many ways, the election was a referendum on an extremist conservatism that has guided (and deformed) American politics and society since the 1980s. The spectacular failures of the Bush administration and the shifts in public opinion on the economy and the Iraq War presented a mandate for bold action and a historic opportunity for a progressive governing agenda.

A year later, it's clear we are a long way from building a new order and reshaping the prevailing paradigm of American politics. That will take more than one election. It requires continued mobilization, strategic creativity and, yes, audacity on the part of independent thinkers, activists and organizers. The structural obstacles to change are considerable. But at least we now have the political space to push for far-reaching reforms.

Whatever one thinks of Obama's policy on any specific issue, he is clearly a reform president committed to the improvement of people's lives and to the renewal and reconstruction of America. Yes, his economic recovery plan was too small and too deferential to the Republican Party and tax cuts. But it has kept the economy from falling into the abyss, and it includes more new net public investment in anti-poverty measures than any program since Lyndon Johnson's Great Society.

We need a much more robust jobs program—without one, Americans will not believe this president stands with the working people. Obama would be wise to use his presidential pulpit and brilliant oratorical skills to explain that when one out of six Americans is unemployed or underemployed, our greatest fear should be joblessness, not deficits.

Still, there's much to be praised. Obama has spoken eloquently of a new and progressive role for government. His first appointment to the Supreme Court, Sonia Sotomayor, was a strong choice—the first Latina on the Court and a powerful progressive jurist. In selecting Sotomayor, Obama has finally halted the Court's long drift to the right. The president says the labor movement is the solution, not the problem. (If he really believes this, he should act on it by pushing for speedy passage of the Employee Free Choice Act.) He has reinvigorated the regulatory agencies in Washington, from the EPA to the FCC (in doing so he has, ironically, fueled a full-employment program for K Street lobbyists). He has repealed the global gag rule on abortion, has spoken of the urgency of the climate crisis and has restored integrity to the government's scientific research programs.

The president's quarter of major speeches abroad—in Cairo, Prague, Moscow and Accra—began to lay out an Obama Doctrine in international affairs: support for diplomacy and the UN; commitment to a nuclear-free world; a belief that democracy is strengthened not through US intervention but when people win for themselves their rights and liberties; and engagement and cooperation with, rather than antagonism toward, the Muslim world. However, the military-industrial complex Eisenhower warned against grows ever stronger. And so far Obama has been unwilling to rethink skewed priorities in this arena; he just approved a bloated military budget despite his rare cancellation of several costly weapons programs.

And then, of course, there is Afghanistan. Historians have warned that wars kill reform presidencies. The most recent, and perhaps most relevant, example is the Vietnam War's undermining of the Great Society. Obama is wisely taking his time to make a decision about Afghanistan, but he appears to have excluded the one option that makes the most sense—a responsible exit strategy—and seems poised to escalate this unnecessary war. If he does so, he will endanger his reform presidency and squander funds needed to rebuild and renew our country.

Obama could have used the moment of economic crisis to restructure the economy and rein in the financial sector, not simply resuscitate it. The taxpayer-funded bailout of the banks has contributed to a popular backlash. If Obama doesn't respond to the widespread anguish and anger with constructive support for those in need, the GOP will continue to channel it in destructive directions.

There are other disappointments. I am sure you have your list. At the top of mine is Obama's failure to end the excesses and abuses associated with the Bush/Cheney national security apparatus; also on it is his unwillingness to push more strongly for a public option on healthcare reform. But instead of playing the betrayal sweeps, which promotes disappointment and despair, we'd be smart to practice a progressive politics defined by realistic hope and pragmatism. That is, simply denouncing the administration's missteps and failures doesn't get us very far and furthers what our adversaries seek: our disempowerment. We can't afford that. These are times to avoid falling into either of two extremes: reflexively defensive or reflexively critical.

Remember that throughout our history, it has taken large-scale, sustained organizing to win structural change. There would have been no New Deal without the vast upsurge in union activism and unemployed councils, civil rights legislation without the mass movement. We need to learn from those inspiring examples and build our own movements. And we need to start playing inside-outside politics too: engage the administration and Congress, even as we push without apology for bolder solutions than the ones Obama has offered.

Progressives should focus less on the limits of the Obama agenda and more on the possibilities that his presidency opens up. Like all presidents, Obama is constrained by powerful opponents and deep structural impediments. Independent organizing and savvy coalition-building will be critical in overcoming the timid incrementalists of his own party and the forces of money and establishment power that are obstacles to change. But if we work effectively, we can push Obama beyond the limits of his own politics and create a new progressive era.

KATRINA VAN DEN HEUVEL

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**The Google Settlement**

Let's start with two givens. First, Google is an outstandingly innovative company. Millions of us use Google search, e-mail, maps and other applications on a daily, if not hourly, basis. Second, Google is no more above the law than any other company, no matter how much social benefit one of its projects would arguably bestow on society. Yet its proposed settlement of a copyright lawsuit initially brought by some authors and publishers goes far beyond what class-action settlements
are supposed to achieve and is tantamount to private legislation.

Google has been scanning books from major research libraries, such as the University of Michigan, since 2004. The initial goal was to index the contents of books to provide snippets to users whose queries yielded Google Book Search (GBS) results. Google believed that its scanning of in-copyright books was fair use, because it wasn’t displaying substantial parts of book contents and because it facilitated access to them by linking to libraries or bookstores from which they could be obtained. (A fair use does not infringe copyright, insofar as it is done for a beneficial purpose and does not unreasonably harm the copyright owners’ interests.)

In fall 2005 the Authors Guild and five major book publishers sued Google, claiming that its book scanning was copyright infringement. Soon thereafter, Google began negotiating a settlement of this dispute with the guild and members of the Association of American Publishers. In October 2008 Google, the guild and the AAP collectively announced a settlement agreement they had devised on behalf of a class of all people who own a US copyright interest in one or more books, with the guild representing the author subclass and the AAP the publisher subclass. Because of US treaty obligations, the proposed settlement class includes all owners of copyright interests in all books in the world. Google has pledged $125 million to settle the lawsuit, $45.5 million of which will go to the lawyers who negotiated it. (The lawyers are getting $300,000 more than Google has set aside for payments to rights holders of all of the in-copyright books now in the GBS corpus.)

Members of the class had until September 4 to opt out, object, oppose or comment on the settlement. The court received more than 400 submissions about the settlement, the overwhelming majority of which expressed opposition, objections or concerns. Among the objectors were the governments of France and Germany, several states, and prominent authors such as Harold Bloom and Michael Chabon. Library associations and academic authors expressed concern about lack of user privacy and risks of price-gouging; Amazon.com, Microsoft, Yahoo! and the Justice Department asserted that the deal was anticompetitive and a misuse of the class-action process.

In late September the lawyers for the author and publisher subclasses asked the court for time to work on amendments to respond to the Justice Department’s concerns. A revised settlement is expected to be filed by November 9, and the lawyers have asked the judge to hold a hearing about whether to approve the settlement by the end of the year.

So what does the deal provide, and why are some opposed to it? The main feature of the proposed settlement agreement is the license it would give Google—and Google alone—to commercialize all in-copyright out-of-print books, in three ways: through the sale of ads next to search results that yield GBS responses, consumer purchase of individual books that will be available on Google servers, and institutional subscriptions to libraries and the like. Google would keep 37 percent of these revenues and would give the other 63 percent to a newly created Book Rights Registry, which would be responsible for finding rights holders and paying them for Google’s use of their books.

The fundamental idea underlying class-action lawsuits is one all good liberals can get behind: corporations sometimes do bad things to others (e.g., their customers). Often the harm to each person is too small to make it worthwhile to bring individual lawsuits. Yet in aggregate, the harm to similarly injured persons may be very large indeed. If a firm overcharges a million customers $10 each for the same item, for instance, the aggregate harm is $10 million. Class-action lawsuits allow recovery of the aggregate harm to the class; and if these lawsuits are settled, as many of them are, class members will generally get some benefit (e.g., a $5 refund) and, one hopes, wrongdoers will be deterred.

The GBS agreement is, however, less a settlement of a class-action lawsuit than a forward-looking commercial joint venture that far exceeds in scope the scanning-to-index issue being litigated. Class-action settlements typically resolve only the specific dispute between the parties. The more forward-looking the settlement, the broader its scope, the broader the class and the more the deal tries to release the defendant from liability for future conduct—especially conduct different in kind from the litigated issue—the less likely it is that judges will approve it. The GBS deal is troublesome on all four grounds. Moreover, serious questions exist about whether the authors and publishers who negotiated the settlement adequately and fairly represented the interests of the class as a whole.

An important policy underlying the requirement that named plaintiffs in class-action lawsuits fairly and adequately represent the interests of the defined class is to prevent collusion between plaintiffs and defendants that would accomplish an outcome beneficial for them but not so much for other class members. With the powerfully strong commercial interests at stake in Authors Guild Inc. et al. v. Google Inc., there is reason to be concerned about the GBS settlement agreement, with its extensive new regime for rights clearances; procedures for determining the copyright and in- or out-of-print status of books; and criteria for price-setting for subscriptions, payout schedules and compulsory dispute resolution, among other things.

Dozens of authors have argued that the GBS settlement is fundamentally unfair to them. Of particular concern to academic authors is that once the settlement is approved, Google has the right to sell the corpus to anyone—even Rupert Murdoch or China—if it so chooses.

Google is arguing that the settlement should be approved because of the social benefit of providing greater public access to out-of-print books. However, an extensive restructuring of the market for digital books, such as the one the GBS deal would accomplish, should be done either on a voluntary basis with consenting book rights holders or through legislation. Arguments that the settlement is in the public interest should be directed to Congress, not the courts. Private legislation through the GBS class-action settlement would set a dangerous precedent and undermine democratic values.

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