

Amitai Etzioni

A liberal friend scratched me off his cocktail party guest list. A colleague remarked less than kindly: "You are moving to the Right of Center." The woman I care most about let it be known that while "you might have some points, I don't like that you somehow sound like Bush, bashing the ACLU." I would like to keep them all at my side, but they will not forget that I launched a new quarterly, *The Responsive Community: Rights and Responsibilities*, which shows that as authorities devise new techniques to counter terrorists or drug and alcohol abuse, or contain AIDS, civil libertarians are in the courts hobbling the new efforts.

Airport screening devices, sobriety checkpoints, random drug tests of train engineers and pilots, and HIV screening of convicted rapists are all depicted by the ACLU as "police excesses," intrusive, violating privacy, eroding our constitutional rights. You may say, let them speak, it's a free country. I hardly seek to shut them up; what concerns me is that the ACLU has been successful in defeating, delaying, or at least limiting the use of many of these measures. Other measures are not even tried, for fear of the libertarian challenge.

Meanwhile, Americans are ever more frustrated by their inability to gain elementary security in their neighborhoods. Many feel like "hostages in our own homes," as Maxine Clark, a black community leader in Alexandria, Va., put it. Indeed, many people feel unsafe even in their own homes. In some parts, they sleep on the floor and keep their children away from windows, to shield them from stray bullets. In several cities, I find that people in public housing have moved beyond double locks and window bars to demand steel doors. Fear and desperation are rampant in many cities. *There is a widespread feeling that the weakened and overburdened state no longer fulfills its most elementary function: public safety.* Such feelings, my 30 years of sociological study suggest, are social dynamite. If carefully crafted new safety measures will continue to be blocked by libertarians, I fully predict, the public will demand the use of sledgehammers. Right-wingers already call for random hanging of drug dealers, quarantining of all HIV carriers, and "suspending the Constitution until the war against drugs is won." It would not be the

first time that the extremists on one side (unyielding libertarians) played into the hands of those on the other side (authoritarians), while the moderate Center was paralyzed.

I used to support the ACLU, as a valiant protector of the First Amendment, our right of free speech. It lost me, and I believe many others, over its interpretation of the Fourth Amendment, over the question what constitutes unreasonable search and seizure. The ACLU draws on a point of law: Individuals should not be subject to searches or tests unless there is "probable cause" (good reason to suspect, in plain English) that they are actually carrying a bomb, drugs, HIV virus, etc. To establish that presumption, under many circumstances a police officer must submit the evidence to a judge, who, if convinced, issues a warrant to allow that person or car to be stopped and searched. Why subject the luggage of innocent people to bomb searches? Why require you and me to stop at sobriety checkpoints? the ACLU asks rhetorically. American authorities should only go after offending individuals rather than deem whole categories — e.g., all who drive — as suspect. Seems fair enough, even to me.

It does until one examines the effects of this interpretation of the Fourth Amendment in a world of terrorists, crack, and AIDS. Say the police suspect that some people about to board a plane are carrying a bomb. Can they run to a judge and submit the evidence and get a warrant? It is much more reasonable to submit all who board planes to brief screening. As a result, millions of innocent people are delayed a bit, but the flights are much safer. The ACLU's argument that such submission conditions people to a police state is a piece of sociological rubbish; we have been screening all travelers since 1973 without any discernible ill effects.

Sobriety check points, when set up in line with court guidelines requiring that the public be forewarned and that traffic jams do not result, delay the average drive for about a minute-and-a-half. I ask my liberal friends: Is this an unreasonable price to pay for the right to travel free of murderous drunk drivers? True, drug tests are more intrusive because they entail a urine test which is collected while another person is present. Hence, random testing of one and all seems indeed unreasonable. However, when it comes to individuals who have in their hands literally the lives of hundreds of others, such as air controllers,

and if they are forewarned that drug testing is part of their job requirements, this seems reasonable.

New highly targeted anti-loitering laws, that allow police to search people who meet several criteria, including having a lookout, seeking cover when police cruise by, and putting concealed objects into the pockets of passersby, seem quite constitutional. (The ACLU opposed those, suggesting that individuals involved might be innocent, such as lawyers who "have business cards which they give to persons whom they may meet on the street.")

When I address groups of citizens on these matters, they complain that in thinking their way through these issues they tend to become entangled in details. There are numerous court cases on the question of what is reasonable that differ from one to another in complex ways. Moreover, the ACLU tells them that there are other ways to enhance public safety and health (e.g., legalize drugs). My response is that the public is best off when it focuses on the essence of the issue. My little speech runs as follows:

We live in a new situation, facing the dangers of terrorism, crack, an epidemic disease, and urban warfare. We must find new measures that accord citizens better protection, both because this is their most fundamental right and because, lest in despair, they turn vigilante or worse. *We must end the institutionalized paranoia that the state is the enemy, and that the more we shackle it, the freer we are.* We must find ways to allow the police and the courts to enhance public safety, while ensuring that all new measures fall within the constitutional framework. The ACLU should not be assumed to have a monopoly on establishing what constitutes a reasonable search and seizure.

If these views will cost me more of my friends, I sure hate to lose them, but: "Here I stand. I can do no other."

Amitai Etzioni is University Professor at The George Washington University, and author of *The Moral Dimension*. He is also Editor of the new quarterly *The Responsive Community* (2020 K St. NW, Suite 282; Washington, DC 20006), which *Time* magazine describes as "groping to find alternatives to the selfishness