment to the law's neutrality where the rights of persons are at stake." In the Texas case, he insisted that "liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters relating to sex.... As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." Tushnet criticizes Kennedy for what he sees as a streak of pomposity, and he is unable to explain Kennedy's interest in gay rights; but he sees Kennedy as an old-style Republican, with a strong libertarian streak and a willingness to make changes in the law in accordance with evolving social values.

Tushnet depicts Scalia as a fundamentally different judge, committed to the view that the Constitution is solid and unchanging, and to a belief that those who disagree with him are essentially lawless—and dumb, and maybe dishonest. As Tushnet acknowledges, Scalia's principal contribution to the Court (and it is an important one) has been an insistence on the need for clear rules laid down in advance. Hence Scalia is skeptical of the time-honored idea, emphasized above all by O'Connor, that judges should decide one case at a time; he believes that an approach of this kind makes the law unpredictable and increases the discretion of unelected judges. Scalia's commitment to rules is linked to his belief in "originalism," the view that the Constitution should be interpreted in accordance with the original understanding of those who ratified it. (Here Scalia differs from Rehnquist, who pays much attention to history but has not endorsed originalism as a creed.) Tushnet adds that some of Scalia's surprising votes in free-speech cases have a great deal to do with his enthusiasm for rule-bound law: he provided a key vote, for example, in two majority opinions protecting flag-burning. Tushnet argues that Scalia feared the dissenters' approach would breed confusion and uncertainty in the law.

In fact, Scalia has been generally a strong advocate of free speech, in part because he believes that judges would be unable to administer a system that carves out vague exceptions from the free-speech guarantee. But Tushnet does not mean to celebrate Scalia, whom he describes as arrogant and far too sure that he is right. In Tushnet's view, Scalia "isn't as smart as he thinks he is." He believes that Scalia's inflated sense of his own abilities has been reinforced by the "vocal admiration that Scalia received from conservative legal activists." Tushnet also believes that Scalia's much-praised writing is just "the sound-bite style of *Crossfire*, highly quotable, reducing complex issues to simple—and often misleading—phrases," in which he treats those who disagree with him as "stupid" or as "liars." The more general point is that unlike Kennedy and O'Connor, Scalia has a clear agenda, seeking large-scale changes in constitutional law that cut across both economic and social issues.

Clarence Thomas has a similar agenda, and he certainly rejects the view that the Constitution allows affirmative action and protects abortion and gay rights; but Tushnet argues that Thomas is no Scalia clone, and indeed Tushnet seems to admire him. No less than Scalia, Thomas insists that the Constitution should be interpreted to fit with the original understanding of those who ratified it. But much more than Scalia,

Thomas is willing to reject longstanding precedent in order to reclaim that original understanding. In a controversial opinion in 1992, for example, Thomas wrote that severe beatings of prisoners by their guards do not offend the cruel and unusual punishment clause, which was not originally understood to question "any hardship that might befall a prisoner during incarceration." Thomas went much further in 2004, invoking the original understanding to make the radical (though historically plausible) suggestion that the establishment clause—the constitutional source of the separation of church and state—does not apply to the states at all.

With respect to racial discrimination, Thomas has been a particularly distinctive voice, challenging what he sees as "racial paternalism." Where Scalia appears to see affirmative action as a form of social engineering, Thomas contends that it reflects condescension and pity and is ultimately incompatible with equality itself. Thomas insists that affirmative action programs "will help fulfill the bigot's prophecy about black underperformance." At various times in his life, Thomas has been said to have admired Ayn Rand, Ronald Reagan, Richard Wright, and Malcolm X; and it is a unifying theme for these diverse figures that they favored self-help and abhorred pity. Thomas's skepticism about what he calls a "patronizing indulgence" from the state marks much of his writing and makes his voice genuinely unique.

TUSHNET DEVOTES A FULL chapter to only one member of the Rehnquist Court who cannot be characterized as conservative: Ruth Bader Ginsburg. He focuses on her successful effort to interpret the Constitution's equal protection clause to forbid official discrimination on the basis of sex. As Tushnet notes, much of Ginsburg's career, before she moved to the bench, was devoted to the claim that sex discrimination, like racial discrimination, is often motivated by prejudice—and should be struck down unless government can justify it in neutral terms. As a lawyer, Ginsburg accomplished a great deal to move the law in this direction. As a Supreme Court justice, she wrote the majority opinion in the Rehnquist Court's most important sex-discrimination case, involving the Virginia Military Institute (VMI). There the Court struck down the exclusion of women from VMI notwithstanding the claim that women could not handle its "adversative method," which involves a great deal of physical and psychological hazing. The Court acknowledged that if women were admitted, VMI would have to alter some features of the adversative system, but it rejected, on the basis of history, the claim that the slightly modified system would be unsuitable for women.

With this ruling, Ginsburg moved constitutional law very close to treating sex discrimination with the same hostility applied to racial discrimination. And O'Connor and Kennedy joined Ginsburg's opinion. Tushnet's most general point is that the Court's opinion was a reflection of "changing social values about the role of women." He writes, somewhat sardonically, that the Rehnquist Court "was entirely unified about women's issues appealing to suburban women."

TUSHNET DESCRIBES A COURT that has followed the extreme conservatives on some important issues. Under Rehnquist's leadership, the constitutional law of federalism has seen a kind of revolution. Between 1937 and 1995, the Court did exceedingly little to limit the power of the national government, failing to issue even a single ruling to the effect that Congress had exceeded its authority under the commerce clause. By contrast, the Rehnquist Court has re-invigorated limitations on congressional power, striking down provisions of both the Gun-Free School Zones Act and the Violence Against Women Act. For many decades, the Court ruled that Congress had a great deal of flexibility to protect liberty and equality under its power to "enforce" the Fourteenth Amendment. Sharply limiting these rulings, the Rehnquist Court has struck down the Religious Freedom Restoration Act and parts of the Americans With Disabilities Act and the Age Discrimination in Employment Act. Tushnet thinks that these decisions reflect "disdain for Congress."

Under the Rehnquist Court, as Tushnet explains, U.S. corporations have had many significant successes. Countless companies have been alarmed at the prospect of high punitive-damage awards, and indeed jury awards can be both huge and unpredictable. Does the Constitution stand in the way of such awards? For almost all of the nation's history, the answer was no; juries could award punitive damages without the slightest constitutional restriction. But under the Rehnquist Court, all this has changed. In two crucial decisions, the Court has required that the punitive award have some relationship to the monetary value of the harm that was done. This requirement imposes a real discipline on what juries may do.

As Tushnet reports, some of the most dramatic corporate victories have occurred in the domain of speech. The First Amendment used to be about "rebels and rabble-rousers"; under the Rehnquist Court, it is far more often about money and marketing. In 1976, the Burger Court ruled, for the first time, that commercial advertising is protected by the First Amendment. This was a tentative development, but the Rehnquist Court has massively expanded the protection given to commercial advertisers. Here Thomas has been especially aggressive, arguing that the Court should invalidate any regulation based on the paternalistic (and condescending) idea that consumers cannot decide for themselves. Indeed, Thomas has argued that commercial advertising should receive the same level of protection as political speech. Other members of the Rehnquist Court have shown at least some sympathy for this position, going so far as to invalidate efforts to regulate tobacco advertising.

Many conservative activists have wanted the Supreme Court to expand greatly the reach of the constitutional clause requiring government to protect "just compensation" for any "takings" of private property. In particular, they have wanted the Court to require government to pay compensation when environmental regulations diminish the value of private property. Under the leadership of Rehnquist, Scalia, and Thomas, the Rehnquist Court has made some movement in their direction—but O'Connor and Kennedy have ensured that the movement has been modest. In Tushnet's summary, the "Rehnquist Court didn't force governments to pay substantially for any modern environmental, wetlands, or historic preservation regulations—if the governments proceeded carefully enough." But after the Court's pro-property decisions, "business and developers can credibly threaten to tie regulation up in court with takings clause challenges unless the regulations are to their liking."

With respect to social issues, Tushnet contends that the Court, led by O'Connor and Kennedy, has been quite cautious. Here Rehnquist, Scalia, and Thomas have often been thwarted; and here Rehnquist's personal agenda has been partially stalled. True, the Court has narrowly confined affirmative action programs, but it has not eliminated them entirely. In the area of abortion, it has cut back on *Roe* v. *Wade*, allowing some regulations that previous decisions forbade; but the Court has refused to reject the fundamental right to choose. The religious right has certainly scored a number of victories before the Rehnquist Court—above all, perhaps, in the Court's decision upholding a system of vouchers in education. The Court has also moved away from the idea of a strict separation of church and state, tending to require instead a form of "neutrality" that will permit government to aid religious institutions so long as it is aiding secular ones as well. But there has been no sea change as yet. (Recall Thomas's suggestion that the establishment clause does not even apply to the states—a suggestion that would make a revolution in the law.)

The Court's conservatism has been more conspicuous in criminal cases, in which the Court has been reluctant to limit police discretion, even when that discretion might well be exercised in racially discriminatory ways. Here, too, Rehnquist has often led the way: he has long sought to scale back Warren Court decisions using the Constitution to protect criminal defendants. Tushnet argues that the Court has "licensed racist police officers to act on their impulses, leaving victims with legal remedies that were available in theory but unavailable in practice." But for most of the social issues, Kennedy and O'Connor have been more moderate than Scalia, Thomas, and Rehnquist; and as a result, the Court has been more moderate as well.

TUSHNET CONCLUDES WITH A big question: what is likely to happen in the future? In his view, a Democratic president would not appoint liberal activists like Earl Warren, William Brennan, and Thurgood Marshall. Any Democratic appointees would likely continue the O'Connor-Kennedy approach on social issues while rejecting the Rehnquist Court's activism on economic issues. By contrast, moderate Republican appointees would continue to scale back Congress's power, perhaps by invalidating the Endangered Species Act; they would also be more willing to find that environmental regulations violate private-property rights. Conservative Republican appointees would go much further. They might overrule *Roe* v. *Wade*; they would certainly be unwilling to use the Constitution to protect gays and lesbians from discrimination. They might even strike down laws forbidding discrimination as beyond Congress's power or as interfering with freedom of association. Tushnet believes that these are unlikely scenarios, not least because the confirmation process tends to ensure a measure of moderation. Tushnet's more general point is that the political process is central to movements in constitutional developments—partly because of the process of appointment and confirmation, and partly because the Court is inevitably influenced, at least some of the time, by public opinion.

Tushnet is right to insist that legal arguments by the justices often grow out of political commitments, and from

that standpoint he offers a number of shrewd insights about the justices and the law. Ronald Reagan was able to transform the Supreme Court in important ways, above all by appointing Scalia and by elevating Rehnquist to chief justice, but also by appointing O'Connor and Kennedy, two justices with little enthusiasm for the rights-protecting innovations associated with liberal activists such as Warren, Brennan, Marshall, and William Douglas. Republican presidents may not have gotten everything that they desired, but they succeeded in dramatically changing the law, simply because the constitutional understandings of their appointees tended toward the right.

Of course Tushnet is correct to reject the view—ludicrous but widespread in conservative circles—that the Rehnquist Court, or at least Scalia and Thomas, is speaking neutrally for "the law." The conservatism of the Rehnquist Court is a product of a self-conscious and highly politicized re-engineering of the federal judiciary brought about by conservatives in the White House and Congress. Tushnet is also right to insist that all the current justices are at least occasional activists, willing and able—some of the time—to use judicial power to invalidate practices that do not obviously violate the Constitution.

Unfortunately, Tushnet does not adequately defend his central claim, which is that the division on the Rehnquist Court reflects a split between old and new Republicans. I believe that the split lies elsewhere. Tushnet thinks that the traditional Republicans favor less economic regulation without being social conservatives, whereas the new Republicans are conservative on both economic and social issues. But it is not easy to show that affirmative action, abortion, and gay rights were favored by some older generation of Republicans. Many of the current divisions in the Republican Party involve a split between the libertarians, who favor free markets and also privacy rights of various sorts, and the more powerful Reaganites, who favor free markets but also have sympathy with the religious right and hence distrust privacy rights. O'Connor and Kennedy have some libertarian inclinations, but they are hardly libertarians. In any case, many contemporary Republicans are moderate on both economic and social issues (Christine Whitman, Rudolph Giuliani, George Pataki). In short, it is not easy to map divisions in the Republican Party onto the Rehnquist Court.

MY OWN VIEW IS THAT the real divisions in the Rehnquist Court involve two radically different approaches to constitutional law. In a nutshell: O'Connor and Kennedy are incrementalists, reluctant to make large-scale changes in existing understandings of the law. Scalia, Thomas, and (to a lesser extent) Rehnquist are legal fundamentalists, or "movement judges," eager to insist on the supremacy of their own view of the Constitution, whatever the precedents say.

Most of the time, O'Connor and Kennedy are certainly conservatives. But they tend to decide cases one at a time. They respect precedent, even when they disagree with it. They do not want to revolutionize the law by reference to first principles. They also show some interest in public opinion, or in what Kennedy has called "evolving social values." Apparently they believe that the Constitution's meaning changes over time; and they think that evolving values play a legitimate role in the interpretive process. Hence, perhaps, their willingness to invalidate laws that interfere with sexual privacy and that discriminate against women. In all these ways, O'Connor and Kennedy are quintessential common-law judges, distrustful of general theories and broad rules, and willing to adjust the law to new conditions and emerging principles.

Scalia and Thomas are altogether different. (Rehnquist is generally with them, but he is somewhat more cautious. In his early days on the Court, he was a bit of a firebrand, carrying out the role now associated with Scalia; but as chief justice he has seemed more moderate, perhaps because of the requirements of his new role, perhaps because the Court as a whole has moved far to the right, and thus has often joined him.) Scalia and Thomas are radicals, seeking to make large-scale changes in constitutional law. They are angry about existing law in a way that O'Connor and Kennedy are not. As Tushnet emphasizes, their organizing theme is "originalism"; they believe that the Constitution should be interpreted to reflect the original understanding of those who ratified it. Originalism enjoys a lot of appeal among many people, but it is also vulnerable to serious objections. As an approach to constitutional interpretation, it must be defended, not simply asserted. Taken seriously, it would seem to lead to consequences that everyone, including Scalia and Thomas, would reject: permitting racial segregation by the national government and probably by the states, allowing sex discrimination, and authorizing a great deal of censorship as well.

Scalia and Thomas do not follow the logic of originalism wherever it leads. Most disturbing of all, they seem least interested in the original understanding when it runs counter to their moral and political convictions. For example, a great deal of historical work suggests that, as originally understood, no provision of the Constitution bans affirmative action programs. Yet Scalia and Thomas have repeatedly declared that the Constitution forbids such programs—and they have not so much as bothered to investigate the original understanding. So, too, a great deal of historical work suggests that under the original understanding, the constitutional protection against "takings" of private property did not require government to pay compensation when regulations merely diminish the value of property. But without even a glance at history, Scalia and Thomas have voted to require government to pay compensation when regulations diminish the value of property. In these (and other) cases, the constitutional understandings of Scalia and Thomas seem uncomfortably close not to the original understanding of the Constitution but to the ideology of the right wing of the Republican Party.

WHAT TUSHNET DOES NOT emphasize is that the most aggressive decisions of the Rehnquist Court reflect a truly radical change in conservative legal thinking since the 1970s and early 1980s. In that period, the Warren Court was a principal target of conservatives, and many conservatives sought to challenge aggressive judicial interventions into democratic processes, above all *Miranda* v. *Arizona* and *Roe* v. *Wade*. Conservatives claimed that federal judges should give greater respect to the decisions of elected officials; and they offered strong, principled arguments on behalf of that claim.

In a short time, however, things have changed dramatically. For many admirers of Scalia and Thomas, the real target now is Franklin Delano Roosevelt, not

Earl Warren. There is increasing talk of restoring what is being called the Constitution in Exile—the Constitution as of 1932, Herbert Hoover's Constitution, before Roosevelt's New Deal. This was a period in which the Supreme Court's understanding of the Constitution, obviously rooted in the justices' political convictions, jeopardized maximum-hour legislation, minimum-wage legislation, the National Labor Relations Act, the Fair Labor Standards Act, and the Social Security Act—and would certainly have forbidden the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Age Discrimination in Employment Act. This was also a period in which racial segregation was constitutionally fine, and in which it would have been ludicrous to say that the Constitution banned sex discrimination or protected a right to sexual and reproductive privacy.

The Bush administration does not lack sympathy for the Constitution in Exile, and President Bush has nominated judges who appear to believe that it should be restored. Conservatives speak of "strict construction," but most of them do not practice it. Few are willing to argue that judges should stay out of the democratic arena. *Bush* v. *Gore* was a far more radical intervention into political processes than anything dared by the Warren Court, and it is celebrated rather than reviled. And *Bush* v. *Gore* is merely the most visible of a long line of cases in which the Rehnquist Court has seized on ambiguous constitutional provisions to invalidate decisions of Congress and state governments.

Even in its aggressive moments, the Rehnquist Court has not suggested that the Constitution was properly understood by the Supreme Court in 1932. But in limiting national authority to protect disadvantaged groups and in protecting property rights, it has shown unmistakable sympathy for the pre–New Deal Constitution. This is a political program in legal dress. The harsh irony is that the program has been advanced especially aggressively by those members of the Rehnquist Court who contend, and even appear to believe, that they are speaking neutrally for the Constitution. ■

Robert Alter

Past Imperfect

A TALE OF LOVE AND DARKNESS: A MEMOIR
By Amos Oz
Translated by Nicholas de Lange
(Harcourt, 538 pp., $26)

THE TITLE THAT AMOS OZ has chosen for this remarkable book—in many ways the best book that he has ever written—stresses storytelling and theme and mood, with no hint that it is an autobiography. In her review of the original Hebrew publication two years ago, Nitza Ben-Dov, one of his most perceptive Israeli critics, actually referred to the book as a novel. This is a bit misleading, but it is not entirely a mistake, for Oz's narrative of his Jerusalem childhood in the 1940s is not only an imaginative reconstruction (like all autobiographies), it also calls on all his resources as a novelist for an extraordinary evocation of place, person, and period. The variety of episodes and the range of feelings are wider than those of any of his novels—touching, haunting, wrenching, amusing, and sometimes downright hilarious.

Oz was born in 1939, the only child of Yehuda Aryeh and Fania Klausner. His father, who had come to Palestine from Odessa, was the scion of a family of right-wing Zionists, the most prominent of whom was Joseph Klausner, the first professor of modern Hebrew literature at Hebrew University. Oz's lengthy portrait of Uncle Joseph (in fact his great-uncle) is the most brilliant in a whole gallery of memorable portraits, and it exemplifies one of the notable virtues of this wonderful book: its ability to exercise sharp satiric vision and yet maintain a degree of compassionate understanding. By Oz's account, Joseph Klausner was a monster of egotism, his home arranged as a temple to his achievements, in which he tirelessly lectured family and friends on the profundity of his intellectual breakthroughs (nowadays not much esteemed), the scurrility of the Zionist-socialist leadership, the imbecility of the academic world for not sufficiently recognizing his greatness. With all this, Oz is able to conclude, "He was at once a kind man, and a selfish, spoilt one, with the sweetness of a baby and the arrogance of a *Wunderkind*."

This same balancing of judgment and understanding is repeatedly put into play in Oz's characterization of his father. Yehuda Aryeh Klausner was a well-meaning person but also a mediocrity, and just once Oz permits himself to use this word. Like Uncle Joseph, his father knew seventeen or eighteen languages and was a walking encyclopedia. His dream was to follow in his uncle's footsteps at Hebrew University, but he spent his whole professional life as a librarian, earning a doctorate in late middle age by editing an obscure Hebrew manuscript by Y. L. Peretz, and never receiving a hand up the academic ladder from Uncle Joseph, who feared the imputation of nepotism and, even more, the prospect of a nephew who would not measure up to what he perceived to be his own lofty stature.

Even more painfully, Oz's father was, for all his good intentions, a failure in the realm of emotions and relationships. A blandly programmatic rationalist, he would never talk about feelings, found his wife's turbulent inner world beyond his ken, and had a grating habit of inserting bad puns or little lectures on etymology where real conversation was needed. He was disposed to address his son with polite sarcasm as "His Highness." One of his few sustained attempts to bond with the boy, the planting of a vegetable garden in their rocky backyard in proper Zionist fashion, ended in a misery of withering and weeds. When his wife committed suicide in 1952 at the age of thirty-eight, he could not bring himself to exchange a single word about her or her death with their twelve-year-old son.

Two years later the boy moved out: "And so at the age of fourteen and a half ... I killed my father and the whole of Jerusalem, changed my name, and went on my own to Kibbutz Hulda to

Robert Alter's most recent book, THE FIVE BOOKS OF MOSES: A TRANSLATION WITH COMMENTARY, *was published this fall by Norton.*