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The Communitarian Reader

Beyond the Essentials

Edited by Amitai Etzioni, Andrew Volmert, and Elanit Rothschild
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Introduction

I was once asked whether communitarianism is an academic discipline, a public philosophy, or a social movement. I responded "all of the above." There are academic communitarians, especially those concerned with social philosophy, political theory, and macrosociology. Communitarians also have articulated a new approach to public policy. And their voice has helped ferment a social movement.¹ I find it best to think about it as the second environmental movement, different from the first one in that the communitarian movement is focused on the body society rather than on nature. While both seek to nurture the environment that is the foci of their concern, communitarians, as social environmentalists, do not seek to bring society back to a state of nature but to advance it, toward a good society.

The very notion that it is intellectually and morally appropriate, indeed necessary, to employ a conception of the good society points to a major fault line that separates communitarianism from many contemporary liberal (and in particular libertarian) thinkers. The core assumption of communitarianism, as a social philosophy, is that we require shared ("social") formulations of the good. The assumption is both empirical (social life exhibits instances of shared values and functions poorly if they are absent) and normative (shared values ought to be formulated). This communitarian assumption is often contrasted with that of liberalism (based on the works of John Locke, Adam Smith, and John Stuart Mill, not to be confused with liberalism as the term is used in contemporary American politics). Liberalism's core assumption is that what people consider right or wrong, their values, should strictly
be a matter for each individual to determine. To the extent that social arrangements and public policies are needed, these should not be driven by shared values but by voluntary arrangements and contracts among the individuals involved, thus reflecting their values and interests. Communitarians, in contrast, see social institutions and policies as affected by tradition and hence by values passed from generation to generation. These become part of the self through nonrational processes, especially internalization, and are changed by other such processes by persuasion, religious or political indoctrination, leadership, and moral dialogues.

In addition, communitarianism emphasizes particularism, the special moral obligations people have to their families, kin, communities, and societies. In contrast, liberalism stresses the universal rights of all individuals, regardless of their particular membership. Indeed, liberal philosopher Jeremy Bentham declared that the very notion of a society is a fiction.

As with other schools of thought, different bodies of thought use the same term. The focus here is on new or responsive communitarianism, which was founded in 1990. It issued The Responsive Communitarian Platform: Rights and Responsibilities, a joint manifesto summarizing the guiding principles of the group; an intellectual quarterly journal, The Responsive Community (from which chapters included in this volume are drawn), whose editors include several sociologists; several books; position papers on issues ranging from a communitarian view of the family, to organ donation, to bicultural education; and numerous public conferences, op-eds, and a web site (www.comunitariannetwork.org). Among the scholars involved are William A. Galston, Mary Ann Glendon, Thomas Spragens, Jr., Philip Selznick, Daniel A. Bell, Alan Ehrenhalt, and Robert Bellah, to mention but a few.

Key Assumptions and Concepts

Responsive communitarianism methodology is based on the assumption that societies have multiple and not wholly compatible needs and values, in contrast to philosophies deriving their core assumptions from one overarching principle, for instance liberty for libertarianism. Responsive communitarianism assumes that a good society is based on a carefully crafted balance between liberty and social order, between individual rights and social responsibilities, between particularistic (ethnic, racial, communal) and society-wide values and bonds. In that sense, far from representing a Western model, the communitarian good society combines "Asian" values (also reflecting tenets of Islam and Judaism stressing social responsibilities) with a Western concern with political liberty and individual rights.
Although the model of the good society is considered universal, communitarianism stresses that different societies, during various historical periods, may be off balance in rather contrasting ways and hence may need to move in different directions in order to approximate the same balance. Thus, contemporary East Asian societies require much greater tolerance for individual and communal differences, while in the American society—especially at the end of the 1980s—excessive individualism needed to be reined in. To put it differently, communitarianism suggests that the specific normative directives that flow from the good society model are historically and culturally contingent.

Responsive communitarians stress that the relationship between liberty and social order is not a zero-sum situation, that they are mutually supportive, up to a point. Thus, in situations such as those prevailing in late-1990s Moscow, where liberty and social order are neglected, increasing order might well also enhance people’s autonomy and life choices. The same might be said about reducing crime in American cities when it reached the point where people did not venture into parks and were reluctant to ride the subway or walk the streets after dark. Moreover, totalitarian regimes, the ultimate loss of freedom, are said to arise when order is minimized.

Although social order and liberty enhance one another up to a point, if the level of social order is continually increased, responsive communitarianism expects it to reach a level where it will erode people’s liberty. And, if the scope of liberty is increasingly extended, it will reach a point where it will undermine the social order. This idea is expressed in the term inverting symbiosis, which indicates that liberty and order nourish one another up to a point, and beyond it they turn antagonistic.

The same point applies to the relationship between the self and the community. Political theorists have tended to depict the self as “encumbered,” “situated,” or “contextualized,” all of which imply that it is constrained by social order. Responsive communitarians stress that individuals within communities are able to be more reasonable and productive than isolated individuals, but if social pressure to conform reaches a high level, such pressures undermine the development and expression of the self.

The next question is, under what conditions can the zone of symbiosis be expanded and that of antagonism between liberty and order be minimized? To answer that question the communitarian view of human nature must be introduced. While sociologists tend to avoid this term, on the ground that it is a-empirical and can lead to racism (as evident in the notion that some groups of people are more intelligent by nature), communitarians use the term with less reluctance.
The view of human nature most compatible with responsive communitarian thinking is a dynamic (developmental) view, which holds that people at birth are akin to animals. But unlike social conservatives, who tend to embrace a dour view of human nature and are inclined to view even adults after socialization as impulsive, irrational, dangerous, or sinful, communitarians maintain that people can become increasingly virtuous if the proper processes of value-internalization and reinforcement of undergirding social institutions, the "moral infrastructure," are in place. At the same time, communitarians do not presume that people can be made as virtuous as liberals assume them to be from the onset. (Liberals tend to assume that crime and forms of "deviant" behavior reflect social conditions, especially government interventions that pervert good people rather than their innate nature.)

The moral infrastructure, an essential foundation of a good society, draws on four social formations: families, schools, communities, and the community of communities. The four core elements of the moral infrastructure are arranged like Chinese nesting boxes, one within the other, and in a sociological progression. Infants are born into families, which communitarians stress have been entrusted throughout human history with beginning the process of instilling values and launching the moral self. Schools join the process as children grow older, further developing the moral self ("character"), or trying to remedy character neglect suffered under family care. Schools are hence viewed not merely or even primarily as places of teaching, where the passing of knowledge and skill occur, but as educational institutions in the broadest sense of the term.

Human nature, communitarians note, is such that even if children are reared in families dedicated to child raising and moral education and children "graduate" from strong and dedicated schools, these youngsters are still not sufficiently equipped for a good, communitarian society. This is a point ignored by social philosophers who often assume that once people have acquired virtue and are habituated, their inner moral compass will guide them. The very concept of "conscience" assumes the formation of a perpetual inner gyroscope.

In contrast, communitarians assume that the good character of those who have acquired it tends to degrade. If left to their own devices, individuals gradually lose much of their commitments to their values, unless these are continuously reinforced. A major function of the community, as a building block of the moral infrastructure, is to reinforce the character of its members. This is achieved by the community's "moral voice," the informal sanction of others, built into a web of informal affect-laden relationships, which communities provide. In general, the weaker the community—because of high
population turnover, few shared core values, high heterogeneity, and so forth—the thinner the social web and the slacker the moral voice. The strength of the moral voice and the values it speaks for have been studied using a series of questions such as: Should one speak up if child abuse is witnessed? Or if children are seen painting swastikas? What about less dire situations, such as insisting that friends wear their seatbelts, or admonishing a non-disabled person one witnesses parking in a handicapped space?

Informal surveys show that in the 1980s Americans were very reluctant to raise their moral voice; many accepted the liberal ideology that each individual determines what is morally sound, and one should not pass judgment over others. Alan Wolfe's study, One Nation, After All, found that Americans, even in conservative parts of the country, have grown very tolerant of a great variety of social behavior. Increase in tolerance is of course by itself virtuous; communitarians, though, raise the question of at which point does such increased tolerance engender an amoral culture in which spousal abuse, discrimination, child neglect, drunk driving, obsessive materialism, and other forms of antisocial behavior are all considered matters the community should ignore, leaving them to individual discretion or "the law."

More specifically, communitarians ask whether various elements of the moral infrastructure reinforce, neglect, or undermine the moral infrastructure. In this context, the special communitarian perspective of voluntary associations is especially important. Previously, the significance of these associations has been highlighted as protecting individuals from the state (a protection they would not have if they faced the state as isolated or "atomized" individuals), and as intermediating bodies that aggregate, transmit, and underwrite individual signals to the state.

Communitarians argue that, in addition, the very same voluntary associations often fulfill a rather different role: they serve as social spaces in which members of communities reinforce their social webs and articulate their moral voice. That is, voluntary associations often constitute a basis of communal relationships. Thus, the members of a local chapter of the Masons, Elks, or Lions care about one another and reinforce each other’s particular brand of conservative views. Similarly, the members of the New York City Reform Club, Americans for Democratic Action, and local chapters of the ACLU reinforce one another’s particular brand of liberal views.

Communitarians pay special attention to the condition of public spaces as places communities happen (as distinct from private places such as homes and cars). Even though one may carpool with friends or have them over for a visit, these are mainly activities of small friendship groups (what Robert Putnam calls "bowling alone"). Communities need more encompassing webs,
Introduction

and those are formed and reinforced in public gathering places—from school assembly halls to parks, from plazas to promenades. To the extent that these spaces become unsafe, communities lose one of their major sources of reinforcement; recapturing them for community use is hence a major element of community regeneration.

Most important, drawing again on sociology, and in particular on what has been called the "consensus" (rather than the conflict) model, communitarians tend to maintain that if in addition to strong families and schools that build character, a society has communities whose social webs are intact and whose moral voice is clearly articulate, that society will be able to base its social order largely on moral commitments rather than on the forces of the state. This is the case, communitarians argue (drawing on sociological assumptions and studies), because once moral commitments are internalized and reinforced they help shape people's preferences in favor of prosocial behavior, thus reducing the need for coercion by the state and diminishing the tension between liberty and social order. To put it more succinctly, in the communitarian good society more people more of the time seek in line with our values to engage in pro-social behavior than in other kinds of societies.

Many discussions of community and of the moral infrastructure stop at this point, having explored the moral agency of family, school, and community. However, social and moral communities are not freestanding; they are often parts of more encompassing social entities. Moreover, communitarians note that unless communities are bound socially and morally into more encompassing entities, they may war with one another. Hence, the importance of communities of communities: the society.

Communitarians argue that one should not view society as being composed of millions of individuals, but as being pluralistic within unity. They further maintain that subcultures and loyalties are not a threat to the integrity of society as long as a core of shared values and institutions (such as the Constitution and its Bill of Rights, the democratic way of life, and mutual tolerance) are respected.

Communitarians draw on the four elements of the moral infrastructure—families, schools, communities, and communities of communities—as a sort of a checklist to help determine the state of the moral infrastructure in a given society. They argue that the decline of the two-parent family (due to high divorce rates, growing legitimation of single parent families, and psychological disinvestment of parents in children), the deterioration of schools (due to automatic promotions and deterioration of social order in schools), the decline of communities (due to modernization), and the decline of the community of communities (as a result of excessive emphasis on diversity
without parallel concern over shared bonds) resulted in the decline of moral and social order in the American society during the 1970s and 1980s. The sharp rise in violent crime, drug abuse, teen pregnancy, and the decline of voluntarism, among other factors, was evidence of this decline. Communitarians view in part the fact that some of these trends slowed down and reversed in the 1990s as a reflection of changes in social thinking and practices that they helped champion.

Herein lies a great difference between the communitarian position and that of various social conservatives. Both groups recognize the need to regenerate the moral infrastructure, but conservatives favor returning to traditional social formations while communitarians point to new ways of shoring up society's ethical framework. For instance, many social conservatives favor women "graciously submitting to their husbands" and returning to homemaking, while communitarians argue for "peer marriage," a concept that Pepper Schwartz introduced. Peer marriage suggests equal rights and responsibilities for mothers and fathers but favors marriages that last, as compared to the liberal argument that single parent families or child care centers can socialize children as well if not better than two-parent families. (Among the scholars who have struck a communitarian position in this matter are Linda Waite, Glen Elder, Alice Rossi, and David Popenoe.)

The communitarian argument over the role of communities in maintaining social order is strongly supported by sociological research of the kind conducted by Robert Sampson on the role of communities in fighting crime and drug abuse. David Karp and Todd Clear have also studied community involvement in criminal justice, focusing on ideas of restorative justice and policies that are concerned more with reintegrating offenders into their communities than merely punishing them. Other communitarian themes are explored by Edward W. Lehman, especially in his writing on macro-sociology, by Don Browning and Martin Whyte in their works on the family, and by Richard Coughlin in his seminal essay comparing communitarian thinking to socio-economics.

Civil Society, the Third Way, and the Good Society

Much of the normative debate in the West, at least since the middle of the nineteenth century, has focused on the merit of the free market (or capitalism) versus the role of the state in securing the citizens' well being. Communitarians have basically leapfrogged this debate, focusing instead on the importance of the third leg of the "stool" of social life, that of the civic society, which is neither state nor market. Communitarians have played a key
role in the debate over the condition of civic society in the West, such as examining whether participation in voluntary associations, voting, and trust in institutions have declined, and to what effect. The work of Robert Bellah and his associates has been particularly influential here, \(^{15}\) demonstrating the rise of first expressive and then instrumental individualism, and their ill effects.

Communitarians have argued that, rather than dumping people (often the most vulnerable members of society) into the marketplace as the welfare state is curtailed, civic society's various institutions can “empower” these individuals to help one another in attending to some of their social needs. They also contend that communal institutions (including places of worship) can shoulder important aspects of care that state agencies previously provided, although the state will have to continue to shoulder an important part of the burden.

Communitarians stress that mutuality, rather than charity, is the basis for community-wide action that is not solely limited to helping one particular vulnerable group or another. The CPR training of some 400,000 Seattle citizens, who are thus able to help one another without public costs or private charges, is held up as a key case in point. Other examples include voluntary recycling programs, crime watch patrols, and, above all, the massive assistance given to immigrants by people of “their own kind.” Communitarians have also pointed to the importance of a culture of civility in maintaining a society's ability to work out differences without excessive conflict.

Communitarians have most recently argued that a civic society is good, but not good enough. Civic society tends to be morally neutral on many matters other than values concerning its own inherent virtue and the attributes citizens need to make them into effective members of a civic society, for instance, to be able to think critically. Thus, all voluntary associations, from the KKK to the Urban League, from militias to Hadassah, are considered to have the same basic standing. In contrast, a good society seeks to promote a core of substantive values, and thus views some social associations and activities as more virtuous than others. In the same vein, communitarians have stressed that while everyone's legal right to free speech should be respected, some speech—as seen from the community’s viewpoint—undeniably is morally sound while other is abhorrent. For instance, the (legal) right to speak does not make hate speech (morally) right. Communitarians would not seek to suppress hate speech by legal means, however, but they urge communities to draw on their moral voice to chastise those who speak in ways that are offensive.
Authoritarian, Political Theoretical, and Responsive Communitarianism

Different communitarian camps are no closer to one another than National Socialists (Nazis) are to Scandinavian Social Democrats (also considered socialists). It is hence important to keep in mind which camp one is considering. The axes they differ on concern the normative relations between social order and liberty, and the relations between the community and the individual.

Authoritarian communitarians (some of whom are often referred to as “Asian” or “East Asian” communitarians) are those who argue that to maintain social order and harmony, individual rights and political liberties must be curtailed. Some believe in the strong arm of the state (such as former Singapore Prime Minister Lee Kwan Yew and Malaysian head of state Mahathir Bin Mohamad), and some in strong social bonds and the voice of the family and community (especially the kind of society Japan had, at least until recently). Among the arguments authoritarian communitarians make is that social order is important to people, while what the West calls liberty actually amounts to social, political, and moral “anarchy”; that curbing legal and political rights is essential for rapid economic development; and that legal and political rights are Western ideas, which the West uses to harshly judge other cultures that have their own inherent values. The extent to which early sociological works, for instance, by Tönnies and Community and Power by Robert Nisbet, include authoritarian elements is open to question.

Communitarian Policies

Communitarian writers take it for granted that we must both shore up public safety and vigilantly protect our rights and our free way of life or else we will have done the job of criminals and terrorists for them. It holds then that extremism in the defense of either security or liberty is not a virtue. Moreover, although to some extent we can reconcile these two claims that we now face, a basic tension between them must be worked out.

One may well disagree about this or that detail of public policy, with regard to both domestic and foreign security. However, one may share the commitment to find a middle course, a third way, between those who are committed to shoring up our liberties but who are blind to the needs of public safety, as well as those who never met a right they are not willing to curtail to give authorities an ever freer hand. A third way lies between those who are all too confident they can make the whole world akin to America and those who want to withdraw from the world after they have given up on efforts to make the globe a better place
than it is. Charting the middle course, which is the subject of this volume, may make for less dramatic copy than that of those who argue fervently for one side or the other but it is one that is more valid in both empirical and moral terms.

Particularly relevant for the issues at hand is the Fourth Amendment. It is not phrased in terms as absolute as the First Amendment. It does not state that Congress “shall make no law allowing search and seizure” or anything remotely like it. It states that there be no unreasonable searches. It is one of only two rights-defining amendments that recognize, on the face of it, the importance of taking into account the public interest. Indeed, the courts have long recognized that our right to privacy must be weighed against our need for public safety (and public health). It highlights how unreasonable it is to argue that we should not sacrifice our rights for our security, which is a highly misleading way of framing the issue, just as it would be misleading for someone to argue that we should not sacrifice our security to protect our rights. Public authorities can take a whole range of security-enhancing measures that are reasonable and that do not violate any rights. No one has a right to never be searched, stopped, finger printed, and so on and hence they cannot lose it.

The next step is to ask, what is reasonable? The law—which often draws on this concept—views this standard as that which an average person, a member of the community, would consider reasonable. There can be no doubt that Americans have an altered sense of that which is reasonable since September 11. This does not mean that they threw the Bill of Rights out the window. However, Americans do find some new security measures reasonable now that they may well have not embraced before the 2001 attack on America.

Moreover, the Constitution has always been a living document, and it has been adapted to the changing needs of the times—a point emphasized by Judge Richard Posner. This is evident if one recalls that until the ACLU reinterpreted the First Amendment in the 1920s, it was hardly a steely protector of free speech. More dramatically, if we were to rely on the unchanging text of the Constitution, then of course we would have no right to privacy, which the Constitution does not even mention; indeed, privacy is a right fashioned as recently as 1965. If we can create an entirely new right from the penumbra of the Constitution then we can surely re-fashion this and other rights, not because the nation experienced the most devastating attack on our homeland in its history, but because there are strong reasons to expect that the country will face in the future more and worse dangers.

All this is by way of introduction to what at least this communitarian considers the main points communitarian thinking has made and to illustrate the nature of its approach. Much more follows from outstanding scholars who have written on the subject. This book may well be read in conjunction with
The Essential Communitarian Reader, a previous volume that included a collection of essays, all of which—like those found here—were first published in The Responsive Community, the communitarian quarterly, published from 1990 until 2004. Back issues are available by contacting us via e-mail at com-net@gwu.edu, or by calling (202) 994-4355. You may also visit our website at http://www.gwu.edu/~ccps. For current discussions of communitarian subjects, see www.amitai-notes.com/blog.

The Responsive Community

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1. For more, see Amitai Etzioni, My Brother's Keeper: A Memoir and a Message (Lanham, Md.: Rowman & Littlefield, 2003).
10. For more discussion, see part one of Amitai Etzioni, From Empire to Community: A New Approach to International Relations (New York: Palgrave, 2004).
The Responsive Communitarian Platform: Rights and Responsibilities

Preamble

American men, women, and children are members of many communities—families; neighborhoods; innumerable social, religious, ethnic, workplace, and professional associations; and the body politic itself. Neither human existence nor individual liberty can be sustained for long outside the interdependent and overlapping communities to which all of us belong. Nor can any community long survive unless its members dedicate some of their attention, energy, and resources to shared projects. The exclusive pursuit of private interest erodes the network of social environments on which we all depend, and is destructive to our shared experiment in democratic self-government. For these reasons, we hold that the rights of individuals cannot long be preserved without a communitarian perspective.

A communitarian perspective recognizes both individual human dignity and the social dimension of human existence.

A communitarian perspective recognizes that the preservation of individual liberty depends on the active maintenance of the institutions of civil society where citizens learn respect for others as well as self-respect; where we acquire a lively sense of our personal and civic responsibilities, along with an appreciation of our own rights and the rights of others; where we develop the skills of self-government as well as the habit of governing ourselves, and learn to serve others—not just self.
A communitarian perspective recognizes that communities and poli-
ties, too, have obligations—including the duty to be responsive to their
members and to foster participation and deliberation in social and politi-
cal life.

A communitarian perspective does not dictate particular policies; rather,
its mandates attention to what is often ignored in contemporary policy de-
bates: the social side of human nature; the responsibilities that must be borne
by citizens, individually and collectively, in a regime of rights; the fragile
ecology of families and their supporting communities; the ripple effects and
long-term consequences of present decisions. The political views of the sign-
ers of this statement differ widely. We are united, however, in our conviction
that a communitarian perspective must be brought to bear on the great
moral, legal, and social issues of our time.

Moral Voices

America’s diverse communities of memory and mutual aid are rich resources
of moral voices—voices that ought to be heeded in a society that increas-
ingly threatens to become normless, self-centered, and driven by greed, spe-
cial interests, and an unabashed quest for power.

Moral voices achieve their effect mainly through education and persuas-
ion, rather than through coercion. Originating in communities, and some-
times embodied in law, they exhort, admonish, and appeal to what Lincoln
called the better angels of our nature. They speak to our capacity for rea-
soned judgment and virtuous action. It is precisely because this important
moral realm, which is neither one of random individual choice nor of gov-
ernment control, has been much neglected that we see an urgent need for a
communitarian social movement to accord these voices their essential
place.

Within History

The basic communitarian quest for balances between individuals and groups,
rights and responsibilities, and among the institutions of state, market, and
civil society is a constant, ongoing enterprise. Because this quest takes place
within history and within varying social contexts, however, the evaluation of
what is a proper moral stance will vary according to circumstances of time
and place. If we were in China today, we would argue vigorously for more in-
dividual rights; in contemporary America, we emphasize individual and so-
cial responsibilities.
Not Majoritarian But Strongly Democratic

Communitarians are not majoritarians. The success of the democratic experiment in ordered liberty (rather than unlimited license) depends, not on fiat or force, but on building shared values, habits, and practices that assure respect for one another’s rights and regular fulfillment of personal, civic, and collective responsibilities. Successful policies are accepted because they are recognized to be legitimate, rather than imposed. We say to those who would impose civic or moral virtues by suppressing dissent (in the name of religion, patriotism, or any other cause), or censoring books, that their cure is ineffective, harmful, and morally untenable. At the same time divergent moral positions need not lead to cacophony. Out of genuine dialogue clear voices can arise, and shared aspirations can be identified and advanced.

Communitarians favor strong democracy. That is, we seek to make government more representative, more participatory, and more responsive to all members of the community. We seek to find ways to accord citizens more information, and more say, more often. We seek to curb the role of private money, special interests, and corruption in government. Similarly, we ask how “private governments,” whether corporations, labor unions, or voluntary associations, can become more responsive to their members and to the needs of the community.

Communitarians do not exalt the group as such, nor do they hold that any set of group values is ipso facto good merely because such values originate in a community. Indeed, some communities (say, neo-Nazis) may foster reprehensible values. Moreover, communities that glorify their own members by vilifying those who do not belong are at best imperfect. Communitarians recognize—indeed, insist—that communal values must be judged by external and overriding criteria, based on shared human experience.

A responsive community is one whose moral standards reflect the basic human needs of all its members. To the extent that these needs compete with one another, the community’s standards reflect the relative priority accorded by members to some needs over others. Although individuals differ in their needs, human nature is not totally malleable. Although individuals are deeply influenced by their communities, they have a capacity for independent judgment. The persistence of humane and democratic culture, as well as individual dissent, in Eastern Europe and the Soviet Union demonstrate the limits of social indoctrination.

For a community to be truly responsive—not only to an elite group, a minority or even the majority, but to all its members and all their basic human
needs—it will have to develop moral values which meet the following criteria: they must be nondiscriminatory and applied equally to all members; they must be generalizable, justified in terms that are accessible and understandable, for example, instead of claims based upon individual or group desires, citizens would draw on a common definition of justice; and, they must incorporate the full range of legitimate needs and values rather than focusing on any one category, be it individualism, autonomy, interpersonal caring, or social justice.

Restoring the Moral Voice

History has taught that it is a grave mistake to look to a charismatic leader to define and provide a moral voice for the polity. Nor can political institutions effectively embody moral voices unless they are sustained and criticized by an active citizenry concerned about the moral direction of the community. To rebuild America’s moral foundations, to bring our regard for individuals and their rights into a better relationship with our sense of personal and collective responsibility, we must therefore begin with the institutions of civil society.

Start With the Family

The best place to start is where each new generation acquires its moral anchoring: at home, in the family. We must insist once again that bringing children into the world entails a moral responsibility to provide, not only material necessities, but also moral education and character formation.

Moral education is not a task that can be delegated to baby sitters, or even professional child-care centers. It requires close bonding of the kind that typically is formed only with parents, if it is formed at all.

Fathers and mothers, consumed by “making it” and consumerism, or pre-occupied with personal advancement, who come home too late and too tired to attend to the needs of their children, cannot discharge their most elementary duty to their children and their fellow citizens.

It follows that work places should provide maximum flexible opportunities to parents to preserve an important part of their time and energy, of their life, to attend to their educational-moral duties, for the sake of the next generation, its civic and moral character, and its capacity to contribute economically and socially to the commonweal. Experiments such as those with unpaid and paid parental leave, flextime, shared jobs, opportunities to work at home, and for parents to participate as volunteers and managers in child-care centers, should be extended and encouraged.
Above all, what we need is a change in orientation by both parents and workplaces. Child-raising is important, valuable work, work that must be honored rather than denigrated by both parents and the community.

Families headed by single parents experience particular difficulties. Some single parents struggle bravely and succeed in attending to the moral education of their children; while some married couples shamefully neglect their moral duties toward their offspring. However, the weight of the historical, sociological, and psychological evidence suggests that on average two-parent families are better able to discharge their child-raising duties if only because there are more hands—and voices—available for the task. Indeed, couples often do better when they are further backed up by a wider circle of relatives. The issue has been wrongly framed when one asks what portion of parental duties grandparents or other helpers can assume. Their assistance is needed in addition to, not as a substitute for, parental care. Child-raising is by nature labor-intensive. There are no labor-saving technologies, and shortcuts in this area produce woefully deficient human beings, to their detriment and ours.

It follows that widespread divorce, when there are children involved, especially when they are in their formative years, is indicative of a serious social problem. Though divorces are necessary in some situations, many are avoidable and are not in the interest of the children, the community, and probably not of most adults either. Divorce laws should be modified, not to prevent divorce, but to signal society's concern.

Schools: The Second Line of Defense

Unfortunately, millions of American families have weakened to the point where their capacity to provide moral education is gravely impaired. And the fact is that communities have only a limited say over what families do. At best, it will take years before a change in the moral climate restores parenting to its proper status and function for many Americans.

Thus, by default, schools now play a major role, for better or worse, in character formation and moral education. Personal and communal responsibility come together here, for education requires the commitment of all citizens, not merely those who have children in school.

We strongly urge that all educational institutions, from kindergartens to universities, recognize and take seriously the grave responsibility to provide moral education. Suggestions that schools participate actively in moral education are often opposed. The specter of religious indoctrination is quickly evoked, and the question is posed: "Whose morals are you going to teach?"
Our response is straightforward: we ought to teach those values Americans share, for example, that the dignity of all persons ought to be respected, that tolerance is a virtue and discrimination abhorrent, that peaceful resolution of conflict is superior to violence, that generally truth-telling is morally superior to lying, that democratic government is morally superior to totalitarianism and authoritarianism, that one ought to give a day’s work for a day’s pay, that saving for one’s own and one’s country’s future is better than squandering one’s income and relying on others to attend to one’s future needs.

The fear that our children will be “brainwashed” by a few educators is far-fetched. On the contrary, to silence the schools in moral matters simply means that the youngsters are left exposed to all other voices and values but those of their educators. For, one way or another, moral education does take place in schools. The only question is whether schools and teachers will passively stand by, or take an active and responsible role. . . .

Within Communities

A Matter of Orientation
The ancient Greeks understood this well: A person who is completely private is lost to civic life. The exclusive pursuit of one’s self-interest is not even a good prescription for conduct in the marketplace; for no social, political, economic, or moral order can survive that way. Some measure of caring, sharing, and being our brother’s and sister’s keeper is essential if we are not all to fall back on an ever more expansive government, bureaucratized welfare agencies, and swollen regulations, police, courts, and jails.

Generally, no social task should be assigned to an institution that is larger than necessary to do the job. What can be done by families should not be assigned to an intermediate group—schools, etc. What can be done at the local level should not be passed on to the state or federal level, and so on. There are, of course, plenty of urgent tasks—environmental ones—that do require national and even international action. But to remove tasks to higher levels than is necessary weakens the constituent communities. This principle holds for duties of attending to the sick, troubled, delinquent, homeless, and new immigrants; and for public safety, public health, and protection of the environment—from a neighborhood crime-watch to CPR to sorting the garbage. The government should step in only to the extent that other social subsystems fail, rather than seek to replace them. . . .

Many social goals . . . require partnership between public and private groups. Though government should not seek to replace local communities, it may need to empower them by strategies of support, including revenue-shar-
ing and technical assistance. There is a great need for study and experimentation with creative use of the structures of civil society, and public-private cooperation, especially where the delivery of health, educational and social services are concerned.

Last, but not least, we should not hesitate to speak up and express our moral concerns to others when it comes to issues we care about deeply and share with one another. It might be debatable whether or not we should encourage our neighbors to keep their lawns green (which may well be environmentally unsound), but there should be little doubt that we should expect one another to attend to our children, and vulnerable community members. Those who neglect these duties should be explicitly considered poor members of the community.

National and local service, as well as volunteer work, is desirable to build and express a civil commitment. Such activities, bringing together people from different backgrounds and enabling and encouraging them to work together, build community and foster mutual respect and tolerance. . . .

Duties to the Polity

Being informed about public affairs is a prerequisite for keeping the polity from being controlled by demagogues, for taking action when needed in one’s own interests and that of others, for achieving justice and the shared future.

Voting is one tool for keeping the polity reflective of its constituent communities. Those who feel that none of the candidates reflect their views ought to seek out other like-minded citizens and seek to field their own candidate rather than retreat from the polity. Still, some persons may discharge their community responsibilities by being involved in nonpolitical activities, say, in volunteer work. Just as the polity is but one facet of interdependent social life, so voting and political activity are not the only ways to be responsible members of society. A good citizen is involved in a community or communities, but not necessarily active in the polity.

Paying one’s taxes, encouraging others to pay their fair share, and serving on juries are fully obligatory. One of the most telling ills of our time is the expectation of many Americans that they are entitled to ever more public services without paying for them (as reflected in public opinion polls that show demands to slash government and taxes but also to expand practically every conceivable government function). We all take for granted the right to be tried before a jury of our peers, but, all too often, we are unwilling to serve on juries ourselves.
Cleaning Up the Polity

We need to revitalize public life so that the two-thirds of our citizens who now say they feel alienated or that the polity is not theirs will again be engaged in it.

Campaign contributions to members of Congress and state legislatures, speaking fees, and bribes have become so pervasive that in many areas of public policy and on numerous occasions the public interest is ignored as legislators pay off their debts to special interests. Detailed rationalizations have been spun to justify the system. It is said that giving money to politicians is a form of democratic participation. In fact, the rich can “participate” in this way so much more effectively than the poor that the democratic principle of one-person one-vote is severely compromised. It is said that money buys only access to the politician’s ear; but even if money does not buy commitment, access should not be allotted according to the depth of one’s pockets. It is said that every group has its pool of money and, hence, as they all grease Congress, all Americans are served. But those who cannot grease at all or not as well lose out and so do long-run public goals that are not underwritten by any particular interest groups.

To establish conditions under which elected officials will be able to respond to the public interest, to the genuine needs of all citizens, and to their own consciences requires that the role of private money in public life be reduced as much as possible. All candidates should receive some public support, as presidential candidates already do, as well as some access to radio and TV.

To achieve this major renewal and revitalization of public life, to reinstitute the prerequisites for attending to the public interest, requires a major social movement, akin to the progressive movement of the beginning of the twentieth century. For even good causes can become special interests if they are not part of such a movement, keeping their strategies and aims in constant dialogue with larger aims and multiple ends. Citizens who care about the integrity of the polity either on the local, state, or national level should band with their fellows to form a neo-progressive communitarian movement. They should persevere until elected officials are beholden—not to special interests—but only to the voters and to their own consciences.

Freedom of Speech

The First Amendment is as dear to communitarians as it is to libertarians and many other Americans. Suggestions that it should be curbed to bar verbal expressions of racism, sexism, and other slurs seem to us to endanger the
essence of the First Amendment, which is most needed when what some people say is disconcerting to some others. However, one should not ignore the victims of such abuse. Whenever individuals or members of a group are harassed, many nonlegal measures are appropriate to express disapproval of hateful expressions and to promote tolerance among the members of the polity. For example, a college campus faced with a rash of incidents indicating bigotry may conduct a teach-in on intergroup understanding. This, and much more, can be done without compromising the First Amendment.

Social Justice

At the heart of the communitarian understanding of social justice is the idea of reciprocity: each member of the community owes something to all the rest, and the community owes something to each of its members. Justice requires responsible individuals in a responsive community.

Members of the community have a responsibility, to the greatest extent possible, to provide for themselves and their families: honorable work contributes to the commonwealth and to the community's ability to fulfill its essential tasks. Beyond self-support, individuals have a responsibility for the material and moral well-being of others. This does not mean heroic self-sacrifice; it means the constant self-awareness that no one of us is an island unaffected by the fate of others.

For its part, the community is responsible for protecting each of us against catastrophe, natural or man-made; for ensuring the basic needs of all who genuinely cannot provide for themselves; for appropriately recognizing the distinctive contributions of individuals to the community; and for safeguarding a zone within which individuals may define their own lives through free exchange and choice.

Public Safety and Public Health

The American moral and legal tradition has always acknowledged the need to balance individual rights with the need to protect the safety and health of the public. The Fourth Amendment, for example, guards against unreasonable searches but allows for reasonable ones.

We differ with the ACLU and other radical libertarians who oppose sobriety checkpoints, screening gates at airports, drug and alcohol testing for people who directly affect public safety (pilots, train engineers, etc.). Given the minimal intrusion involved (an average sobriety checkpoint lasts ninety seconds), the importance of the interests at stake (we have lost more lives,
many due to drunken drivers, on the road each year than in the war in Vietnam), and the fact that such measures in the past have not led us down a slippery slope, these and similar reasonable measures should receive full public support.

There is little sense in gun registration. What we need to significantly enhance public safety is domestic disarmament of the kind that exists in practically all democracies. The National Rifle Association suggestion that criminals not guns kill people ignores the fact that thousands are killed each year, many of them children, from accidental discharge of guns, and that people—whether criminal, insane, or temporarily carried away by impulse—kill and are much more likely to do so when armed then when disarmed. The Second Amendment, behind which the NRA hides, is subject to a variety of interpretations, but the Supreme Court has repeatedly ruled, for over a hundred years, that it does not prevent laws that bar guns. We join with those who read the Second Amendment the way it was written, as a communitarian clause, calling for community militias, not individual gun slingers.

When it comes to public health, people who carry sexually transmitted diseases, especially when the illness is nearly always fatal, such as AIDS, should be expected to disclose their illness to previous sexual contacts or help health authorities to inform them, warn all prospective sexual contacts, and inform all health care personnel with whom they come in contact. It is their contribution to help stem the epidemic. At the same time, the carriers' rights against wanton violation of privacy, discrimination in housing, employment, and insurance should be scrupulously protected.

The Human Community

Our communitarianism is not particularism. We believe that the responsive community is the best form of human organization yet devised for respecting human dignity and safeguarding human decency, and the way of life most open to needed self-revision through shared deliberation. We believe that the human species as a whole would be well-served by the movement, as circumstances permit, of all polities toward strongly democratic communities. We are acutely aware of the ways in which this movement will be (and ought to be) affected by important material, cultural, and political differences among nations and peoples. And we know that enduring responsive communities cannot be created through fiat or coercion, but only through genuine public conviction.

We are heartened by the widespread invocation of democratic principles by the nations and peoples now emerging from generations of repression; we
see the institutionalization of these principles as the best possible bulwark against the excesses of ethnic and national particularism that could well produce new forms of repression.

Although it may seem utopian, we believe that in the multiplication of strongly democratic communities around the world lies our best hope for the emergence of a global community that can deal concertedly with matters of general concern to our species as a whole: with war and strife, with violations of basic rights, with environmental degradation, and with the extreme material deprivation that stunts the bodies, minds, and spirits of children. Our communitarian concern may begin with ourselves and our families, but it rises inexorably to the long-imagined community of humankind.

In Conclusion

A Question of Responsibility

Although some of the responsibilities identified in this manifesto are expressed in legal terms, and the law does play a significant role not only in regulating society but also in indicating which values it holds dear, our first and foremost purpose is to affirm the moral commitments of parents, young persons, neighbors, and citizens to affirm the importance of the communities within which such commitments take shape and are transmitted from one generation to the next. This is not primarily a legal matter. On the contrary, when a community reaches the point at which these responsibilities are largely enforced by the powers of the state, it is in deep moral crisis. If communities are to function well, most members most of the time must discharge their responsibilities because they are committed to do so, not because they fear lawsuits, penalties, or jails. Nevertheless, the state and its agencies must take care not to harm the structures of civil society on which we all depend. Social environments, like natural environments, cannot be taken for granted.

It has been argued by libertarians that responsibilities are a personal matter, that individuals are to judge which responsibilities they accept as theirs. As we see it, responsibilities are anchored in community. Reflecting the diverse moral voices of their citizens, responsive communities define what is expected of people; they educate their members to accept these values; and they praise them when they do and frown upon them when they do not. Although the ultimate foundation of morality may be commitments of individual conscience, it is communities that help introduce and sustain these commitments. Hence the urgent need for communities to articulate the responsibilities they expect their members to discharge, especially in times,
such as our own, in which the understanding of these responsibilities has weakened and their reach has grown unclear.

Further Work
This is only a beginning. This platform is but a point in dialogue, part of an ongoing process of deliberation. It should not be viewed as a series of final conclusions but ideas for additional discussion. We do not claim to have the answers to all that troubles America these days. However, we are heartened by the groundswell of support that our initial efforts have brought to the communitarian perspective. If more and more Americans come forward and join together to form active communities that seek to reinvigorate the moral and social order, we will be able to deal better with many of our communities' problems while reducing our reliance on governmental regulation, controls, and force. We will have a greater opportunity to work out shared public policy based on broad consensus and shared moral and legal traditions. And we will have many more ways to make our society a place in which individual rights are vigilantly maintained, while the seedbeds of civic virtue are patiently nurtured.
PART ONE

THEORY AND SOCIAL PHILOSOPHY
The revolutions that ushered in regimes of popular sovereignty transferred the ruling power from a king onto a “nation,” or a “people.” In the process, they invented a new kind of collective agency. These terms existed before, but the thing they now indicate, this new kind of agency, is something unprecedented, at least in the immediate context of early modern Europe. Thus the notion “people” could certainly be applied to the ensemble of subjects of the kingdom, or to the nonelite strata of society, but prior to the turnover it hadn’t indicated an entity which could decide and act together, to whom one could attribute a will.

Why does this new kind of entity need a strong form of cohesion? Isn’t the notion of popular sovereignty simply that of majority will, more or less restrained by the respect of liberty and rights? But this kind of decision rule can be adopted by all sorts of bodies, even those which are the loosest aggregations. Supposing during a public lecture, some people feel the heat oppressive and ask that the windows be opened; others demur. One might easily decide this by a show of hands, and those present would accept this as legitimate. And yet the audience of the lecture might be the most disparate congeries of individuals, unknown to one another, without mutual concern, just brought together by that event.

This example shows by contrast what democratic societies need. It seems at once intuitively clear that they have to be bonded more powerfully than this chance grouping. But how can we understand this necessity?
One way to see it is to push a bit further the logic of popular sovereignty. It not only recommends a certain class of decision procedures—those which are grounded ultimately on the majority (with restrictions)—but it also offers a particular justification. Under a regime of popular sovereignty, we are free in a way we are not under an absolute monarch, or an entrenched aristocracy, for instance.

Now supposing we see this from the standpoint of some individual. Let's say I am outvoted on some important issue. I am forced to abide by a rule I am opposed to. My will is not being done. Why should I consider myself free? Does it matter that I am overridden by the majority of my fellow citizens, as against the decisions of a monarch? Why should that be decisive? We can even imagine that a potential monarch, waiting to return to power in a coup, agrees with me on this question, against the majority. Wouldn't I then be freer after the counterrevolution? After all, my will on this matter would then be put into effect.

We can recognize that this kind of question is not merely a theoretical one. It is rarely put on behalf of individuals, but it regularly arises on behalf of subgroups, for example, national minorities, who see themselves as oppressed. Perhaps no answer can satisfy them. Whatever one says, they cannot see themselves as part of this larger sovereign people. And therefore they see its rule over them as illegitimate, and this according to the logic of popular sovereignty itself.

We see here the inner link between popular sovereignty and the idea of the people as a collective agency, in some stronger sense than our lecture audience above. This agency is something you can be included in without really belonging to, which makes no sense for a member of the audience. We can see the nature of this belonging if we ask what is the answer we can give to those who are outvoted and are tempted by the argument above.

Of course, some extreme philosophical individualists believe that there is no valid answer that appeals to some greater collective is just so much humbug to get contrary voters to accept voluntary servitude. But without deciding this ultimate philosophical issue, we can ask: what is the feature of our "imagined communities" by which people very often do readily accept that they are free under a democratic regime, even where their will is overridden on important issues?

The answer they accept runs something like this: You, like the rest of us, are free just by virtue of the fact that we are ruling ourselves in common, and not being ruled by some agency which need take no account of us. Your freedom consists in your having a guaranteed voice in the sovereign, that you can be heard, and have some part in making the decision. You enjoy this
freedom by virtue of a law that enfranchises all of us, and so we enjoy this
together. Your freedom is realized and defended by this law, and this whether
or not you win or lose in any particular decision. This law defines a com-
munity, of those whose freedom it realizes/defends together. It defines a col-
lective agency, a people, whose acting together by the law preserves their
freedom.

Such is the answer, valid or not, that people have come to accept in dem-
ocratic societies. We can see right away that it involves their accepting a
kind of belonging much stronger than the people in the lecture hall. It is an
ongoing collective agency, one the membership in which realizes something
very important, a kind of freedom. Insofar as this good is crucial to their iden-
tity, they thus identify strongly with this agency, and hence also feel a bond
with their co-participants in this agency. It is only an appeal to this kind of
membership which can answer the challenge of our imagined individual
above, who is pondering whether to support the monarch’s (or general’s)
coup in the name of his freedom.

The crucial point here is that, whoever is ultimately right philosophically,
it is only insofar as people accept some such answer that the legitimacy prin-
ciple of popular sovereignty can work to secure their consent. The principle
is effective only via this appeal to a strong collective agency. If the identifi-
cation with this is rejected, the rule of this government seems illegitimate in
the eyes of the rejecters, as we see in countless cases with disaffected national
minorities. Rule by the people, all right; but we can’t accept rule by this lot,
because we aren’t part of their people. This is the inner link between de-
ocracy and strong common agency. It follows the logic of the legitimacy
principle that underlies democratic regimes. They fail to generate this iden-
tity at their peril.

This last example points to an important modulation of the appeal to pop-
ular sovereignty. In the version I just gave above, the appeal was to what we
might call “republican freedom.” It is the one inspired by ancient republics,
and which was invoked in the American and French Revolutions. But very
soon after, the same appeal began to take on a nationalist form. The attempts
to spread the principles of the French Revolution through the force of
French arms created a reaction in Germany, Italy, and elsewhere, the sense
of not being part of, represented by that sovereign people in the name of
which the Revolution was being made and defended. It came to be accepted
in many circles that a sovereign people, in order to have the unity needed for
collective agency, had already to have an antecedent unity, of culture, his-
tory, or (more often in Europe) language. And so behind the political nation,
there had to stand a preexisting cultural (sometimes ethnic) nation.
This means that the modern democratic state has generally accepted common purposes, or reference points, the features whereby it can lay claim to being the bulwark of freedom and locus of expression of its citizens. Whether or not these claims are actually founded, the state must be so imagined by its citizens if it is to be legitimate.

I

So a question can arise for the modern state for which there is no analogue in most premodern forms: what/whom is this state for? whose freedom? whose expression?

This is the sense in which a modern state has what I want to call a political identity, defined as the generally accepted answer to the “what/whom for?” question. This is distinct from the identities of its members, that is, the reference points, many and varied, which for each of these defines what is important in their lives. There had better be some overlap, of course, if these members are to feel strongly identified with the state; but the identities of individuals and constituent groups will generally be richer and more complex, as well as being often quite different from each other.

The close connection between popular sovereignty, strong cohesion, and political identity can also be shown in another way: the people are supposed to rule; this means that the members of this “people” make up a decision-making unit, a body which takes joint decisions. Moreover, it is supposed to take its decisions through a consensus, or at least a majority, of agents who are deemed equal and autonomous. It is not “democratic” for some citizens to be under the control of others. It might facilitate decision making, but it is not democratically legitimate.

In addition, to form a decision-making unit of the type demanded here, it is not enough for a vote to record the fully formed opinions of all the members. These units must not only decide together but deliberate together. A democratic state is constantly facing new questions, and, in addition, aspires to form a consensus on the questions that it has to decide, and not merely to reflect the outcome of diffuse opinions. However, a joint decision emerging from joint deliberation does not merely require everybody to vote according to his or her opinion. It is also necessary that each person’s opinion should have been able to take shape or be reformed in the light of discussion, that is to say, by exchange with others.

This necessarily implies a degree of cohesion. To some extent, the members must know one another, listen to one another, and understand one another. If they are not acquainted, or if they cannot really understand one an-
other, how can they engage in joint deliberation? This is a matter that concerns the very conditions of legitimacy of democratic states.

If, for example, a subgroup of the "nation" considers that it is not being listened to by the rest, or that they are unable to understand its point of view, it will immediately consider itself excluded from joint deliberation. Popular sovereignty demands that we should live under laws which derive from such deliberation. Anyone who is excluded can have no part in the decisions which emerge and these consequently lose their legitimacy for him. A subgroup that is not listened to is in some respects excluded from the "nation," but, by this same token, it is no longer bound by the will of that nation.

For it to function legitimately, a people must thus be so constituted that its members are capable of listening to one another, and effectively do so; or at least that it should come close enough to that condition to ward off possible challenges to its democratic legitimacy from subgroups. In practice, more than that is normally required. It is not enough nowadays for us to be able to listen to one another. Our states aim to last, so we want an assurance that we shall continue to be able to listen to one another in the future. This demands a certain reciprocal commitment. In practice a nation can only ensure the stability of its legitimacy if its members are strongly committed to one another by means of their common allegiance to the political community. Moreover, it is the shared consciousness of this commitment which creates confidence in the various subgroups that they will indeed be heard, despite the possible causes for suspicion that are implicit in the differences between these subgroups.

In other words, a modern democratic state demands a "people" with a strong collective identity. Democracy obliges us to show much more solidarity and much more commitment to one another in our joint political project than was demanded by the hierarchical and authoritarian societies of yesterday. In the good old days of the Austro-Hungarian Empire, the Polish peasant in Galicia could be altogether oblivious of the Hungarian country squire, the bourgeois of Prague, or the Viennese worker, without this, in the slightest, threatening the stability of the state. On the contrary: this condition of things only becomes untenable when ideas about popular government start to circulate. This is the moment when subgroups which will not, or cannot, be bound together start to demand their own states. This is the era of nationalism, of the breakup of empires.

From another angle again, because these societies require strong commitment to do the common work, and because a situation in which some carried the burdens of participation and others just enjoyed the benefits would be intolerable, free societies require a high level of mutual trust. In other words,
they are extremely vulnerable to mistrust on the part of some citizens in relation to others, that the latter are not really assuming their commitments, for example, that others are not paying their taxes, or are cheating on welfare, or as employers are benefiting from a good labor market without assuming any of the social costs. This kind of mistrust creates extreme tension, and threatens to unravel the whole skein of the mores of commitment which democratic societies need to operate. A continuing and constantly renewed mutual commitment is an essential basis for taking the measures needed to renew this trust.

II

So there is a need for common identity. How does this generate exclusion? In a host of possible ways, which we can see illustrated in different circumstances.

1. The most tragic of these circumstances is also the most obvious, where a group which cannot be assimilated to the reigning cohesion is brutally extruded; what we have come today to call "ethnic cleansing."

But there are other cases where it doesn’t come to such drastic expediens, but where exclusion works all the same against those whose difference threatens the dominant identity. I want to class forced inclusion as a kind of exclusion, which might seem a logical sleight of hand. Thus the Hungarian national movement in the nineteenth century tried to forcefully assimilate Slovaks and Romanians; the Turks are reluctant to concede that there is a Kurdish minority in their eastern borderlands. This may not seem to constitute exclusion to the minority, but in another clear sense, it amounts to this. It is saying in effect: as you are, or consider yourselves to be, you have no place here; that’s why we are going to make you over.

Or exclusion may take the form of chicanery, as in the old apartheid South Africa, where millions of Blacks were denied citizenship on the grounds that they were really citizens of “homelands,” external to the state.

All these modes of exclusion are motivated by the threat that others represent to the dominant political identity. But this threat depends on the fact that popular sovereignty is the regnant legitimacy idea of our time. It is hard to sustain a frankly hierarchical society, in which groups are ranged in tiers, with some overtly marked as inferior or subject, as with the millet system of the Ottoman Empire.

It is no accident that the twentieth century is the age of ethnic cleansing, starting with the Balkan Wars, extending in that area through the aftermath of World War I, then reaching epic proportions in World War II, and still continuing—to speak only of Europe.
The democratic age poses new obstacles to coexistence because it opens a new set of issues which may deeply divide people, those concerning the political identity of the state. In many parts of the Indian subcontinent, for instance, Hindus and Muslims coexisted in conditions of civility, even with a certain degree of syncretism, where later they would fight bitterly. What happened? The explanations often given include the British attempt to divide and rule, or even the British mania for census figures, which first made an issue of who was a majority where.

These factors may have their importance, but clearly what makes them vital is the surrounding situation, in which political identity becomes an issue. As the movement grows to throw off the alien, multinational Empire and to set up a democratic state, the question arises of its political identity. Will it simply be that of the majority? Are we heading for Hindu Raj? Muslims ask for reassurance. Gandhi's and Nehru's proposals for a pan-Indian identity don't satisfy Jinnah. Suspicion grows, demands for guarantees, ultimately separation.

Each side is mobilized to see the other as a political identity threat. This fear can then sometimes be transposed, through mechanisms we have yet to understand, into a threat to life; to which the response is savagery and counter-savagery, and we descend the spiral which has become terribly familiar. Census figures can then be charged with ominous significance, but only because, in the age of democracy, being in the majority has decisive importance.

2. Then there is the phenomenon we can sometimes see in immigrant societies with a high degree of historic ethnic unity. The sense of common bond and common commitment has been so long bound up with the common language, culture, history, ancestry, and so on that it is difficult to adjust to a situation where the citizen body includes lots of people of other origins. People feel a certain discomfort with this situation, and this can be reflected in a number of ways.

In one kind of case, the homogeneous society is reluctant to concede citizenship to the outsiders. Germany is the best known example of this, with its third-generation Turkish Gastarbeiter, whose only fluent language may be German, whose only familiar home is in Frankfurt, but who are still resident aliens.

But there are subtler, and more ambivalent, ways in which this discomfort can play out. Perhaps the outsiders automatically acquire citizenship after a standard period of waiting. There even may be an official policy of integrating them, widely agreed on by the members of the "old stock" population. But these are still so used to functioning politically among themselves that
they find it difficult to adjust. Perhaps one might better put it that they don't quite know how to adjust yet; the new reflexes are difficult to find. For instance, they still discuss policy questions among themselves, in their electronic media and newspapers, as though immigrants were not a party to the debate. They discuss, for instance, how to gain the best advantage for their society of the new arrivals, or how to avoid certain possible negative consequences, but the newcomers are spoken of as "them," as though they weren't potential partners in the debate.

This illustrates just what is at stake here. I don't want to claim that democracy unfailingly leads to exclusion. That would be a counsel of despair, and the situation is far from desperate. I also want to say that there is a drive in modern democracy toward inclusion, in the fact that government should be by all the people. But my point is, that alongside this, there is a standing temptation to exclusion, which arises from the fact that democracies work well when people know each other, trust each other, and feel a sense of commitment toward each other.

The coming of new kinds of people into the country, or into active citizenship, poses a challenge. The exact content of the mutual understanding, the bases of the mutual trust, and the shape of the mutual commitment, all have to be redefined, reinvented. This is not easy, and there is an understandable temptation to fall back on the old ways, and deny the problem; either by straight exclusion from citizenship (Germany) or by the perpetuation of "us and them" ways of talking, thinking, doing politics.

And the temptation is the stronger, in that for a transition period, the traditional society may have to forgo certain advantages which came from the tighter cohesion of yore.

3. The cases I've been looking at are characterized by the arrival from abroad, or the entry into active citizenship, of new people, who have not shared the ethnic-linguistic culture or else the political culture. But exclusion can also operate along another axis. Just because of the importance of cohesion, and of a common understanding of political culture, democracies have sometimes attempted to force their citizens into a single mold. The "Jacobin" tradition of the French Republic provides the best-known example of this.

Here the strategy is, from the very beginning, to make people over in a rigorous and uncompromising way. Common understanding is reached, and supposedly forever maintained, by a clear definition of what politics is about, and what citizenship entails, and these together define the primary allegiance of citizens. This complex is then vigorously defended against all comers, ideological enemies, slackers, and, when the case arises, immigrants.
The exclusion operates here, not in the first place against certain people already defined as outsiders, but against other ways of being. This formula forbids other ways of living modern citizenship; it castigates as unpatriotic a way of living which would not subordinate other facets of identity to citizenship. In the particular case of France, for instance, a certain solution to the problem of religion in public life was adopted by radical Republicans, one of extrusion; and they have had immense difficulty even imagining that there might be other ways to safeguard the neutrality and comprehensiveness of the French state. Hence the overreaction to Muslim adolescents wearing the head scarf in school.

But the strength of this formula is that it managed for a long time to avoid or at least minimize the other kind of exclusion, that of new arrivals. It still surprises Frenchmen, and others, when they learn from Gérard Noiriel that one French person in four today has at least one grandparent born outside the country. France in this century has been an immigrant country without thinking of itself as such. The policy of assimilation has hit a barrier with recent waves of Maghrébains, but it worked totally with the Italians, Poles, Czechs, who came between the wars. These people were never offered the choice, and became indistinguishable from les Français de souche.

III

I hope I have made somewhat clear what I mean by the dynamic of exclusion in democracy. We might describe it as a temptation to exclude, beyond that which people may feel because of narrow sympathies or historic prejudice; a temptation which arises from the requirement of democratic rule itself for a high degree of mutual understanding, trust, and commitment. This can make it hard to integrate outsiders, and tempt us to draw a line around the original community. But it can also tempt us to what I have called “inner exclusion,” the creation of a common identity around a rigid formula of politics and citizenship, which refuses to accommodate any alternatives, and imperiously demands the subordination of other aspects of citizens’ identities.

It is clear that these two modes are not mutually exclusive. Societies based on inner exclusion may come to turn away outsiders as well, as the strength of the Front National, alas, so well illustrates; while societies whose main historical challenge has been the integration of outsiders may have recourse to inner exclusion in an attempt to create some unity amid all the diversity.

Now the obvious fact about our era is that, first, the challenge of the new arrival is becoming generalized and multiplied in all democratic societies. The scope and rate of international migration is making all societies increasingly
"multicultural"; while, second, the response to this challenge of the "Jacobin" sort, a rigorous assimilation to a formula involving fairly intense inner exclusion, is becoming less and less sustainable.

This last point is not easy to explain, but it seems to me an undeniable fact. There has been a subtle switch in mind-set in our civilization, probably coinciding with the 1960s. The idea that one ought to suppress one's difference for the sake of fitting in to a dominant mold, defined as the established way in one's society, has been considerably eroded. Feminists, cultural minorities, homosexuals, religious groups, all demand that the reigning formula be modified to accommodate them, rather than the other way around.

At the same time, possibly connected to this first change, but certainly with its own roots, has come another. This is an equally subtle change, and hard to pin down. But migrants no longer feel the imperative to assimilate in the same way. One mustn't misidentify the switch. Most of them want to assimilate substantively to the societies they have entered; and they certainly want to be accepted as full members. But they frequently want now to do it at their own pace, and in their own way, and, in the process, they reserve the right to alter the society even as they assimilate to it.

The case of Hispanics in the United States is very telling in this regard. It's not that they don't want to become Anglophone Americans. They see obvious advantages in doing so, and they have no intention of depriving themselves of these. But they frequently demand schools and services in Spanish, because they want to make this process as painless as they can for themselves, and because they welcome such retention of the original culture as may fall out of this process. And something like this is obviously in the cards. They will all eventually learn English, but they will also alter somewhat the going sense of what it means to be an American, even as earlier waves of immigrants have. The difference with earlier waves is that Hispanics seem to be operating now with the sense of their eventual role in codetermining the culture, rather than this arising only retrospectively, as with earlier immigrants.

The difference between the earlier near-total success of France in assimilating East Europeans and others (who ever thought of Yves Montand as Italian?), and the present great difficulty with Maghrébins, while it reflects a whole lot of other factors—for example, greater cultural-religious difference, and the collapse of full employment—nevertheless must also reflect, I believe, the new attitude among migrants. The earlier sense of unalloyed gratitude toward the new countries of refuge and opportunity, which seemed to make any revendication of difference quite unjustified and out of place, has been replaced by something harder to define. One is almost tempted to say,
by something resembling the old doctrine which is central to many religions, that the earth has been given to the human species in common. A given space doesn’t just unqualifiedly belong to the people born in it, so it isn’t simply theirs to give. In return for entry, one is not morally bound to accept just any condition they impose.

Two new features arise from this shift. First, the notion I attributed to Hispanics in the United States has become widespread, vis-à-vis the idea that the culture they are joining is something in continual evolution, and that they have a chance to co-determine it in the future. This, instead of simple one-way assimilation, is more and more becoming the (often unspoken) understanding behind the act of migration.

Secondly, we have an intensification of a long-established phenomenon, which now seems fully “normal,” that is, where certain immigrant groups still function morally, culturally, and politically as a “diaspora” in relation to their home country. This has been going on for a long time—think, for instance, of the “Polonia” in all the countries of exile. But whereas it was frowned on, or looked askance at, by many people in the receiving society, or where toleration for it depended on sympathy for the cause of the home country (the Poles were lucky in this respect); whereas people muttered darkly in the past about “double allegiance,” I believe now that this kind of behavior is coming to be seen as normal. Of course, there are still extreme variants of it which arouse strong opposition, as when terrorists use the receiving countries as a base for their operations. But that is because these manifestations shock the dominant political ethic, and not because of the intense involvement in the country of origin. It is becoming more and more normal and unchallenged to think of oneself and be thought of as, say, a Canadian in good standing, while being heavily involved in the fate of some country of origin.

IV

The upshot of the above discussion could be expressed this way: democracies are in a standing dilemma. They need strong cohesion around a political identity, and precisely this provides a strong temptation to exclude those who can’t or won’t fit easily into the identity which the majority feels comfortable with, or believes alone can hold them together. And yet exclusion, besides being profoundly morally objectionable, also goes against the legitimacy idea of popular sovereignty, which is to realize the government of all the people. The need to form a people as a collective agent runs against the demand for inclusion of all who have a legitimate claim on citizenship.
This is the source of the malady; what are the remedies? These are a lot harder to find. But I believe that an important first step is to recognize the dilemma. For this allows us to see that it can very often only be dealt with by struggling towards a creative redefinition of our political identity. The dilemma after all arises because some often historically hallowed definition can't accommodate all who have a moral claim to citizenship. And yet the reaction to this is all too often to render this original identity even more absolute and unchallengeable, as though it somehow belonged essentially to a certain people with its territory and history that it be organized under this and no other identity.

This appeal to the origins can occur in both “republican” and “national” registers. In the first case, the particular features of our republican constitution are made absolute and sacrosanct, in face of all evidence that they may beimpeding the search for a new common ground. Thus there is a certain “Jacobin” fundamentalism which comes to the surface in France, in reaction to certain demands to accommodate the growing Muslim minority. The wearing of head scarves in school by Muslim teenagers is judged to infringe the principles of laïcité, as laid down in the French republican tradition. The general principle of state neutrality, indispensable in a modern diverse democracy, is metaphysically fused with a particular historical way of realizing it, and the latter is rendered as non-negotiable as the former.

As a panic reaction, this is understandable even if disastrous. Faced with the unfamiliar and disturbing, one reaches for the age-old sources of common identity. But the reaction is facilitated by the belief that this original constitution was meant to resolve the issue of political identity once and for all, that somehow it precluded in advance any need for illegitimate exclusion.

This amounts to a denial that the potential for the dilemma is built into democracy itself. It cannot be conjured once and for all by the ideal constitutional settlement. Even if this perfectly suits the population at the time of founding (and what constitution ever has?), the shifts in personal identity over time, through migration and moral or cultural change, can bring the established political identity out of touch with the people who are supposed to live within it. This kind of fundamentalism attempts to deny history.

We are more familiar with this reaching back to sources in the national register; its destructive consequences are more immediately evident. The claim is that a certain territory belongs as of right to a certain historical ethnic, or cultural, or linguistic, or religious identity, regardless of what other people are living there, even if they've been there for centuries.

The reflex of many people in liberal societies to this kind of thing is to blame “nationalism” and not democracy. But this is to take too quick a way with it. To start with, “nationalism” has many senses. The original idea, for
instance in its Herderian form, was a liberating one, and highly consonant with democracy. We don’t have to force ourselves into an artificial homogeneity in order to live together in peace. We can recognize different “national” (Volk) identities, even give them political expression, because each in this act of recognition acknowledges that it is not universal, that it has to coexist with others which are equally legitimate.

What this pushes us toward is the idea which I believe is the key to facing the dilemma of exclusion creatively, the idea of sharing identity space. Political identities have to be worked out, negotiated, creatively compromised between peoples who have to or want to live together under the same political roof (and this coexistence is always grounded in some mixture of necessity and choice). Moreover, these solutions are never meant to last for ever, but have to be discovered/invented anew by succeeding generations.

The idea of nationalism which creates bitter trouble is that defined by Gellner: the “political principle, which holds that the political and national unit should be congruent.” According to this idea, the problem of how to share identity space can be solved by giving each nation its territory, on which it can erect its sovereign state. The utopian, even absurd nature of the proposal immediately strikes the eye. Quite apart from the thousands of groups that can claim the status of “nation,” even giving each its parcel of land would still leave each pocket handkerchief state with national minorities, so inextricably mixed are the world’s peoples. The utopian scheme could only be carried through by massive ethnic cleansing.

It is clear that this idea will only “work” by making certain nations more equal than others. These are to get their states, and the rest are to live in their shadow as minorities, if they are allowed to live at all. This idea of nationalism can only be applied by negating its own universalist ethical basis.

It is this distorted idea which justifies the claim by historical national identities to monopoly control over “their” territory. In the worst cases, this ends in a Yugoslav scenario. In the best cases, as with the Parti Québécois, and the more liberal wing of the B.J.P., minorities are to be guaranteed their rights, but the idea of sharing identity space, actually negotiating some compromise political identity with them, is vigorously rejected.

Just as with “republican” forms of constitutionalism above, the unreal idea of a definitive solution to the problem of democratic coexistence is blinding people to the effective situation on the ground in almost all democratic states. The hope is once again to arrest history, to fix it in some original moment when our people attached themselves to this territory. And similarly, what offers itself as a solution to the democratic dilemma can only exacerbate it to the point of bitter conflict.
But the belief that the problem here is "nationalism" sans phrase can accredit another utopian solution, that of a political identity grounded purely in "republican" elements, without any reference to national or cultural identities.

In face of the prospect of having to bring together so many differences of culture, origin, political experience, and identity, the temptation is natural to define the common understanding more and more in terms of "liberalism," rather than by reference to the identities of citizens. The focus should be totally on individual rights and democratic and legal procedures, rather than on the historical-cultural reference points, or the ideas of the good life by which citizens define their own identities. In short, the temptation is to go for what Sandel calls the "procedural republic" . . .

What does the procedural republic have going for it? A number of things, some of them tendencies in our philosophical tradition, about what can and cannot be known and proved, and about the nature of freedom. They have been much discussed, debated, and often refuted by philosophers. But there is a political argument. Regardless of who is ultimately right in the battle between procedural ethics and those of the good life, we could conceivably be convinced on political grounds that the best political formula for democratic government of a complex society was a kind of neutral liberalism. And this is where the argument has mainly gone today. The shift between Rawls I and Rawls II is a clear example of this. His theory of justice is now presented as "political, not metaphysical." This shift perhaps comes in part from the difficulties that the purely philosophical arguments run into. But it also corresponds to the universal perception that diversity is a more important and crucial dimension of contemporary society. This comes, as I argued above, partly from the actual growth in diversity in the population, through say, international migration; and partly from the growing demand that age-old diversities be taken seriously, put forward for instance, by feminists.

So the issue now could be: what conception of freedom, of equality, of fairness, and of the basis for social coexistence are not right in the abstract, but feasible for modern democratic societies? How can people live together in difference, granted that this will be in a democratic regime, under conditions of fairness and equality?

The procedural republic starts right off with a big advantage. If in your understanding of the citizen's roles and rights, you abstract from any view of the good life, then you avoid endorsing the views of some at the expense of others. Moreover, you find an immediate common terrain on which all can gather. Respect me, and accord me rights, just in virtue of my being a citizen, not in virtue of my character, outlook, or the ends I espouse, not to speak of my gender, race, sexual orientation, etc.
Now noone in their right mind today would deny that this is an important dimension of any liberal society. The right to vote, for instance, is indeed accorded unconditionally; or on condition of certain bases of citizenship, but certainly in a way which is blind to differences of the range just quoted. The question we have to ask is whether this can be the only basis for living together in a democratic state, whether this is the valid approach in all contexts, whether our liberalism approaches perfection the more we can treat people in ways that abstract from what they stand for and others don’t.

Now it can look right off, that whatever other reasons there might be for treating people this way, at least it facilitates our coming together, and feeling ourselves to be part of a common enterprise. What we do all have in common is that we make choices, opt for some things rather than others, want to be helped and not hindered in pursuing the ends that flow from these options. So an enterprise that promises to further everyone’s plan, on some fair basis, seems to be the ideal common ground. Indeed, some people find it hard to imagine what else could be.

But this retreat to the procedural is no solution to the democratic dilemma. On the contrary, it very often itself contributes to activating it. We can readily see this in two ways.

First, the condition of a viable political identity is that people must actually be able to relate to it, to find themselves reflected in it. But in some cases, the preservation of an historical cultural identity is so important to a certain group that suppressing all mention of it in our answer to the “what for?” question cannot but alienate that group.

Second, the procedural route supposes that we can uncontroversially distinguish neutral procedures from substantive goals. But it is in fact very difficult to devise a procedure which is seen as neutral by everyone. The point about procedures, or charters of rights, or distributive principles, is that they are meant not to enter into the knotty terrain of substantive difference in way of life. But there is no way in practice of ensuring that this will be so.

The case of the Muslim teenagers wearing the head scarf in school in France is eloquent in this regard. Laïcité is supposedly a neutral principle, not favoring one religion or worldview over another. On this basis the headscarves were refused, but other French girls often wear, for example, a cross around their necks, and this was unchallenged. In a “secular” society, this is presumably often just a “decoration.” The presumption is valid enough, but the religious “invisibility” of the cross reflects France as a “post-Christian” society, following centuries of Christian culture. How can one expect to convince Muslims that this combination of rulings is neutral?
The mistake here is to believe that there can be some decision whose neutrality is guaranteed by its emerging from some principle or procedure. This breeds the illusion that there is no need to negotiate the place of these symbols, and hence to confront the actual substantive differences of religious allegiance in the public square. But no procedure can dispense from the need to share identity space.

Something similar holds of the American case. What is meant to be a procedural move, neutral between all parties, the separation of church and state, turns out to be open to different interpretations, and some of these are seen as very far from neutral by some of the important actors in the society. The school prayer dispute is a case in point. One could argue that insistence on a procedural solution—in this case a winner-take-all constitutional adjudication—is exactly what will maximally inflame the division; which, indeed, it seems to have done.

Moreover, as against a political solution, based on negotiation and compromise between competing demands, this provides no opportunity for people on each side to look into the substance of the other’s case. Worse, by having their demand declared unconstitutional, the losers’ program is delegitimated in a way that has deep resonance in American society. Not only can we not give you what you want but also you are primitive and un-American to want it.

In short, I would argue that the current American Kulturkampf has been exacerbated rather than reconciled by the heavy recourse in that polity to judicial resolution on the basis of the constitution.

V

My argument here has been that a full understanding of the dilemma of democratic exclusion shows that there is no alternative to what I have called sharing identity space. This means negotiating a commonly acceptable, evenly compromised political identity between the different personal or group identities which want to/have to live in the polity. Some things will, of course, have to be non-negotiable, the basic principles of republican constitutions—democracy itself and human rights, among them. But this firmness has to be accompanied by a recognition that these principles can be realized in a number of different ways, and can never be applied neutrally without some confronting of the substantive religious-ethnic-cultural differences in societies. Historic identities can’t be just abstracted from. But nor can their claims to monopoly status be received. There are no exclusive claims to a given territory by historic right.
What does this mean in practice? I don't have space to go into this here (phew!). But also there are not too many things that one can say in utter generality. Solutions have to be tailored to particular situations. But some of the political mechanisms of this sharing are already well known, for example, various brands of federalism, as well as the design of forms of special status for minority societies, such as we see today in Scotland and Catalonia, for instance. But many other modalities remain to be devised for the still more diverse democratic societies of the twenty-first century.

In the meantime, it will have helped, I believe, if we can perceive more clearly and starkly the nature of our democratic dilemma, since the hold of unreal and ahistorical solutions over our minds and imagination is still crippling our efforts to deal with the growing conflicts that arise from it. If this chapter contributes a little to this end, it will have been worth the writing.
Why are we all so fascinated by Isaiah Berlin? Several reasons easily come to mind if we try to explain why Isaiah Berlin has become such a crucial figure of contemporary discussions in political theory. During his lifetime one reviewer already called him “the intellectual high priest of humane Western liberalism,” and since his death he seems to have turned almost into a cult figure for Western intellectuals. But some of the potential explanations for this fact—like the sheer brilliance of Berlin’s conversational and writing style, or the erudition and ease with which he moved between different national intellectual traditions—clearly are not fully satisfying. In addition to them there must be a more profound motive that makes his writings such a focus of interest today.

In my eyes, this deeper reason lies in Berlin’s attempt to combine a radical value pluralism with a firm and almost militant liberalism in political matters. Obviously my emphasis in this last sentence was on the word “combine,” since in our time—with its ongoing debates about postmodernity—there is no lack of value pluralists or even value relativists whose liberal credentials, however, may sometimes be problematical. On the other hand, while liberalism remains the strongest tradition of political thinking in the English-speaking world and has become more and more important on the European continent in the last years, many of these liberals do not excel in their understanding of their adversaries and pay the high price of hermeneutical insensitivity for the rationalist defense of their liberal convictions. Most people, however, feel attracted to both ends of this spectrum. They find value
pluralism important because they believe in an ethos of tolerance and tend to problematize their own culture, which makes them skeptical toward all sorts of philosophical universalism. But very often these same people are well aware of the political dangers of a mere particularism and hence cannot avoid the question of whether liberal values really should be considered nothing but one option among innumerable competing ones. For them, value pluralism and moral universalism clearly do not seem to be logically exclusive, though they do not know how exactly they could be combined.

Does Isaiah Berlin's work contain an answer to this question, and how satisfying is this answer? Or did Berlin just give us the feeling he had an answer, but in reality only represents a sort of "personal union" of liberalism plus value pluralism, a combination grounded in his particular biography, but not in a systematic philosophy? This is the question I am going to discuss here. After a short recapitulation of Berlin's ideas on this matter I will attempt to demonstrate that his attempt at combination falls short of complete success. I will argue that a more successful approach can be based on the ethics of pragmatism. The catchword for this approach is "the sieve of norms"—an expression I borrow from Paul Ricoeur whose thinking, though it cannot be derived from pragmatist sources, has astonishing similarities with them.

**Value Pluralism Defined**

As John Gray has demonstrated in his masterly book on Isaiah Berlin, there is one core idea in Berlin's writings, which are devoted to a very great variety of subjects and thinkers. This core idea is the idea of "value pluralism," defined by Gray as the assumption "that ultimate human values are objective but irreducibly diverse, that they are conflicting and often uncombinable, and that sometimes when they come into conflict with one another they are incommensurable." According to this definition, "value pluralism" has to be distinguished from a pluralism of interests and from value relativism or value skepticism. A pluralism of interests can occur within the framework of a shared consensual value system; value skepticism denies that the notion of an objective binding force of values makes sense at all, and a value relativist believes in the total mutual exclusiveness of competing value systems. Berlin's value pluralism is more culture-oriented than a pluralism of interests, more objectivity-oriented than value-skepticism, and more willing to engage in the mediation or intercommunication between value-systems than value-relativism. It also has a clear implication for political philosophy, namely—following Gray again—that "the idea of a perfect society in which all genuine ideals and goods are achieved is not merely utopian; it is incoherent."
According to Berlin there is no single ideal way of living, and the utopian dream of realizing such an ideal is always prone to degenerate into a totalitarian project. Berlin is radical enough to conclude that even a liberalism that understands itself as such an ideal is dangerous, but this does not prevent him from defending liberalism as a better way of organizing political life than all the others. He subverts a certain triumphalist self-understanding of liberalism, not liberal institutions as such.

Three characteristic traits of Berlin's thinking are logically connected with this core assumption of value pluralism. First, if there is no single ideal possible that integrates all ultimate ends into one harmonious synthesis, and if we cannot measure the competing values with one unitary standard and cannot dissolve our dilemmas of decision making by applying one consistent set of principles, then the situation of decision making itself takes on an irreducible quality in our understanding of ethical and moral life. Hence Berlin's emphasis on choice—on the complexities of practical decision making under contingent conditions, in view of conflicts between values or even within one and the same value, and on the unavoidability of practical tradeoffs. For Berlin, this insight is valid not only on the individual level but also on the collective and institutional level. He would not agree with John Rawls and the assumption that in public life one value, namely, justice, can be declared supreme and isolated from constant conflict with other values like freedom, equality, community, or peace.

Second, the idea of value pluralism is also logically connected with Berlin's historicism; with his critical attitude toward universalist anthropologies (i.e., claims of a single human nature); and with one of his most important achievements in the history of ideas: his reconstruction of the "expressionist" or "expressivist" model of human action (i.e., action as not primarily purpose-oriented, but expressive), which is found in his interpretation of Herder's work. Berlin himself established this connection when he claimed—in his famous essay, "Two Concepts of Liberty"—"If, as I believe, the ends of men are many, and not all of them are in principle compatible with each other, then the possibility of conflict—and of tragedy—can never wholly be eliminated from human life, either personal or social. The necessity of choosing between absolute claims is then an inescapable characteristic of the human condition." Choosing itself becomes for Berlin the cornerstone of his anthropology, of his understanding of the specificities of human nature. The connection for him works both ways. If on one hand human beings do choose how they want to be, that is evidence that there is not one fixed set of supracultural anthropological traits; if on the other hand human beings can choose how they want to be, a pluralism of cultures and individuals necessarily ensues.
The third trait of Berlin’s thinking that I wish to highlight here contrasts Berlin with overly optimistic liberals. Value pluralism—as the last quotation has already made clear—is also related to a tragic view of history, tragic at least in the sense that tragedy remains possible whatever political progress we might imagine, that even in our most reasonable decisions in moral and political life there is a neglected side, a part of the world doomed to perish. Liberalism for Berlin is not a doctrine of salvation; it is not the end of history or the solution to all problems, and Berlin’s tragic liberalism is very different from the shallow optimism of conventional modernization theories.

But if such a tragic view of history can be derived from the core assumption of value pluralism, why should it be tragic liberalism? Why liberalism? Can liberalism be justified in the widest sense of this term without any universalist claims? A purely cultural justification in terms of living liberal traditions can only make sense in cultures that have been thoroughly impregnated by the spirit of liberalism, but not in Germany, let alone in Russia or China! Berlin is ambiguous in this respect. On some occasions he simply disclaimed any logical connection between pluralism and liberalism. On others, he seems to have established at least a “negative” connection, that is, he claimed quite plausibly that pluralism presupposes a liberal political order if it is to flourish. But this move is not really convincing as a justification of liberalism on the basis of value pluralism since it transforms the fact of a plurality of competing values into a value in itself; it transforms the insight of value pluralism into a plea for the value of plurality.

Beyond this “negative” connection Berlin leaves us at a loss in this respect. Instead of going into philological detail here and instead of examining possible traces of a “positive” connection between value pluralism and liberalism in Berlin’s work—traces that certainly do not represent a fully elaborated philosophical argument—I will argue that Berlin’s idea of “value pluralism” has two weaknesses, and that these weaknesses are responsible for the difficulties his thinking encounters at that point. “Value pluralism” and “liberalism” can be connected with each other in a positive way only if we supersede these two deficiencies.

**Choice between Values?**

The first weakness seems to me to lie in Berlin’s description of choice and decision making. Concepts like “choice” and “self-invention” appear to be too voluntarist and not adequate for a description of what happens in the type of situations Berlin has in mind. Let us consider what it is that we can choose in such a situation. In the utilitarian tradition, we have to decide between
competing desires or preferences, or the objects of our desires in the world. Under these utilitarian assumptions, it sounds quite plausible to assume a common measure for the competing desires (like the calculus of pleasure and pain), or a common standard of utility (like money). A denial of a common standard or measure leads, under utilitarian assumptions, to a description of choice which makes it look like a lottery, a decision that cannot be improved by a more methodical procedure. But Berlin was not a utilitarian; he was an expressivist in terms of his theory of action. He knew very well that a value pluralist has to describe the decisions we make between competing values and not just competing desires. There are two respects in which a decision between values differs from a decision between desires. We may consider our desires as empirically given, but we evaluate them before we allow them to govern our actions. That means that values are necessarily reflective—they are emotionally laden standards for the reflective evaluation of our standards. And, secondly, values themselves are not the result of a choice, but of an experience of being bound, being affected by something that is independent of ourselves and commanding of our orientation. In our decision making between competing values we reflect upon the diverse feelings of obligation and attraction that we experience in the situation.

Against a radical philosophical communitarianism that overemphasizes the difficulties to distance oneself from one’s values, an emphasis on choice may be reasonable, because it is true that the result of our decision making is never fully predetermined. But one could also say that Berlin’s language betrays here that he has not fully developed the importance of his expressivist understanding of action for the analysis of decision making. Had he done so, he could also have avoided the irrationalist undertone in his description of the alternative to a fully rational choice. The actual alternative is not groundless decision and criterionless choice, completely ungoverned by reason. A latent unpragmatic understanding of reason leads to such exaggerations. A pragmatic understanding, rather, directs our attention to the role of reasoning in situations of decision making characterized by the impossibility of certainty, to the logic of practical judgment. In Berlin’s late essays we find a growing emphasis on the ways we balance competing claims and establish priorities, but this insight remains rather superficial.

My second objection is directed at Berlin’s historicism. I am convinced that he fell into the historicist trap. This could be described as a sort of optical illusion. The more we compare different human cultures the more we recognize their enormous diversity, and the more we doubt that there is anything substantial to be said about human nature as such. But this is an optical illusion, because if we compare human cultures in general with prehuman
and nonhuman forms of life, behavior, and sociality, then we recognize that there is a common human nature uniting the members of all cultures.

Berlin, in joining the expressivist and romantic revolt against the Enlightenment and its universalist anthropology, neglected the possibility and the necessity of an anthropological theory of expression. Anthropological universalism does not necessarily mean that we assume a fixed human nature on which cultural traits are only superficially grafted. Because of this neglect, Berlin can only retain the human disposition for variability, the capacity for choice as such, as a minimal anthropology. Again he seems to have realized from time to time, particularly when he talked about the possibility of communication between cultures, that “the nature of men, however various and subject to change, must possess some generic character if it is to be called human at all.” But this is certainly not enough. Much more can be said if we try to describe the specificities of human action, human communication, the formation of selves and the genesis of values. By neglecting the possibilities of anthropological reasoning, Berlin did not only refrain from developing an adequate conception of values, but he also cut himself off from a justification of moral universalism.

**Discourse and Action**

For an attempt to combine value pluralism and moral universalism, we need an anthropologically based understanding of moral universalism and of the genesis of value-commitments. And here I turn to my own proposal. American pragmatism had—in William James and John Dewey—a theory of the contingent genesis of values, but also—in Dewey and George Herbert Mead—a conception of moral universalism. How are we to envisage the combination of these two divergent theoretical components in the pragmatist spirit?

In order to answer this question, we should recall two distinctive features of pragmatist ethics that distinguish it from several other approaches. First of all, pragmatist ethics is based on an elaborate anthropological theory of human action in general, and human communication in particular. Dewey and especially Mead developed the essential features of such a theory of the biological preconditions for human-specific performances. Without going into these in detail, it can, nevertheless, be emphasized that even the attempt at such a theory involves the assumption that there are universal structures of human action that distinguish it from animal behavior, and that it is possible to make substantial statements about these universal human structures. Dewey and Mead have no doubt that typical problems and
conflicts are inherent in these universal structures, from which there arises a need for regulation. George Herbert Mead above all—and subsequently Dewey, under his influence—interprets the universal human capacity for “role-taking,” the decisive characteristic of typically human communication, as the prerequisite for overcoming these disturbances. The development of this capacity and the social facilitation of this development are thus of the highest empirical significance. At the same time, however, Dewey and Mead see a substantial ideal located in precisely this empirically verifiable capacity: “Universal discourse is then the formal ideal of communication.” Mead shows how the capacity to employ significant symbols refers every participant in communication beyond his immediate community to a virtual world of ideal meanings. Pragmatist ethics thus stands opposed to culturalistic moral relativism and stresses the universal need for the normative regulation of human cooperation and care, as well as the possibility of seeing a substantial ideal in the solution of these problems of cooperation through communication itself.

The second distinctive feature of pragmatist ethics consists in the fact that it is an ethics from the perspective of the actor. Of central interest for Dewey and Mead is not the question of the foundation of norms, nor even that of the justification of actions, but the question of the solution to problems of action. What was novel in Mead’s critique of Kant’s ethics was the notion that the categorical imperative as such could only serve to subject actions to a universalization test, but not to discover which actions were adequate in the first place. Action itself demands a creative design. The concept of the “application” of norms or values is hardly appropriate for this emphasis on the creative and risky performances in action. Of course, a value as well as the “application” of a value can be subjected to a discourse of justification, but pragmatist ethics separates the perspective of such a discourse from the existential perspective of the agent.

If one takes these two distinctive features together—pragmatism’s elaborate theory of human action and its emphasis on the perspective of the actor—then it becomes apparent how the universalistic conception of morality and the theory of the contingent genesis of values can be combined to form a whole along pragmatist lines. According to this point of view, there is no higher authority for the justification of norms than discourses. From the perspective of the actor, however, it is not the justification that is uppermost, but the achievement of the good or the right. Even if, as agents, we wish to concede a clear primacy to a particular good or the right as we understand it, we do not have at our disposal certain knowledge of what we must therefore do. We can honestly strive to increase the good or to act exclusively accord-
ing to the right, but this does not furnish us with any certainty that we will actually be successful in doing this with all the actions that we decide upon, and all the direct and indirect consequences which we thus bring about. In the light of the consequences of action, every conception of the good and the right will come under the pressure of revision.

Each new specification does not liberate us from this pressure either. A clear conclusion cannot be envisaged, since the situations in which our action takes place are always new, and the search for certainty remains forever unfulfilled. While we can establish for certain in the abstract, that is to say, in the discourse removed from action situations, that certain aims of action should enjoy priority as a result of certain presuppositions about points of view to be considered, in the concrete reality of the action situations we often achieve a subjective feeling of certainty but, intersubjectively, only one of plausibility. In retrospect—having become wiser after the event—we can discover more about the actual appropriateness of our action, but even here a definitive and certain judgment cannot be reached, because the future will yield further consequences of action and points of view, which again jeopardize our appraisal.

While some might concede that our action has the character described here, they might nevertheless dispute that an answer to the question of the relationship between the good and the right and between value pluralism and moral universalism follows from it. In which respect, then, should this emphasis on the expressivity or—better still—creativity of action suggest such an answer? It might at first seem as if this emphasis were at best banal and at worst dangerous. It would be dangerous if it exclusively emphasized the situation-specific nature of our decisions and, in so doing, opened the way to arbitrariness and a lack of principles. It would be banal if it only stressed what no one, even the most ardent proponent of an ethics of conviction, has ever contested—that, namely, the right acts do not always follow from a good will. But the way in which the pragmatists present the argument for the creativity of action in ethical contexts does not grant unrestricted freedom to arbitrariness; it declares only certain revisions and specifications as acceptable. And it is not banal to include in the concept of the good itself the moral duty to recognize what works and what doesn't. From the pragmatists' understanding of action and from the structure of their ethics as an ethics from the perspective of the actor, it follows that, in the action situation itself, the restrictive point of view of the morally right must inevitably arise, but can arise only as one point of view alongside the various orientations of the good.

This double assertion requires further clarification. The viewpoint of the right must arise, according to this view, because it represents the universal
requirements of the coordination of social action, and these are unavoidable in the face of the unavoidable embedding of human action in social contexts. All action is unavoidably embedded in the social because the capacity for action is itself already socially constituted, and our cooperation by no means aims only at individually attributable, but also at irreducibly social goods. This point of view of the right is always present in the manifold diversity of our orientations; the situative revision of our objectives does not degenerate into arbitrariness because it must pass through the potentially universal “sieve of norms.”

The viewpoint of the right can only arise, according to this view, as one point of view among several in the action situation, because this potentially universal “sieve of norms” would have nothing to test if the agent were not oriented to various conceptions of the good, of which he cannot be certain if they are acceptable from the point of view of the right. Even the self-over-taxing moralist who is thoroughly determined always to give precedence to the universalization procedure may well want to eliminate his inclinations, but will only be able to test his conceptions of possible actions in this procedure. One point in emphasizing the creativity of action is the recognition that actions cannot be derived from the universalizing point of view itself, but can only be assessed as to whether a possible action is acceptable from this point of view. Even he who wishes to eliminate his inclinations does not thereby eliminate the candidates for examination which the rule of universalization represents. These candidates are our conceptions of our duty on the one hand, and our inclinations on the other—they too contain a potentially universal validity claim. If with Kant and his followers it remained unclear whether the universalization test of the categorical imperative is directed at our inclinations or at the maxims of our action, then this was due to his failure to understand the reciprocity obtaining between our prereflective inclinations and our conscious intentions. If one assumes a theory of action, however, which anchors intentionality in the situation-specific reflection on our prereflective inclinations, then it becomes clear that the right can only ever be an examining authority—unless it becomes itself the good, the value of justice.

In the action situation, consequently, there is no primacy of the good or the right. There is a relationship of neither superordination nor subordination, but rather, one of complementariness. In the action situation, the irreducible orientations to the good, which are already contained in our inclinations, encounter the examining authority of the right. In these situations, we can only ever achieve a reflective equilibrium between our orientations. Certainly, the extent to which we subject our orientations to this test may
vary. For this reason, there is in the point of view of the right a perpetual, unflagging potential to modify the good, in order to enable it to pass the universalization test. But it does not follow from the universality of the right that in action situations we should give precedence to the right as a matter of course before all other considerations—nor that we should not do this. The debate over the question of whether primacy should be attributed to either the good or the right must be sharply distinguished from the debate over the universalizibility of the right. From the pragmatist perspective, the debate over the universalizibility of the right does not have to take place—not because this possibility is rejected but because it is held to be beyond dispute, following from the premises of the anthropological theory of action. The emphasis on the situativeness and creativity of action here does not involve skepticism toward the notion of the universality of the right. But in turn, this does not entail for the pragmatists that, within the action situation, the testing of an orientation against the universalization principle must self-evidently be given precedence above all other considerations.

**Particular, Not Particularist**

Not only individual agents, but also collectives, entire communities, and cultures are placed in action situations. From the philosophical conceptualization of the “good” and the “right,” let us switch to the sociological terminology of “values” and “norms” when we come to speak of collective actors and aggregations of action. Like individual agents, these too exist in an area of conflict between their particular value systems which have arisen contingently, and the potential of a morality which is pressing toward universality. Universally distributed structures of morality can be ascertained entirely by empirical means. Fundamental norms of fairness, for example, can be discovered by children by merely concentrating on the internal need for the regulation of cooperation and, right up to the reflective formulation of the “golden rule,” are undoubtedly known in all cultures.

But one should qualify this allusion to the universal distribution of fundamental norms by immediately adding the rider that every culture fences in the potentially universal morality, by defining its areas and conditions of application. Which people (or organisms) and which situations are, for this morality, “set free” requires interpretation and is accordingly culturally and historically variable. In each case, a justification is produced for excluding people of different nationalities, ethnic groups, races, or religions, of another sex or age, of other mentalities and moralities; without such justification, the right would become an explosive charge for a culture. But in the exuberance
of the plea for a universalistic morality, it would again—as in the case of the individual agent—be an error to overlook the fact that no culture can manage without a definite, particular value system and a definite, particular interpretation of the world. "Particular" does not, of course, mean here "particularistic"; cultural distinctiveness does not lead to an inability to consider the universalistic point of view. On the contrary, the question is which particular cultural traditions, from the point of view of the universality of the right, can be most readily adhered to, and how can other cultural traditions be creatively continued and reshaped from this point of view?

In the particular value systems of democratic societies we can indeed find rules which can be viewed as translations of universal moral rules into particular political institutions. These remain, nonetheless, inevitably particular and, in the case of each transposition into another culture, must always subject themselves to scrutiny as to whether their particularity is a particularism, that is, whether their unavoidable cultural distinctiveness restricts them so that they underestimate or ignore the viewpoints and interests of others. The notion, however, that in order to overcome particularism, particularity itself must disappear, overlooks the necessarily contingent character of values. It condems itself to remain a mere morality, detached from the attractiveness of values, to declare possible a motivation from pure morality.

In this last respect the American pragmatists and Isaiah Berlin clearly are on the same side; in their attempts to combine value pluralism and moral universalism they are close together. Whereas the pragmatists may be more convincing with respect to elaborating the universal claims of the liberal-democratic tradition and its foundation in human nature, Isaiah Berlin is superior in his concrete understanding of different (European) cultures and in his sensitivity toward the difficulties of their mutual understanding. We can learn from him in the most vivid way that no culture or national political tradition can simply claim universality for itself. Berlin is not a dogmatist of liberalism, not a fundamentalist of the Enlightenment, even less so of certain national types or traditions of liberalism or the Enlightenment. He can also teach us how to prevent a cultural justification for antiliberal political regimes. Though there can never be a universal culture, there is a universal dimension in the regulation of human affairs—at all times and everywhere.
It is often said that “you can’t legislate morality,” yet Christopher Beem argues that “it is extremely difficult and rare for government not to legislate morality.” Civil libertarians insist that we should not try to legislate morality, but some moralists, both reformers and conservatives, nevertheless advocate the deployment of law on behalf of the moral principles they champion. The fact is that all of these arguments can be correct without contradicting one another because the central terms at issue are multivalent. Just as a recent chief executive maintained in a celebrated jam, “it depends upon what the definition of ‘is’ is,” the right way to understand the relationship between morality and legislation depends upon what we mean by “legislate” and what we mean by “morality.”

The claim that morality cannot be legislated is correct if morality is understood in the Kantian sense of actions motivated by a good will. The difficulty here is that forces of external compulsion are ultimately unable to control internal states of mind, attitudes, and desires. That is why Locke famously insisted, in his Letter concerning Toleration, that not only was the state not entitled to use its powers to achieve religious salvation for its citizens but it could not accomplish that end if it tried. For if justification before God is accomplished by faith and acceptance of grace, as Locke assumed, the determinants of human fate reside in an inner citadel unreachable by legal mandate or proscription.

Beyond this empirical claim, some warn that it is simply improper for the state to even try to legislate morality. This admonition rests upon a belief in
the moral sanctity of the soul, not simply upon its empirical impenetrability. It is the moral insistence upon the freedom and dignity of the human spirit that animates our deepest convictions about human rights, civil liberties, and the importance of personal autonomy. And those beliefs and commitments place principled limits upon the legitimate purchase of state and social power over peoples’ hearts and minds.

One last important constraint on attempts to legislate morality in liberal societies is that attempts to encourage “good morals” or to compel actions dictated by such moral standards must be confined to norms of civil morality; they cannot properly extend to norms of good behavior predicated upon controversial “comprehensive” moral and religious beliefs. The law can legitimately be used—and sometimes should be used—to encourage people to act as good citizens and to prevent them from acting as bad citizens. It should not be used to coerce people to be good Christians, good utilitarians, or avatars of political correctness. As John Rawls has reminded us in his recent writings, we live in a society where people are committed to different conceptions of the human good. It is beyond our capacity to adjudicate the competition among these comprehensive conceptions in any definitive way—and it is certainly beyond the capacity or the right of the state to do so. We can cooperate fairly and successfully as fellow citizens without trying to enforce such contestable judgments upon one another.

These proper limitations on the scope of the law can be overextended and improperly construed, however. We should not be blind to the ways that law can encourage better moral character, nor be dissuaded from using the law to improve behavior, even when it is unable to change attitudes and intentions.

There are at least three ways that law can be used productively and legitimately to foster good behavior and civic virtue. First, laws can properly compel people to act in accord with the moral standards that inform our democratic system when they would be disinclined to do so on their own. No social order is or could be ethically vacuous, and a liberal and democratic society should not let its commitment to liberty and tolerance lead it into a genial nihilism that undermines its constitutive purposes. The classic examples here are the various enactments that protect citizens’ civil rights and liberties against those who would seek to suppress ideas, persecute religions, or suppress and exclude other racial or ethnic groups. Where some widespread disposition and commitment to fundamental ethical and democratic norms is present, moreover, legal enactments can have the significant collateral benefit of softening prejudice and enhancing intercultural understanding and mutual accommodation. Second, the law can properly serve as the vehicle for expressing the moral sense of the community with respect to the social
obligations it recognizes and the moral values it seeks to promote. Draconian
strictures are not the proper mechanism to employ here, but it is the legal
recognition of these obligations and values that provides a valuable and le-
gitimate persuasive effect. Third, laws can properly be used to encourage
good traits of civic character through the incentives resident within them;
conversely, we must scrutinize legally enacted social policies to ensure that
they do not inadvertently induce negative dispositions, character traits, and
behavior patterns.

To summarize the practical imperatives generated by these several consid-
erations, then, we can say that legislators in a democratic society should not
hesitate to use the force of law to defend the fundamental moral standards
intrinsic to a liberal democratic regime. And they should routinely and care-
fully consider the impact of their enactments upon citizens’ moral habitua-
tion and perceptions—and thereby upon their character and behavior. But
they should also take care not to overreach themselves by undertaking futile
crusades, by engaging too coercively or intrusively in attempts to refashion
the hearts and minds of its citizens, or by seeking to enforce on people con-
testable features of comprehensive moral systems that transcend the domain
of political morality.

Looking at some specific cases may serve both to illuminate these precepts
and to indicate that their deployment can be a tricky matter. Making these
casuistic judgments can be difficult for two reasons: it is not always clear
when a relevant boundary has been crossed, and the several principles may
sometimes be in tension with each other.

The civil rights acts passed by Congress in the years between 1964 and
1968 exemplify an appropriate use of legal mandates to defend fundamental
moral principles that lie at the heart of democratic values and practices. Op-
ponents invoked the bromide that “you can’t legislate morality” in debates
over these acts, meaning that legal enactments cannot force anyone to like
and respect other people against whom they bear prejudice. That is true, but
in this instance irrelevant. For if the law cannot directly mandate attitudes,
it can require people to treat other citizens in a manner commensurate with
their status as rights-bearing civic equals. Moreover, the legal enforcement of
equitable treatment has in this case had a salutary indirect impact upon pop-
ular attitudes and sentiments by affecting habituation and perceptions. Since
much prejudicial sentiment and behavior represents reflexive deference to-
ward established social mores—for example, the idea that it is simply normal
and proper for different racial groups to sit in different places—laws that
force a change in social customs produce changes in perceptions that in turn
lead to important shifts in attitudes and behavioral patterns.
A proper recognition of the role that law plays in moral habituation, and therefore in shaping attitudes and actions, suggests that American law both misses an important opportunity and may bolster less than optimal civic attitudes and behavior by the way it treats—or fails to treat—the moral obligation to assist those in distress. American jurisprudence has often been reluctant to define as a tort a failure to intervene on behalf of someone in danger or distress, and there are compelling reasons for this reluctance. But where someone stands idly by and watches another suffer or perish when he or she could have assisted without significant self-endangerment, that abdication of basic moral and civic responsibility should be subject to penalty under the criminal code. A society delivers a perverse moral message when it provides no legal sanctions whatsoever in cases like the recent one in which a California college student did nothing to prevent his friend from sexually assaulting and then killing a child in the restroom of a Las Vegas casino. We may not be able to demand moral heroism of each other, but we need not accept the moral cretinism that produces such a breakdown of basic civic responsibility.

It is also both prudent and proper for a democratic society to take into account the likely consequences upon civic character and social morality of laws and social policies concerning social support services and reallocation of income. As Michael Sandel has persuasively argued in Democracy's Discontent, this kind of consideration was quite common for much of our history. Perhaps because of our deepened moral pluralism and the notion that a liberal polity must remain neutral vis-à-vis competing conceptions of the good, we have tended in recent decades to bracket, ignore, or suppress such concerns. But, as Sandel insists, this inattention to the impact of social and economic policies is neither required nor prudent. A democratic society need not ignore and cannot be indifferent to the ways its legal arrangements foster or discourage attributes of good democratic citizenship such as self-reliance, self-respect, social responsibility, and public spiritedness. Since the ways we organize our work lives and the criteria by which we reallocate income can have significant consequences for such components of our collective civic character, canvassing and assessing these consequences should always be a legitimate part of policy discussions in this area.

If these last two examples arguably represent lost legitimate opportunities to use law in support of morality, in other instances we have—by the standards I set out above—transgressed the relevant boundaries and undertaken to legislate morality in unwise and/or improper ways. Prohibition was one obvious example. Society had the right to try to protect itself against the ills produced by alcohol abuse on grounds both of collective prudence and dis-
tributive justice. But outright prohibition of liquor sales was an exercise in futility, and it arguably was too intrusive in its attempt to regulate private behavior. Moreover, to the extent that it was animated by a belief that alcohol consumption was intrinsically wrong in some moral sense, the policy of prohibition constituted an illegitimate attempt to enforce upon recalcitrant subjects a contestable comprehensive morality they rejected. When it comes to the consumption of potentially destructive substances such as drugs or alcohol, the wiser and more appropriate strategy is to avoid enforcing moral condemnation through legal proscription of consumption and instead to deploy the full force of the law against the collateral social offenses sometimes produced by that consumption. Rather than, for example, having a high drinking age, it would be far better to institute stronger and rigorously enforced penalties for public drunkenness and DUI.

Laws that criminalize specific forms of what some consider to be sexual immorality or perversion are also improper attempts to legislate morality. I refer not to crimes such as sexual assault or the seduction of children. Here there are victims, real and potential, who are entitled to protection by the organized force of society. Instead, I have in mind laws such as anti-sodomy statues or anti-polygamy statutes—both of which criminalize consensual relationships between or among adults. Once again, these laws fail on all counts: they are largely ineffectual, they are improperly intrusive in people's private lives, and they seek to impose contestable comprehensive moralities rather than to encourage civic morality.

Singling out for distinctive punishment crimes based on animosity toward a particular group (i.e., hate crime laws) and making alienation of affection—breaking up a marriage by causing one spouse to lose affection for the other—an actionable tort represent interesting and difficult borderline cases in attempts to legislate morality. It is entirely proper for a pluralist democracy to stigmatize racial/ethnic/cultural hatreds and to discourage violence or intimidation based upon them. Using the public status of law to express our communal reprehension of these prejudices, and designating punishment for crimes they engender, is therefore both reasonable and proper. The question here is how to do so without dragging the law into quagmires and creating other ethical dilemmas. To prosecute the killers of James Byrd and Matthew Shepherd for committing hate crimes rather than solely for murder may express justifiable social condemnation and enhance deterrence. But enforcing such laws requires the difficult task of determining the killers' motivations, which may prove more distracting than edifying. And enacting harsher penalties for these genuinely detestable offenses raises other moral conundrums: is it morally worse, say, for someone to be
animated by ethnic animosity rather than by undiscriminating sadism? Rather than putting hate crimes in a different category from overtly identical offenses that might be differently motivated, it might make more sense to designate “group intimidation” as a distinct and separate offense with specific sanctions of its own. For example, burning a cross on someone’s property may be categorized and penalized differently from burning a campfire there. This way of dealing with the problem could produce the desired deterrent and hortatory effects sought by proponents of hate crime legislation while avoiding some of the attendant difficulties.

Similarly, it might be preferable to change the status of alienation of affection actions, in jurisdictions that still recognize them, from a civil tort to a criminal offense with token sanctions. In that way, such suits could not be the morally and evidentially problematic tactic in bitter divorce cases they generally are today while society could nonetheless signal its condemnation of those who actively encourage others to abandon their marital commitments.

Reasonable people may differ about the best ways to deal with specific cases like these and with the issues they present. Sorting out these questions is part of what democratic deliberation should be about. The important point is that these deliberations need to be conducted whenever the interplay of law and morality becomes an issue, as it often does. And they need to be conducted with reference to the criteria and considerations I set out earlier. The opposing extremes that border these efforts to negotiate the interaction of law and morality are both unacceptable. It is both improper and self-defeating for a liberal democracy to succumb to the crippling simplicities of a legal positivism that insists upon enforcing a mutually exclusionary categorical distinction between law and morals: liberal democracy is not morally neutral but instead is predicated upon substantive moral commitments that it can and should defend. On the other hand, the epistemic humility, the social pluralism, and the respect for personal dignity and autonomy that inform and characterize today’s liberal democracies make it improper and dangerous for them to conflate law with morality—something that is possible only for regimes that seek to become republics of virtue engaged in exercises of comprehensive soulcraft, not an available option for liberal societies. Instead, the wise and proper course is to use the force and the legitimating value of law to defend our fundamental constitutive ideals and to encourage the liberal civic virtues—but to do so subject to the principled constraints that we must recognize as appropriate upon all public action.
In this chapter, I may be reaching beyond the communitarian consensus. I expect some dissent from my argument that there is a close connection between religious teachings and communitarian ideas. Nevertheless, the topic cannot be ignored. Too much that is fundamental is shared. As John Dewey made clear in his own essay, “A Common Faith,” it would be strange indeed if we could learn nothing from religious experience. What we learn will surely enrich our self-understanding; it will also caution us against religious follies and aggression.

Communitarian principles do not stand alone. They draw credence and support from fundamental understandings of human nature and the human condition. When we ask why we honor the principle of moral equality, or why should we care about future generations and about other people's well-being, we enter realms of faith and understanding, where philosophy and theology meet and interact. Together they make clear, and should also govern, our self-defining choices. Those choices are often mistaken, corrupt, and self-defeating. Made wisely, however, they create a legacy of well-founded precepts, which are sometimes made explicit by a Buddha or an Aristotle, by Jesus, Calvin, Hobbes, or Kant. Or they may be only dimly perceived, crudely expressed, or followed but not acknowledged.

We honor such precepts when we put away immature thoughts and longings; when we accept the inevitability of death; when we appreciate the difference between narrow and broad self-interest; when we strive to negotiate, in good faith, the competing obligations of kinship and citizenship. This
legacy helps us understand what attitudes and beliefs, what articles of faith, what lessons of history underpin a communitarian morality. Our answer must take us into the minefields of religious doctrine, and find a way out as well.

Affirming the Principle of Community

[...] Every known society has looked to religion for comfort, coherence, and moral redemption. Religion helps people make sense of a world beyond their control, enriches cultures and causes communities to flourish, creates strong identities and passionate loyalties. Much evil has been justified in God’s name: superstition, bigotry, priestly oppression, genocide. Nevertheless, religious sentiments cannot be dismissed as vestiges of a prescientific age, sustained by primordial awe, fear of the unknown, and yearning for immortality. Religions retain their appeal, and their warrant, because they foster self-scrutiny, self-transcendence, loyalty, and humility. These are the virtues and strengths of piety, which, as filial love, sustains the obligations of family life. Other forms of piety are patriotism, religious observance, institutional loyalty, friendship, discipleship, and vocational pride. Each draws people to the sources of their being—that is, to the attachments from which they derive a sustaining identity. Piety is a prima facie or presumptive good, beneficial in many contexts but not necessarily good in all forms or circumstances. Some forms of piety ask too much of us, and for the wrong objects, or claim immunity from criticism or demand undivided and unconditional loyalty. Therefore, piety is tempered by the more dispassionate virtues of civility. Piety demands conformity and justifies exclusion, while civility welcomes diversity, encourages toleration, and legitimates controversy. Civility builds frameworks within which people can cooperate despite their divergent views and interests.

Here is an important difference between the liberal ethos and the communitarian persuasion. Liberalism has made much of civility but has had a hard time appreciating the benefits of piety. For communitarians, piety and civility complement one another. Together they produce sensitive, self-preserving communities.

In Buddhism, Hinduism, Christianity, Judaism, and Islam, individualism is rejected, even abhorred. All the religions enjoin compassion and caring; all call for awareness of interdependence. Yet the gifts of forgiveness, enlightenment, and salvation are offered to individual persons. In each person a spark of divinity is found, which is a way of saying each person has intrinsic worth. In these beliefs we can readily discern that union of solidarity and respect which I have called the principle of community.
In Christian thought the principle of community is well expressed in the idea of neighborly love. Echoing passages in the Hebrew Bible, Jesus taught: "Love thy neighbor as thyself." What kind of love is neighborly love? Who is my neighbor? An answer is found in the parable of the Good Samaritan. My neighbor is a particular person who rightfully claims my fellow feeling, my mercy, charity, and support. By neighborly love we do not mean love for "humanity" or "mankind," for people in general or in the abstract. The object of moral concern is an individual human being, especially one whose life has touched our own in important ways. This is the source of special obligation, which is not limited to kin or fellow townsmen or colleagues. In the parable, a special connection was created by the accident of proximity, of being present at the scene of distress. The lesson is that people are to be valued as unique persons, entitled as such to respect and care. Insofar as we lose touch with that particularity, the principle of community is weakened or rejected.

In this demanding doctrine, every human being is potentially a neighbor, and every neighbor claims our active concern. This moral imperative exquisitely—and achingly—combines "universalist" and "particularist" ideals. The combination is fragile, the tension is irrepressible. Religions are pulled in both directions. They speak for humankind, but do so in a local idiom, cabined by culture and corrupted by pride.

Can we have piety without religion? Can we appreciate the nuances of human interaction, the constraints and opportunities of the human condition, without theological reflection and learning? In theory, yes. But we should be wary of distancing ourselves from ideas and traditions that have sensitively explored and often improved the quality of collective life.

**Faith, God, and Moral Truth**

[... ] Although God can be described in many ways (perhaps as beyond human knowledge or comprehension), the most helpful way, it seems to me, associates God with moral truth. Indeed, it could be said that, at least in one major manifestation, God is moral truth, made incarnate and expressed as revelation. Here incarnation refers to an idea embodied in living traditions, rituals, teachings, and institutions.

What are these truths deemed worthy of allegiance as articles of faith? Here are a few thoughts on that subject, chosen to show the affinity of religious beliefs and the communitarian persuasion.

Most important is the principle of moral equality. Moral equality finds religious expression in the idea that humans are "children of God" or
"made in the image of God." Each is in some sense equally valuable, equally worthy of concern and respect. This principle can be justified without relying on theology, by pointing to the evils that ensue when moral equality is diminished or rejected, such as hostile discrimination and caste privilege. But those evils are recognized as such not only because of the sufferings they impose but also because they violate our deepest convictions about the respect human beings deserve. A corollary is that we recognize no moral elites. Every human being, however powerful, saintly, or well educated, is corruptible; everyone is capable of self-scrutiny, self-restraint, self-respect, and love.

A more sobering moral truth is the pervasive presence of self-interest, pride, and idolatry in human affairs. These are signs of human frailty and finiteness compared to the unlimited life, power, and perfection of God. This doctrine can be restated as a naturalist theory of human nature and of the human situation, more or less as presented by Freud. But the expression of these truths in sacred texts and symbols brings a deeper realization and, very often, a more subtle understanding of sin and redemption.

A genuinely realistic understanding of humankind looks beyond our shortsightedness and depravity. These are serious failings, against which we seek defenses; they are the main concerns of "moral realism." But a realistic philosophy recognizes potentials as well as limits. What people can achieve, or aspire to, is just as surely part of human nature, just as surely summoned by the human condition, as are more negative traits and dispositions. The big difference is that we cannot rely on the human inclination to recoil from evil and "choose life." We cannot count on disinterested love, even in its natural home, among close relatives. Yet the potential for such love remains an indispensable resource for human betterment.

Religion and Public Policy

[... ] Religious ideas, energies, and institutions make major contributions to public morality. Most important is the work of defining and reinforcing fundamental values: human dignity and responsibility, humility and self-restraint, obligations to family and community, caring for future generations and for the vulnerable and the disadvantaged, ideals of stewardship and reconciliation. The religious traditions do not accept moral indifference, nor is autonomy a basic value. No individual, no institution can claim exemption from God's commands; salvation is not won by invoking the lesser gods of business, politics, art, or science.
Yet religions are often called upon to mind their own business, leaving public morality to law and politics; priests, ministers, and rabbis are to attend to the spiritual lives of their congregations. Indeed, religions lose their innocence and step out of bounds when they ignore the difference between upholding a value and determining public policy. A religious commitment to family, equality, or forgiveness may run up against other concerns, such as public safety. Religion contributes to public morality mainly by holding up a mirror to social life and, in a prophetic spirit, recalling people to their fundamental commitments.

A prison ministry does not try to tear down the walls. It can, however, look beyond the spiritual needs of individuals by scrutinizing sentencing guidelines and prison administration, with a view to resisting draconian penalties and inhumane custody. Such a ministry will accept the realities of discipline and the limits of rehabilitation, but it should be ready to challenge official views of what alternatives are possible and what goals can be achieved. In this way, and in similar ways, religion becomes the conscience of the community.

When religious institutions try to help people in need, they rightly suspect that the needs are spiritual as well as material. This conviction often guides the social service and educational work of so-called faith communities. These activities are prized by communitarians, not only for the immediate good they do but also because they strengthen civil society. At the same time, the communitarian principle of inclusiveness is put at risk. Religious institutions are likely to emphasize the spiritual power of their own beliefs, their own rituals. Moreover, they want to protect their own identities in various ways, perhaps by staffing their agencies with co-religionists. Clients may be called on to betray their own religious identities in exchange for much needed help. The larger community may reasonably accommodate a religious group's need for a coherent identity, by allowing preferences in hiring staff and by recognizing the authority of a religious hierarchy or governing board. For its part, the faith community should be inclusive, serving without discrimination, without regard for religious affiliation, without demanding religious participation, and, above all, without messages of bigotry and hate. These are not hard pills to swallow, at least among those who accept the principle that strangers as well as kinsmen are owed compassion and love.

The Ecumenical Moment

The common faith we seek embraces the spirit of *E pluribus unum*, "one out of many." We say yes to plurality even as we uncover convergent truths. A
rich variety of beliefs and forms of worship should be accepted and supported, as it largely is in the United States. At the same time the unifying themes within diverse religions and secular philosophies should be known and respected. These demands make sense of modern history, which has created an "ecumenical moment." In other words, ecumenism is an idea whose time has come, prepared for by the heavy costs of religious strife and by the well-understood benefits of mutual respect and constructive dialogue.

Human differences are appreciated most keenly, and welcomed most sincerely, when they testify to an underlying unity. Our common humanity generates diverse ways of life, including different ways of imagining divinity. That same humanity produces cultural universals, such as the centrality of kinship, art and music, the prevalence of wickedness and compassion, reverence and self-transcendence, and much else that human societies have in common. That humans are One as well as Many is a faith that leads to "moral hospitality," a hallmark of the ecumenical spirit.

An ecumenical program is often understood as interchurch rather than interreligious. The main concern is to break down barriers to Christian unity: among Roman Catholics, Anglicans, Episcopalians, and Greek Orthodox communities; among Presbyterian, Methodist, and other Protestant affiliates of the World Council of Churches. This limited ecumenism raises few questions about the foundations of faith.

More broadly understood, ecumenism is interreligious. The discussions look beyond specific beliefs, rituals, or ecclesiastical authority. No organic or institutional unity is contemplated. Instead, the quest is for a deeper understanding of the animating principles of Hindu, Buddhist, Jewish, Muslim, or Christian traditions. We approach the varying beliefs and rites with open hearts and inquiring minds. The diverse traditions are taken as given and not meant to be overcome. Everyone involved is self-consciously religious, comfortable with divinity, accustomed to liturgy, familiar with pastoral responsibilities.

A sterner test faces the ecumenical ideal when more secular views are in play, such as those we associate with "secular humanism." This is a naturalist faith, informed by the view that moral truths are grounded in and tested by the funded experience of human communities. It is secular in that it opposes received religions insofar as they cling to literal beliefs about supernatural beings. This secular vision loses clarity, however, when conceptions of God become more abstract and philosophical, more concerned with "first principles" than with the precepts and exploits of Yahweh, Vishnu, or Buddha. In much of theology, since at least the late Middle Ages, the gulf between religious and secular arguments has narrowed. When thought moves
from God to the idea of God, the boundary between philosophy and theology is indistinct.

Although a militant naturalism will surely reject religion, a more authentic and generous version is open to all of human experience, which includes many varieties of deification and worship. Naturalism does not reduce mind to matter, love to attachment, law to power, religion to fantasy. These modalities interact in important ways, and the connections may be strong or weak, benign or harmful. The variable connections between, say, love and sex, or justice and power, do not entitle us to deny the reality or ignore the human significance of love or justice or religious experience. Thus, naturalism is not necessarily at odds with religion, and it need not treat religion as an illusion or just a mistake.

Humanist naturalism is especially open to religious ideas. As Dewey understood it, humanist naturalism is more than a defense of scientific attitudes. His humanity-centered naturalism discerns ways of assessing the quality of human life. An example is the criterion of growth, which Dewey associated with enlarged horizons and improved competences, notably the capacity to live in cooperation with others while gaining and using critical intelligence. In the pragmatist tradition this is an article of faith.

When different religions and philosophies engage in constructive dialogue, they must do so with civility. There can be no privileged truth, no privileged claims to moral authority. When public issues are discussed, a special theological or symbolic idiom must be set aside or bracketed in favor of a common language and shared understandings. To find common ground, people must be able to understand one another. This does not mean they cannot or should not draw on their own ways of thinking when coming to conclusions or talking among themselves. An internal or parochial conversation may bring enrichment as well as solidarity, and at some point its subtleties may be ripe for entry into public discourse. But dialogue is meant to build bridges, not walls.

Earlier I mentioned the complementary values of civility and piety. A few more words may be helpful here. Civility is a richer, more demanding idea than "being civil," which may require no more than taking turns and allowing other voices to be heard without a serious effort to really listen. Genuine civility strives to make sense of an unfamiliar idiom and will be disinclined to give it an unattractive interpretation. An ecumenical program honors piety as well as civility. Norms of civility presume differences and demand respect. Piety builds on shared origins, histories, and fates. Working together, civility and piety strengthen dialogue and shared understanding.
The interplay of civility and piety is a recurrent subtext, a theme that captures much that I have said about community and communitarian thought. Civility draws us outward, to embrace strangers, appreciate differences, and regulate conflict. Piety looks inward toward shared identity and consciousness of kind. The two imperatives often compete, as when we insist on values that revise traditions and transcend locality. The larger truth, however, is that civility is naked without articles of faith, which tell us who we are and what we live by, and piety without civility is debased and out of control.
CHAPTER FIVE

Are Particularistic Obligations Justified? A Communitarian Examination

Amitai Etzioni

If three children go hungry in a community, the members of many such communities are more distressed than if thousands starve in some far away country. Moreover, people not only care more about members of their own communities, but they maintain that they are justified in doing so, that one has a higher level of obligation to one’s “own kind” than to all others. Are such particularistic obligations justified, and on what grounds?

This question has been the subject of an immense amount of deliberation, which is not reviewed here. This exploration is limited to an examination of communitarian justifications for particularistic obligations, and only to those in a societal rather than political context. That is, it concerns the obligations of members of communities, not those of citizens of states.

Constitutive Arguments: Obligations We Owe Our Makers

Arguably the strongest communitarian argument in support of particularistic obligations is that they are an essential part of that which constitutes us. On closer examination, one notes that there are a couple of arguments that shade into one another but are distinct.

(a) Community is essential for our composition

For the purpose of this chapter, I take for granted that particularistic relationships such as friendship, neighborliness, and love are good in themselves. (Note that I do not assume that these values trump all others, including universal
obligations.) As already suggested, these valued relationships bestow a measure of moral legitimation on the obligations that these relationships entail. However, before arguing that communities also accord such legitimation to particularistic obligations, one cannot take it for granted that communities per se are good. Indeed, many liberals view them rather critically as being ascribed (membership being predetermined at birth and hence at least initially involuntary), authoritarian, and oppressive. Hence, the value of communities—and which kinds of communities are valuable—and the normative obligations that follow need to be carefully scrutinized. To proceed, one must first define community. The definition of community here has two characteristics: first, a web of affect-laden relationships among a group of individuals, relationships that often criss-cross and reinforce one another (rather than merely one-on-one or chainlike individual relationships); and second, a measure of commitment to a set of shared values, norms, and meanings, and a shared history and identity—in short, to a particular culture.

One should note that there is a strong tendency to think about communities as if they were what social scientists call a dichotomous variable rather than a continuous one, one which can vary greatly in its thickness rather than merely being present or absent. Mountains of data, recently reviewed and augmented by Robert Putnam and Francis Fukuyama, and long before them by Robert Bellah and his associates and scores upon scores of other sociologists from Ferdinand Tönnies, Emile Durkheim, and Martin Buber on, show that when there is little or no community, people suffer physically (e.g., are more prone to have a great variety of major illnesses including heart attacks, ulcers, and high blood pressure, as well as recover from illness more slowly) and psychologically (e.g., are more prone to be depressed, have low self-esteem, or be disoriented). The absence of sufficient communal bonds is also a major reason people feel detached, alienated, and powerless and either withdraw or act out in antisocial ways including joining gangs and militias (to find community) or abusing drugs and alcohol or each other.

One may object: are there not fully functional individuals who are members of no communities? The well-documented social science response is that when people are truly isolated, cut off from a fabric of bonds of affection and shared values, they are deeply diminished. Indeed, it is the mark of the modern self that its development is stunted and truncated, that it shows the ill effects of deficient connectedness as well as moral anomie. Others have noted that modern loneliness makes people neurotic, selfish, or narcissistic.

In short, communities are essential for our full constitution. We can survive without them, but we can neither achieve nor sustain a full measure of what is considered a "fully functioning" human being without some measure
of community. And thicker communities bode well for our constitution, although excessive community causes ills of its own.

(b) Identity is particularistic
Identity is profoundly tied to communities, and thus to particularistic obligations. As Joseph de Maistre put it, "There is no such thing as man in the world. In the course of my life I have seen Frenchmen, Italians, Russians etc.; I know, too, thanks to Montesquieu, that one can be a Persian. But as for man, I declare that I have never met him in my life; if he exists, he is unknown to me." We do not know who we are, which culture is ours, which heroes we ought to emulate, which demons we must avoid, what our origins are, and what much of our fate is, unless we are linked up with one community or another (or with several).

Michael Sandel puts it well when he writes that we cannot understand ourselves but "as the particular persons we are—as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic." Charles Taylor observes,

People may see their identity as defined partly by some moral or spiritual commitment, say as a Catholic, or an anarchist. Or they may define it in part by the nation or tradition they belong to, as an Armenian, say, or a Québécois. What they are saying by this is that this provides the frame within which they can determine where they stand on questions of what is good, or worthwhile, or admirable, or of value. Put counterfactually, they are saying that were they to lose this commitment or identification, they would be at sea, as it were; they wouldn't know anymore, for an important range of questions, what the significance of things was for them.

There is a tendency to collapse the contributions that community (and the particularistic obligations it entails) makes to our composition as humans with those it makes to our individual identities. The difference is that the first kind of contributions are to our existence as full-fledged human beings; the second concerns our sorting out what kind of human beings we are. The distinction is akin to the difference between learning to walk and determining in which direction we shall walk. The first concerns our physical and psychological health, our general capacity to function. The second concerns which particular relationships (out of a large universe of possible ones) in which we will become more deeply invested (say our ethnic group or our class, our country of origin or the one in which we currently live). It concerns how we are going to define ourselves (say, as conformist or rebellious), and which of the values that we find around us we shall particularly embrace to
the point that they are going to become an integral part of our self. True, these two are connected: if our capacity to function is diminished, this will affect our ability to form and sustain our identity as well as which identity we shall be inclined to develop—and a strong identity will help nurture our ability to function. However, the fact that these two are mutually supportive does not render them a distinction without a difference.

Insofar as one's identity as a member of a community is constitutive of one's basic being as a moral agent, one has a responsibility to nurture the identity of the community itself through participation in its practices, concern for its past, present, and future members, and protection of its resources. Such responsibility may engender particularistic concern for the community above and beyond more universal obligations, and, in fact, one's understanding of universal moral obligations is itself a product of the community's role in identity formation.

To put it differently, particularistic obligations reflect a moral obligation to nurture the social environment in which people can develop, what might be called a "moral ecology." They compel us to apply to the social realm the environmental idea of stewardship toward nature, the notion that we are obligated at least not to leave the social ecology in a worse condition for future generations than it was when bequeathed to us. This argument is a specific application of a general moral position that endorses symmetry: One could not reasonably claim that we are generally entitled (as distinct from occasionally or under special conditions, e.g., when on one's deathbed) to take and not to give, to diminish the total good and not to participate in refurbishing it, within the limits of our relative ability to do so.

I cannot stress enough that the obligation of stewardship toward the moral ecology does not arise because I will be harmed if I do not nurture it. There may be sufficient stock of moral and social fortitude provided by others that the societal fabric may be sustained for a while even if I draw it down without then shoring it up (just as if I pollute a river, I may not be short of drinking water). Stewardship toward the social ecology arises because it is immoral to take and not to give, to diminish and not to restore (although how much I take and give depends on numerous conditions).

Although (partial) loss of community is one of the defining characteristics of modernity, there is no reason to overlook the fact that just as we can experience diminished community, so can we face excessive communality. This is the case in Japan, where individuality is suppressed, rights are neglected, autonomy is severely curbed. Community is to be considered as a good only when its social order is balanced with carefully laid protections of autonomy, when particularistic obligations are balanced with universal ones, especially
to protect basic individual rights. In short, although communities and the particularistic obligations they entail are essential to our full functionality, both can be excessive.

Lawrence Blum, in commenting on this essay in a letter written in September 2001, posed a pivotal question. He asked whether these arguments apply to all communities, or only to good ones. Do people have obligations to bad communities, or only to those that "realize important human goods"? One possible response, Blum suggested, is to hold that "some communities will be sustaining for each individual, and particularistic obligations are being defended only in the sense that each individual will have some such obligations, not that any specific forms of such obligations (neighborhood, ethnic, etc.) are being defended in general."

Numerous social scientists and some communitarian philosophers would part ways here (this author included). Social scientists tend to argue that antisocial communities (say gangs) may be as sustaining as pro-social ones. Some communitarians, Michael Walzer for instance, have argued that communities are the final arbiters of what is good. This communitarian holds that communities do not have the final word about what is good, and that obligations they articulate are valid only if they do not violate what is otherwise justified as good (best determined deontologically). Further elaboration of this point requires a whole separate examination of how one separates true from false articulations of obligations (or good from bad ones) and whether they are universal or particularistic, an examination that cannot be undertaken here.

**Human Betterment**

So far, I have made the argument that communities (and the particularistic obligations they entail) are essential for our constitution, for our ability to function as full human beings and as persons oriented by a particular identity. Next, I advance the argument that communities help make us into better people than we would be otherwise.

**(a) Particularism nurtures free agency and universalism**

Communities (when thick but not excessive) help make us relatively free agents and rational beings and can help us to live up to universal obligations. As Erich Fromm put it in his *Escape from Freedom*, and as numerous studies of behavior in crowds have shown, isolated people tend to be irrational, impulsive, and open to demagogical appeals and totalitarian movements. One could argue that these movements have risen only in societies and periods in
which social integration has been greatly weakened. In contrast, as Tocqueville and the enormous literature on civil society holds, people well-woven into communities (including families and voluntary associations) are able to resist pressures by governments and the seductive appeal of demagogues. Moreover, community members are much more likely to have the psychological integrity and fortitude required for people to be able to engage in reasoned deliberations, make rational choices, act on judgment rather than on impulse, and act as relatively free agents. (I write "relatively" because even under ideal social conditions people can only approximate the liberal ideal, and not very closely, but they certainly cannot do so absent particularistic relations.)

Liberals fear that communities inherently oppress individuality, as they often did in earlier periods and still do in some parts of the world. This fear is justified in reference to excessively thick and authoritarian communities, which existed mainly in earlier periods or in nonliberal societies, although even relatively thin communities tend to restrict the individuality of their members to some extent. Nonetheless, liberalism itself is dependent on the kind of persons found in communities.

David B. Wong adds that to learn to be duty-bound and to act universally, we first must have relationships of trust with others (i.e., particularistic relations). We are not born with universal obligations; they must be taught. We acquire respect for them from parents, educators, religious figures, spiritual leaders, or heads of social movements—all people with whom we have an intense particularistic involvement.

All this is especially evident when we consider our condition as children. Without those who cared for us, we would not have developed into "individuals," but would crawl on all fours and bark, inarticulately and aggressively, snarling at each other. (This is not some Hobbesian heuristic but a statement based on empirical studies by Curtiss, Itard, Lane and Pillard, Singh and Zingg, and Candland.) Even as mature adults we require continued bonding with others to sustain our values in general, our universal commitments included.

(b) Communities help minimize the state (especially its application of coercion)
Communities' introduction and reinforcement of our moral commitments help make for a strong measure of a voluntary social order. There is a tendency to assume that once people are brought up properly, by strong families and good schools, possibly backed up by churches or other places of worship, they will be men and women of virtue. Actually, social science data leave little
room for doubt that unless people's moral commitments are continually reinforced, they will deteriorate. The most effective way to reinforce them builds on the fact that people have a very powerful need for continuous approval by others—especially those to whom they have thick bonds of attachment. These bonds, in turn, are found most readily in communities (families and voluntary associations included). Communities, then, can strengthen adherence to social norms, especially when communities endorse pro-social values. Thus the role of the police and the courts can be minimized, and the state and its coercive means are less needed to maintain social order. Law and order can be largely replaced by the informal controls of communities.

(c) Particularistic bonds humanize us

Particularistic bonds, and hence obligations, protect us from the inhumanity that has often arisen in the past from strong commitments to abstract and general ideas, leading those who believed in these ideas to fight for the betterment of humanity but to care little about their fellow human beings. Particularistic obligations stopped many children during the Nazi era from spying on their parents and some Germans from turning in their Jewish friends, thus showing that even in a severely fragmented civic environment, particularistic bonds maintain considerable moral power. The history of the twentieth century, memories of the unfathomable suffering that totalitarian governments and movements inflicted on millions of people in the name of one universal cause or another (e.g., Stalinist socialism and some radical religious movements) reminds us how crucial such particularistic tempering is.

A related but not identical point is that justice is best served when we judge people and deal with them as whole people, whose particular circumstances we are bound to take into account, rather than merely as members of one or more categories. We should treat individuals as unique, concrete individuals, rather than incidents or members of abstract categories. Selznick puts this point eloquently as follows: "[The] personal standpoint is not and cannot be embraced wholeheartedly. Judgment in the light of rule and principle has serious limitations from a moral point of view. That is so, fundamentally, because rule-centered [universal] judgment does not adequately appreciate the place of concreteness and particularity in moral experience." He adds the following telling quote: "'There is no general doctrine,' wrote George Eliot in Middlemarch, 'which is not capable of eating out our morality if unchecked by the deep-seated habit of direct fellow-feeling with individual fellow-men.'" And she concludes that "the lesson is that impersonal precepts must be tempered and assessed in the light of very specific human outcomes."
The merit of the obligation to take particularistic conditions into account is evident when mandatory sentences prevent judges from taking into account special circumstances, when admissions officers of colleges are expected to adhere strictly to standard guidelines, and in comparison of the Napoleonic legal and the common law traditions.

One may argue that particularistic considerations are not the same as particularistic obligations; the first deal with localized conditions, the second with moral commitments. However, note that the commitment to take into account context is, in part, a moral judgment reflecting particularism.

(d) Human flourishing

There is an immense literature on what constitutes a good life, human flourishing. John Cottingham finds in it a ground for justifying some partiality, drawing on Aristotle. Cottingham writes,

If I am to count as making a moral judgement I must be prepared, at least in principle, to show how my prescription contributes to the overall blueprint for the good life—how it forms part of, or connects with, my vision of how life should be lived if it is to be worthwhile... [contributing to a] fulfilled or "flourishing" life.

In a very elementary sense, the connection between human flourishing and particularistic obligations is supported by the reasons already discussed: Without stable and meaningful social attachments it is impossible to form and nurture fully functional human beings, individuals whose sense of self (or identity) is established, and who are able to act as reasonable, free agents. However, if one takes the term flourishing to mean a higher level of achievement, a greater realization of human potential, a life that is more virtuous than just fully functional—one finds that the relationship to particularistic obligations is a complex one, although clearly there is a connection.

A preliminary examination suggests that particularistic obligations may be compatible with, indeed highly supportive of, some forms of flourishing, but not nearly as essential, possibly even a hindrance to some extent, to some others. Cottingham writes,

If I give no extra weight to the fact that this is my lover, my friend, my spouse, my child, if I assess these people's needs purely on their merits (in such a way as an impartial observer might do), then that special concern which constitutes the essence of love and friendship will be eliminated. Partiality to loved ones is justified because it is an essential ingredient in one of the highest human goods.
But this assumes that one recognizes these particular virtues as part of the good life.

If the center of human virtue is a life of contemplation or nirvana, or other forms of self-perfection, especially if those are viewed as virtues one practices individually rather than as a member of a community, particularistic obligations will play a relatively small role. The same might hold if the good life is one that seeks to promote justice, or a world order based on the Universal Declaration of Human Rights, or on some other such universal principle.

Particularistic obligations become pivotal if one considers any of the following lives (or combinations thereof) as good: One dedicated to love and caring; tending to particular ill or poor persons (rather than to heath care or distributive justice generally); nurturing communal bonds and bonds among communities, including conflict resolution and mediation; parenting and attending to our parents; and, more generally, dedication to the betterment of family life and that of particular communities.

All this is not to suggest that particularistic obligations play no role in societies centered around self-perfection. Human flourishing of any kind takes place within a societal context. People cannot work much to improve themselves unless they build or help nurture a context is which such labor is considered part of the good life. Thus, a life of learning can thrive in a Jewish shtetl or a Chinese literati society that celebrates such a life, but not in one that sees serving the poor and the ill as the main virtue. That is, whatever is considered the good society, whatever form human flourishing takes, it does not take place within a social vacuum. It thrives when it becomes the good around which a society—and the particularistic obligations it entails—is centered. Members must be committed not merely to the particular community (or society), but also to its particular vision of the good—and they must be willing to absorb the costs and often the sacrifices that such visions entail. Thus for a group of literati to dedicate their lives to philosophy, poetry, and brush painting—the other members of the far from affluent society must be willing to curtail their already meager consumption. Therefore, although some forms of human flourishing are more intimately associated with particularistic obligations than others, all draw on them and all add to their moral justification.

Conclusion

To be full-fledged human beings we require a certain environment, one rich in solid but not overbearing communities. These, in turn, are composed of bonds of affection, which cannot be universalized, and moral obligations to
members. A measure of moral obligation to nurture the social environment in which people can develop well arises out of this understanding. That obligation is neither self-serving, utilitarian, nor consequentialist. The moral ecology particularist obligations help sustain may well be sustained for the duration of our lifetime, or even that of our children, even if we do not abide by these obligations and draw on the existing stock of trust and affection and moral commitments—as we draw them down. However, just as we are obligated to sustain the natural environment as a common good, so are we obligated to sustain the moral ecology. I call this a constitutive communitarian argument.

The same communal environment justifies our moral commitment not only because it enables people to fully function but also because it makes us and others better than we would be otherwise. Communities provide the conditions under which people can act autonomously and curb the need for state coercion, provide for empathy that benefits not merely particularistic but also universal obligations, and contribute to human flourishing. None of these attributes—as significant and compelling as they may be—justify ignoring our universal obligations, but they provide a strong communitarian justification for those of us who honor additional commitments to our own communities.
PART TWO

THE COMMUNITARIAN SOCIETY
Chapter Six

Enforcing Norms: When the Law Gets in the Way

Richard A. Epstein

The subject of norms is once again hot. Although norms as a topic never quite disappeared from view, today it receives ceaseless discussion across disciplines: law, economics, philosophy, political theory, and the like. The norms resurgence depends on a rich confluence of factors, of which the dominant one perhaps is the recognition of the critical role that norms play in overcoming the ubiquitous collective action problems that crop up in all sorts of social settings. The destructive logic of the prisoner’s dilemma (PD) game is by now so well known that it is pointless to demonstrate anew why in many simple two-party games both players defect from the cooperative solution to their dual ruin. That simple model explains not only why individuals confess to crimes when they and their confederates should remain silent but also why individual sellers cheat on cartels, why individual drillers overexploit productive oil fields, and why some drivers crowd an intersection on a yellow light. So central is this problem of noncooperative behavior that much social science thought fixates on one single question: what social institutions and strategies can overcome this familiar, if deadly, collective action problem?

The standard answer to this question is often encapsulated in a single word: norms. The norms in question set the standards of cooperative behavior for individuals living and working in groups. When all individuals comply with the applicable norm, the group is able to achieve its ideal cooperative solution, and most likely will (probably by other norms) find some acceptable way to distribute fairly the cooperative surplus generated by norm compliance.
Stating the question in this fashion, however, only pushes back the inquiry. What conditions allow for the emergence and stability of norms? That inquiry in turn is plagued by a further ambiguity that is the chief subject of this short chapter. Norms come in all forms. In the simplest case, a norm could result from an express agreement among group members that norm violations count as breaches of contract for which the violator must answer in a court of law. Yet this equation of norm with contract ignores vital social norms whose emergence cannot be traced to an agreement of any sort. Usually, the discussion of social norms is steeped in common practices, social standards, implied rules of conduct, and language of custom and usage. All of these conventions are widely shared and respected by group members, but do not rest on formal or explicit agreement. Yet in turn this reference to implicit social norms misses the role played by legal norms, the violation of which is met with a coercive response from the state: damages, fines, imprisonment, and the like. Any complete theory of norms must deal with all three variations on the common theme: private agreements, social conventions, and public enforcement. How is that best done?

**Positive versus Normative**

A complete answer must approach this question from at least two angles. First, there is the descriptive question: different norms are enforced in different ways. What accounts for the distribution of norms across these three categories? Why, historically, are some norms generated by explicit contract, others by social convention, and still others by legislation or common law adjudication? The second question, which closely dovetails with the first, is normative. Which substantive norms should be placed in which class and why? Even if we assume that all norms are designed to overcome PD games or other collective action problems (which I take to be almost a truism) it is necessary to select the proper enforcement mechanism to counteract the breach. Which norms should be defined and enforced by explicit agreement, which by custom and common usage, and which by legislation?

In dealing with this question, it is important to note an initial complication that is often lost in the more detailed discussion of specific norms. It is a mistake to assume as a matter of course that we know what count as good norms, and what count as bad ones. In each case we have to accept the intrinsic merits of given norms before we decide on the appropriate mode of their enforcement. And in conducting that argument it is important to recognize that the mere fact that some norm has been enshrined into law does not conclude the matter of its desirability in any debate over the nature and
structure of the good society. All too often some laws are ripe for repeal, and the normative case (so to speak) for their retention does not in any obvious matter depend on the fact that it is already in place, save for the fact that it always costs more to undo a law that is already in place than it takes to establish one to begin with. In dealing with norms, I tend to focus on some of those I regard as desirable, and confine my attention to the question of what mode of enforcement is proper: legal or social.

The standard literature does not appear to have a good deal to say about this question. Rather, it confines itself to the question of why enforceable norms are needed, without asking the question of which type of enforcement mechanism is appropriate for what norm. In answering that first question, the lines between the positive and the normative tend to blur, for the customary distribution of norm enforcement often reflects the desirable distribution, perhaps for the same reason that customs are efficient guides in other contexts. In this short chapter, I cannot comment at great length on the positive question, but I hope to give some clues on how best to answer the normative question swirling about the issue of norm enforcement.

This normative problem asks what should be the role of the state in creating and enforcing social norms. To look at earlier legal systems, it seems that a good many social norms were just that: norms that were enforced exclusively by social sanctions. Yet to the modern mind, a system that relies exclusively on the social enforcement of norms seems to suffer from some kind of a gap or defect. If social enforcement is good, then why isn't legal enforcement even better? The expressive power of condemnation and approval is made stronger if the entire state stands behind the norm. Individuals have been known to hold out against social pressures and sanctions; indeed some social practices can be undone by persistent behavior that stands in opposition to norms. If there is a social norm against integration, then why not institutionalize the norm with Jim Crow laws? If there is a social norm for integration, then why not enforce that norm with a busing order or an antidiscrimination law? If there is a social norm that calls for survival of the fittest, then why not a law that prohibits the giving of charity to the weak and needy? If there is a social norm that the rich must give of their wealth to assist the poor, then why not a legal statute that requires compulsory contributions to a social welfare scheme?

Over and over again individuals who are confident in the soundness of social norms are tempted to argue that the legal enforcement of their preferred moral vision is an unmixed blessing, and that the separation of law and morals should be regarded as a regrettable lapse to be overcome by prompt legislative or judicial action. Even persons whose own worldviews are widely
divergent often share one common belief about their preferred norms: they all believe the norms should be legally enforced. The set of purely social norms is often regarded as falling in an awkward no-man's land between the world of purely subjective preferences (vanilla against chocolate ice cream) and the law of fully enforceable legal norms. The older term, "imperfect obligation," refers to obligations enforced by conscience and social pressures but not law, and was thought in classical natural law theory to represent the correct way for society to implement norms of benevolence.

Both halves of this proposition bear notice. Appeals to conscience count because individuals do alter their conduct when others point out the error of their ways. On the other hand, self-education is not the sole source of social control, as social sanctions for persons who deviate from general norms can take far more concrete forms. When divorce was regarded as socially unacceptable, divorcees found it difficult to get jobs, join clubs, or run for public office. In ordinary life various forms of criticism, hostility, ridicule, snubs, and boycotts were, and are, used against individuals who violate rules of dress, decorum, and behavior, even if no legal sanctions are imposed. These social sanctions work well in cohesive groups, and while they may be intended to educate the offender, they usually carry out an implicit threat to punish certain actions as well. The traditional hostility toward illegitimacy showed the power of these social sanctions even when civil and criminal punishments were assiduously avoided.

Viewed in this context, the traditional emphasis on imperfect obligations was not taken as a verbal dodge or a pious evasion of social obligations. To the contrary, moral and social sanctions were the preferred mode of their enforcement. Consistent with the current era's dominant pressure for writing norms into law, that phrase has fallen out of common use. In principle, there is no a priori reason to think that legal sanctions should back all social norms. The separation of law from morals is sometimes a good thing, and sometimes a bad one. How do we draw the distinction?

**A Tentative Typology**

Our basic task, then, is to decide which rules are to be subject to which form of sanctions. Here it is very difficult to give a clear answer, but a couple of relevant considerations could be pointed out. One constant of the system is that legal sanctions are more expensive than social ones. They require the use of police, lawyers, judges, administrators of all different kinds and sorts, whose behavior must be coordinated up and down the line. One way to put the question, therefore, is to ask whether the use of these additional resources
is justified in terms of improving the outcome by an amount that justifies the extra cost. That question of marginal impact in turn depends on the cost to society of the defection of a single individual from the operation of the basic norm. A few examples might illustrate the point.

Start with the critical cases of aggression and theft. Social sanctions against these practices should be very strong owing to the enormous losses that they impose on others. These individual losses are, moreover, typically social losses in that they are offset only in small part by the gains to the aggressor or the thief. Take physical aggression. Does anyone think that the momentary pleasure of the rapist is larger than the permanent physical and psychological scars of his victim? As for theft, in most cases the fence will pay the thief only a fraction of the value of property to its owner. (And where the fence values it more, he can do the unthinkable: buy it.)

The size of the dislocations caused by aggression and theft is likely to be huge, given the repetitive nature of the wrongs. But social sanctions will not be sufficient to deter the harm. The single individual who is willing to bear the scorn and ostracism of his neighbors could kill (and threaten to kill) with impunity. The ability of the wrongdoer to increase unilaterally the size of the gain is not stopped by any broad social consensus that things should be otherwise. The social equilibrium is massively destabilized even if 99 percent of the population responds to the social sanctions by avoiding the bad conduct. Sooner or later force must be met with force, lest the behavior of the outsider sets the norms for the group. Self-defense is one option that is routinely available, but some collective public force is often necessary to deter offenders before they attack an isolated victim. While serious disputes might arise as to how many resources should be directed toward the prevention of aggression, no one will dispute the initial collective decision to subject it to legal sanctions. The attack on libertarian theory always comes from those who want government to have a greater role. It never comes from those who think that private aggression and fraud are good things.

The enforcement of promises raises much more complicated questions, as the discussion of the law set out above indicates. There are in fact many situations where parties who are entitled to seek legal enforcement of promises decide that they are better off in keeping their disputes out of the legal system. One reason for doing this is that they have no confidence that judges and juries will sensibly apply the correct legal rules to their disputes. They prefer to rely on the informal sanctions imposed by the operation of the trade. Typically, however, that response arises in those cases where the parties have repeat relationships in close-knit communities. In such cases the reputational sanctions that deter future transactions will usually be large
enough to prevent even the unscrupulous trader from taking advantage of a situation, as was the case in the earlier days when the diamond industry was largely the province of Hasidic Jews who traded in close proximity to each other in New York City.

Regulatory Blindness

Modern regulators typically underestimate the importance of these reputational sanctions and often insist on direct legal sanctions where the parties to a transaction might have agreed otherwise. One important illustration of this modern practice is the question of whether employees (but never employers) should be afforded legal remedies against unjust dismissal on the ground of employers’ greater power. A very large percentage of private contracts take the opposite tack, by allowing firing and quitting both to take place “at will,” that is, without showing any “just cause” for terminating the relationship. But many states, both by statute and by common law rule, today seek to regulate the practice of dismissal on the ground that reputational sanctions are inadequate to deter the large institutional employer from serious misconduct. But that conclusion misunderstands the whole situation. The firm that unjustly fires a single worker faces the risk of demoralizing its entire workforce. The costs of hiring and training and socializing new workers to a firm is immense and is known on both sides of the relationship. The employer that pushes too hard in one case risks retribution in many others, and thus has powerful incentives to stay its hand. Ironically, the larger the employer, the more powerful the social retribution if it steps out of line. In contrast, the worker who quits and leaves the employer in a lurch will be subject to much weaker reputational sanctions, especially today when employers are afraid that they will expose themselves to defamation actions by giving candid employee evaluations to prospective employers.

In this social setting, the cost and unreliability of the legal system could make the system of social sanctions standing alone far more efficient than the combined legal and social sanctions routinely adopted under modern law. After all, dismissal still leaves the worker free to seek employment elsewhere, and thus has far different consequences than the killing and maiming that are universally subject to legal sanction. The older distribution of power between the legal and social system had much more sense than the modern critics understand.

The employment relationship is illustrative of a common pattern that can be found in many social settings. The informal norms of the workplace, like the informal norms of an industry, club, or school, may well contain detailed specifications of what are and are not proper forms of behavior. People likely
will understand that acts taken in violation of these norms are indeed wrongs for which social sanctions are appropriate. The social norm may be one of termination or separation only for cause while the legal norm is one for termination or separation at will. Yet there is no irrationality in that disjunction. Owing to the cost and unreliability of the legal sanctions, it may well be that the parties all accept the basic proposition that they are better off using the less coercive set of social sanctions than subjecting themselves to legal rules. The best run apartment buildings reserve the right to evict tenants at the expiration of leases; yet they are thrilled to renew good tenants at reasonable rates, which they routinely do. The best run firms may reserve the right to fire capriciously; yet these firms spend thousands of dollars working to build good employment relationships with their staffs. And charities reserve the right to turn away the needy at the door, and yet routinely take them in. In each of these cases the social norms are often used when the sole sanction available to a private party is the refusal to deal with other people.

The older legal position allowed persons to protect themselves by contract against dismissal, eviction, and rejection, and indeed set the background legal rule in ways that precluded the creation of legal liability unless otherwise assumed. That system could result in certain miscarriages of justice which galvanize courts and legislatures into action. It is easy to rally around the tenant dispossessed in the dead of winter or the sick patient turned away at the hospital door. Yet all systems are subject to individual cases of failure. The acid test comes in the overall evaluation of the system, taking into account the melancholy fact that excesses committed in the name of enforcing community norms are often far greater than those of allowing private parties to do their own thing. It is too easy to miss the tenants who leave a public housing project because no one will evict the one tenant who terrorizes the others. It is too easy to forget that the lavish treatment demanded for the hopeless addict fills the emergency rooms that could be used for more worthy recipients.

Let me just mention one instance here where the difference between legal and social norms apparently did hold well. In his book, Regulatory Takings: Law, Economics and Politics, Professor William Fischel, an economist, examines the social aftermath of one of the most famous takings cases in the Supreme Court literature: Pennsylvania Coal Co. v Mahon. At issue in the 1922 case was whether Pennsylvania could pass, without compensation, a statute that returned to surface owners the right of support that they had previously deeded away to the mining companies that owned the rights to coal beneath their lands. As a matter of technical property law, this so-called support estate was an interest in property that had been sold by landowners to coal owners. It was difficult therefore to resist the conclusion of Justice Holmes that a state statute
which gave the right of support back to the surface owners had taken property of the mining companies, just as if the state had given back the mineral rights to the surface owners after they had been sold.

The question here is what set of consequences followed from this decision to allow mining companies to conduct their operations in ways that could have sent the houses of mineworkers tumbling into the ground below. Professor Lawrence Friedman, a legal historian, wrote that the decision of the Court to interpose itself between the legislature and the mining companies led to "the ruin of an entire community" by the creation of a "series of petty losses," all of which went without compensation. But Fischel's close examination of the historical setting falsified that dire (after-the-fact) prediction. The miners who owned the houses supplied key labor for the mines. The loss of good will associated with the collapse of one of their homes was something that the mining companies wished for the most part to avoid. So the companies' common practice both before and after the decision in Pennsylvania Coal was to repair damage even when not legally obliged to do so.

Of course, this is not to say that the distribution of legal rights is of no consequence in dealing with the incidence and frequency of repair. We should expect that the absence of the legal threat made a difference in some cases at the margin, either in the timeliness or extent of the repairs. But noting the difference hardly justifies junking the result in Pennsylvania Coal, for it could well have been that imposing too great a cost on the mineowners would have led to the premature contraction or cessation of the mining activities on which the homeowners depended. It should be clear that the legal decision that allows the terms of a land sale to dominate cannot be casually attacked for its untoward social consequences. So long as there are repeat transactions between parties, there is good reason to believe that social norms will be respected even if not backed by the force of law.

The Acid Test: Redistribution

Fischel's illustration should give pause to anyone who thinks that dominant private institution always wield their economic power in ways that can be contained only by some strong community response. Yet the bigger challenge to the question of social norms concerns the scope of the imperfect obligations discussed above in connection with redistribution to parties in positions of need. The modern legal position on this question comes in two parts. The first, which insists on the moral strength of the obligation, rests on the assumption that those who have wealth should share it with those who are in need. That position takes for granted that economists' quibbles over in-
terpersonal comparisons of utility are just that, quibbles: in many cases it is easy to see that a dollar will do far more good in the hands of someone who needs it than it will in the hands of someone who earns it. The second step is that the obligations in question should not remain imperfect, or social, but should be enforced by explicit state laws. That enforcement cannot, moreover, come in the form of private lawsuits of the sort that a pedestrian brings against the driver who ran over his foot. Obligations based on need are not triggered by wrongful acts of other individuals. Rather, they rest upon need, and are imposed on the collectivity as a collectivity. Their enforcement depends on some more comprehensive social means, be it the tithe on the one hand or the taxation system on the other.

Anyone engaged with communitarian values has to take dead aim at both questions. He has to accept the power of these obligations, and typically will insist that “the nation has a responsibility to provide a decent level of health, education, and welfare for its citizens, regardless of their ability to pay.” This very argument was elegantly made by Michael Sandel in a *New Republic* article, “Anti-Social Security,” which attacked the recent proposals to restructure benefits under social security with an eye to preserving its long-term viability.

Social security differs in many important ways from other types of redistribution. Yet the program is large enough to make a small stab at so large a question. The approach that I have taken to the matter of social norms does not quarrel with the first point, i.e., that individuals within a community have some responsibility for those in need. But it does differ in the form of emphasis in the location of the duty. I place it on individuals, and assume that a mix of social sanctions and conscience will lead persons with wealth to help some individuals, even though it is highly unlikely that they will choose to help all individuals. That is a far cry from the notion that the community, as a community, has an obligation to assist, much as it has an obligation to maintain order and to control the private use of force.

Yet on the second question—whether this obligation should be made legal—I fully part company with Sandel, at least insofar as we write on a blank slate, and can thus avoid the immense transitional problems that present policies (and politics) have created. The first point to note is that single defections from the policy of charitable giving do not bring down the system. So long as we conceive of charities as a way to make sure that the needy receive assistance, we cannot argue that state compulsion is required in order to control the free-riding of wealthy noncontributors. That concern would only be valid if we thought that social security was an alternative to police power as a means to prevent violence and civil unrest. But the moment the
beneficiary of the charitable activity is the recipient, then the free-rider argument is neither here nor there. You give money to the needy and they are helped by what you give, whether or not others have joined your ranks. The lack of full participation does not lead to a disintegration of the system.

The reply, of course, is that the amounts that will be transferred under this system are too small to matter, so that tax revenues are needed to cover the shortfall. But that way of looking at the problem ignores at least three further complications. First, there is little reason to believe that a dollar of public assistance will go as far as a dollar of private assistance. Ordinary individuals and private groups are, I suspect, better monitors of charitable care than impersonal institutions. Second, the amount of money needed will go down if the amount of aid is reduced. With social security, in particular, the loss of tax revenues would lead to an increase in private savings, which if prudently invested hold out a far higher potential rate of return (especially for the younger generation today, which will receive little or no return on its investment). Third, and most importantly, the politics of social security bear no relationship to the lofty communitarian ideals that helped bring about its adoption. The interest group pressures for keeping the program in place are large and well-oiled, and the obligation is not imposed on the community in the abstract. It is imposed on working individuals, many of whom are of more limited means that the older population who receives the benefits of this program and others (of which Medicare and Medicaid, for long-term nursing care, are only the two most conspicuous).

**Taking Stock**

In sum, the question of redistribution requires the same tough-minded attitude that is brought to other disputes that lie at the intersection of law and social norms. First, it is necessary to give a full explanation of the efficiency of the social system under the alternative legal arrangements. But when that task is finished, we should not routinely and complacently regard the separation between social practices and legal enforcement as a gap in immediate need of a cure. In some settings, including some in which we address the epochal struggles over redistribution, we should regard the gap as a stable and sensible feature of social life. When legal norms cause more mischief than they cure, they should be avoided. Social norms without legal enforcement do an enormous good. They should not be disparaged simply because they are not perfect. No system is perfect, least of all the law. The excesses of big government today often stem from a systematic misevaluation of the relative value of social and legal norms.
Richard Epstein argues that the gap between social practices and legal enforcement is not always a bad thing, and that we should avoid legal norms when they cause more mischief than they cure. At this level of generality, how could anyone disagree? Law is a blunt, expensive instrument wielded by imperfect human beings. The proliferation of legal rules and regulations can never keep pace with the variety of circumstances and may come to strangle the very individuals and social goods they seek to protect. The hard work is to specify, with some useful degree of precision, the conditions under which these disadvantages become decisive objections to the legal enforcement of norms.

As a communitarian of sorts, I have no difficulty accepting Epstein's proposition that it is often better to rely on the force of society's moral voice than on the official coercive mechanisms of the law. But we must be clear about how this social enforcement operates. Epstein seems to suggest that social norms are sustained by equilibrating mechanisms in which the consequences of norm violation automatically redound to the disadvantage of the violator. (For example, a firm that unjustly fires a single worker risks demoralizing its entire workforce.) But there are many circumstances in which norms are not backed by self-executing sanctions.

Consider the following homely example. It snowed one night last winter. The next morning I shoveled the sidewalk in front of my house. I am unaware of any city ordinance requiring me to do so. (Anyway, what difference would it make? I live in the District of Columbia, where it seems
only parking laws are enforced.) Nor was I moved by fear (though maybe I should be) that someone will slip and sue me. The point is rather that my neighbors were out shoveling their walks, and I felt impelled to do likewise—to do my fair share to create a block along which pedestrians can make their way with relative ease. To an extent that is hard to gauge, I have internalized the "fair share" norm. As well, I experience a vague fear that my neighbors will think worse of me if I fail to do my part. This combination of principle and sentiment suffices to produce the socially desirable action. The sum of these actions generates a social practice that—in this case, in my neighborhood—doesn't have to be backed by societal enforcement.

But what if it did? Epstein asserts that legal sanctions are always more expensive than social sanctions. Measured simply in dollars, this is probably true. But Epstein is silent about the nonmonetary costs of social enforcement, which are very real and may loom large enough to induce us to turn to the law. To begin with, in social enforcement an individual or group must directly and personally confront the wrongdoers. Such confrontations may well be experienced as highly distasteful, and not just by individuals on the receiving end. In addition, strategies of social enforcement typically lack procedural safeguards. Individuals who are condemned or ostracized unfairly may have no effective recourse. Whether the accusations are fair or unfair, they can easily breed resentment and lead to cycles of retaliatory escalation that impose further strains on the enforcers. Finally, as Epstein recognizes, the effectiveness of social enforcement rests largely on the existence of "close-knit" communities from which opportunities for exit are limited and costly. Not infrequently, such communities are mixed blessings: the price of membership can be significant restraints on privacy and liberty.

Still, Epstein's observation provides the basis for an important insight: legal enforcement may be the only realistic option when the civil conditions for social enforcement have broken down. If communities are not close-knit—if neighbors do not know or trust one another, if individuals do not care what others think about their conduct—then it may be necessary to resort to the law, even when public institutions are themselves mistrusted.

Legal enforcement may also be necessary when social norms improperly shield certain forms of conduct from scrutiny and redress. An important example of this is spousal abuse. Few individuals ever suggested that this behavior was morally permissible or good. But whatever the intention, insisting that it be dealt with privately rather than legally had the effect of allowing more of it to go unchecked than would otherwise have been the case. I do not want to suggest that social norms are of no account in such
matters. Jean Elshtain has recently described how the small town in which she grew up intervened successfully against a wife-beater. But in the aggregate, it seems fair to say, such social tactics did not suffice.

Another case arises when local norms conflict with the principles of the larger political community. There are circumstances in which the larger community should accommodate such norms. In the famous case of Wisconsin v. Yoder, the Supreme Court allowed the practices of the Old Order Amish to trump the mandatory school attendance laws of the state—and rightly so, in my view. But there are cases in which such accommodation of local norms is clearly wrong—for example, when communities are denying certain individuals or groups the basic rights and privileges of American citizenship. It was possible to argue—and many did—that legal coercion to uproot racial segregation was doomed to fail, or could only succeed at inordinate costs. History refuted these claims.

**When Norms Fail**

What should happen when the weakening of certain social norms damages the entire community? Epstein raises the pertinent examples of divorce and out-of-wedlock births. Most analysts believe that reduced social disapproval has contributed to the rising incidence of these phenomena. One possible response is resignation: law at best mirrors, but cannot lead, social and cultural change. Another response—the one I favor—is activism: if (as many believe) the costs of divorce and out-of-wedlock births for children and for society are very great, then it is worthwhile to experiment with legal changes of incentive structures that might alter behavior.

Epstein is optimistic about the consequences of responding to the “cost and unreliability” of legal sanctions by turning to the “less coercive set of social sanctions.” But what should we do when both fail as enforcement mechanisms? Consider the following example (names omitted to protect both the innocent and the guilty): A delivery truck goes to the wrong address and pumps a large quantity of home heating oil through an abandoned pipe into a homeowner's finished basement, rendering the home uninhabitable. Neither the firm nor its insurance company accepts the norm of making the homeowner whole; the costs they would incur by adhering to this norm are very high. Negative publicity (including extensive coverage on local television news) leaves the offending parties unmoved. Meanwhile, the costs of litigation to the homeowner may be so high as to preclude full recovery within the range of expected court awards (among other difficulties, tort law does not explicitly allow reimbursement for legal expenses).
Is there a general social interest in creating institutional structures (penalties and/or transaction costs) that allow wronged parties in such circumstances to defend themselves more effectively? If so, the interest may take moral rather than material form. From a utilitarian point of view, it may be more cost-effective to permit such transgressions to go without remedy. Only if one believes in the defense of legitimate property claims as a moral imperative will one have a secure basis for state-imposed or state-financed procedures and sanctions for defending these claims.

**Law as the Voice of the Community**

On one level, it is hard to fault Epstein's insistence that we examine the costs of law as an instrument of enforcement. But in many circumstances law is more than a means. It is meant to express the considered moral judgment of the community. A fair opportunity to work, to earn a living, to support oneself and one's family is—as the late Judith Shklar reminded us—one of the core elements of American citizenship. From this perspective, I would suggest it is appropriate that we have laws against employment discrimination. Even if, as Epstein asserts, unjust dismissal leaves the worker free to seek employment elsewhere and imposes a reputational penalty on the discriminatory employer, throwing the force of the law against core injustice is the right thing to do. This is all the more true if we cannot fully share Epstein's confidence in the capacity of social and market mechanisms to cure injustice in the absence of the law.

Epstein does not focus exclusively on legal versus social enforcement of agreed-upon norms; his discussion shades over into disagreement about the content of the norms themselves. For example, his critique of Social Security rejects the proposition that there is or ought to be a norm of redistribution binding on the community as a whole. Some individuals may have duties to assist some other individuals, but the community as a community has no such obligation. Epstein goes on to make some significant empirical predictions concerning the consequences of replacing Social Security with private charity. But the key point for Epstein is that even if these predictions turned out to be inaccurate, no moral norms would be violated.

I am not as well versed in Professor Epstein's oeuvre as I no doubt should be, but on the basis of this brief chapter it appears to me that a central thrust of his analysis is to deny the appropriateness of state-enforced redistribution under most (all?) circumstances. This is, to repeat, not merely an issue of the best means of enforcing shared norms. The question is rather, and more fundamentally, what if anything we owe to one another as fellow citizens. Here libertarians and communitarians part company in principle, at the threshold.
How is this question to be adjudicated? I am less confident than Epstein that utilitarianism in any of its forms illuminates the way forward. My belief that the fortunate among us have a general obligation to the less fortunate does not rest on any assumptions about interpersonal comparisons of utility. Indeed, if I were a libertarian (which I am not), I would be very careful about resting my position on utilitarian arguments, which may well point toward antilibertarian policies in a wide range of cases. To be sure, our moral response to human misfortune is not unaffected by the sequence of events that leaves particular individuals in need of assistance. But I suspect that the differentially distributed propensity to imagine that one could end up in the other's place plays a key role in the differential willingness to accept general (and if need be enforceable) obligations toward those in need.
CHAPTER EIGHT

Confessions of an Alleged Libertarian (and the Virtues of “Soft” Communitarianism)

Jonathan Rauch

Lately I have begun to understand how a Methodist must feel when everyone he meets calls him a Lutheran. People often describe me as a libertarian. All right, it’s true that I often write in a skeptical vein about government. Yes, I have come to see a higher, Zen-like power in leaving things alone. I generally do subscribe to H.L. Mencken’s dictum, “All persons who devote themselves to forcing virtue on their fellow men deserve nothing better than kicks in the pants.” But still, I know, in the visceral and insistent way the Methodist knows he is not a Lutheran, that my worldview is not quite congruent with what most people today regard as libertarianism.

It is hard to evade one label, however, when you can’t offer another. If not “libertarian,” then what? For a while, I tried “curmudgeon.” A curmudgeon, in my own enlightened sense, is a person who is against improving things for the sake of it. (These days, “curmudgeon” is not the same as “conservative,” because, ever since Barry Goldwater, many American conservatives have been radical reformers.) I tried “radical incrementalist.” A radical incrementalist is a person who seeks to foment revolutionary change on a geological time scale. The trouble is that “curmudgeon” and “radical incrementalist” both describe my temperament but say nothing of my beliefs. So I gave up. And then, a little while ago, I figured it out. I am, I discovered, a soft communitarian.

A what? You roll your eyes, and I can’t blame you. Bear with me, however. There is a fair amount of undesignated soft communitarianism about these days, and it signifies the emergence of an important sort of thinking.
A soft communitarian is a person who maintains a deep respect for what I call "hidden law": the norms, conventions, implicit bargains, and folk wisdoms that organize social expectations, regulate everyday behavior, and manage interpersonal conflicts. Until recently, for example, hidden law regulated assisted suicide, and it did so with an almost miraculous finesse. Doctors helped people to die, and they often did so without the express consent of anybody. The decision was made by patients and doctors and families in an irregular fashion, and, crucially, everyone pretended that no decision had ever been made. No one had been murdered; no one had committed suicide; and so no one faced prosecution or perdition.

Hidden law is exceptionally resilient, until it is dragged into politics and pummeled by legalistic reformers, at which point it can give way all at once. The showboating narcissist Jack Kevorkian dragged assisted suicide into the open and insisted that it be legalized (and televised). At that point, the deal was off. No one could pretend assisted suicide wasn't happening. Activists framed state right-to-die initiatives, senators sponsored bills banning assisted suicide, and courts began issuing an unending series of deeply confused rulings. Soon decisions about assisted suicide will be made by buzzing mobs of lawyers and courts and ethics committees, with prosecutors helpfully hovering nearby, rather than by patients and doctors and families. And the final indignity will be that the lawyers and courts and committee people will congratulate themselves on having at last created a rational process where before there were no rules at all, only chaos and darkness and barbarism. And then, having replaced an effective and intuitive and flexible social mechanism with a maladroit and mystifying and brittle one, they will march on like Sherman's army to demolish such other institutions of hidden law as they encounter them.

The enemy of hidden law is not government, as such. It is lawyers. Three years in law school teach, if they teach nothing else, that as a practical matter hidden law does not exist, or that if it does exist it is contemptibly inadequate to cope with modern conflicts. The American law school is probably the most ruthlessly anticomunitarian institution that any liberal society has ever produced.

For eons, hidden law has coped sublimely with adultery. As long as the adulterer was discreet and the wife either didn't know what was going on or was willing to pretend she didn't know, everybody else also pretended not to know. Public law's rather different way of handling the situation was on display in the Clinton-Jones-Starr-Lewinsky affair, and it was not superior. So, also, for sexual conduct involving adults in the workplace. Hidden law was imperfect for situations where flirting got out of hand, but today's sexual harassment law, in which platoons of lawyers scour office e-mails for hints of unwelcome overtures, is proving itself not just imperfect but grotesque.
Why Soft?

What about the "soft" part? Why a "soft" communitarian? Because there is a harder variety that replicates the lawyers' mistakes in a communitarian direction. The hard communitarian, seeing that hidden law has broken down, demands a series of public laws or subsidies to reestablish it. Require children to support their aging parents, require students to do involuntary volunteer work, make voting mandatory—that sort of thing. The archetype of the hard communitarian is Lee Kwan Yew, the former prime minister of Singapore. In America, an example might be Rudolph Giuliani, the former mayor of New York City.

We softies, by contrast, understand that hidden law works precisely because it is not formal: the very act of formalizing it destroys it. We believe, therefore, that public law's next big project should be to sit down and shut up. That is, public law should be careful, infinitely more careful than at present, not to burst into every room it sees and immediately begin breaking crockery. It should strive to stay out of hidden law's way, rather than obliviously trampling it with each elephantine footfall. When personal behavior needs regulating, we soft communitarians prefer exhortation to legislation and shame to jail. A good, albeit controversial, example of an effective soft-communitarian activist is Bill Bennett, with his Book of Virtues, his "index of leading cultural indicators," and his denunciations of gangsta rap. Bennett says he opposes legal regulation of song lyrics, but he certainly does not oppose confronting recording company executives and demanding that they read aloud some of the lyrics they sell. He practices censoriousness rather than censorship. That is "soft" in a nutshell.

From my own "soft" point of view, the anti-individualism of some strains of communitarianism mainly misses the point. "By and large," writes Steven Jones, "communitarians believe that contemporary societies, particularly Western societies, have become so committed to the values of freedom and individualism that social order and moral cohesion are in danger of disintegrating." That may be true of ACLU hard-liners and Ayn Randians, but most ordinary people and their values, I think, have not changed very much. Most Americans are deeply committed to our families, our friends, our churches or clubs, our communities. Few of us are interested in asserting rights in antisocial or disruptive ways. Mostly we're communitarian individualists who instinctively, and almost unerringly, navigate unmarked paths between self-assertion and self-abnegation.

What has changed, and changed dramatically, is the extent to which law, and its mania for formal adversarial process, blocks or subverts those quiet, low-friction pathways. For the aggrieved or angry few, law offers itself as an
irresistibly potent weapon. The larger number who prefer communities to
courts will often find law standing foursquare in the way. Do your supervisor's
inappropriate personal comments make you uncomfortable? If you hoped to
raise the matter informally and settle it quietly, you're out of luck. In any
company big enough to have a lawyer and a personnel department, a harass-
ment complaint is apt to trigger a grinding legalistic machinery that begins
with an investigation and is always at risk of ending in a courtroom train
wreck; victims who survive this ordeal sometimes say they wish they had
never spoken up in the first place. To a soft communitarian, the notion that
individualism is the problem, or that new laws—even ostensibly communi-
tarian laws—are the solution, seems perverse.

We soft communitarians are soft in a further sense: Like F. A. Hayek (who
in some ways was a soft communitarian), we do not believe in taking an un-
critical attitude toward social norms, even deeply embedded ones. With all due
respect to folk wisdom, I favor gay marriage, even though nothing could be less
traditional. Now that we know that homosexuals exist—that they are not just
neurotic heterosexuals who need a few jolts of electroshock—the extension of
the nuptial contract to them is not a sundering of tradition but an extension of
it. Thoughtful criticism allows us to see this. Soft communitarianism is not
blind obeisance to tradition. It aspires to be rigorous rather than rigid.

An interesting question about soft communitarianism is: So what? Who
could be against such a mushy and innocuous doctrine? Or who, anyway, apart
from everyone who ever went to law school? You might point out that soft
communitarians can be found toward the drab center of both political parties,
where everyone is for "values" and "civil society." You might also note that
soft communitarianism is perfectly consonant with most major strands of lib-
ertarianism. The reason I am often mistaken for a libertarian—even though I
am more comfortable talking about rules than rights, I prefer reasonableness
to reason, and I care about government's effectiveness rather than its size—is
that my soft communitarianism leads toward a persistent skepticism about the
oozing encroachment of public law into every pore of daily life. Maybe the soft
communitarian and the libertarian, like the Methodist and the Lutheran, are
just two versions of basically the same thing.

But not so fast. The fact is, many libertarians I know react with discom-
fort, often bordering on hysteria, to soft-communitarian talk. They feel that
if their life is not the law's business, then it also is nobody else's business.
They are deeply uneasy with social instruments like shame or opprobrium,
which smack of big-nosed authoritarianism in a new guise.

And here a certain sort of libertarianism comes full circle to join hands
with a certain sort of leftist. The libertarians and the leftists come to blows
over economic issues—who should run the health care sector, for instance—but they glare in hostile unison at the soft-communitarian project (which, remember, also enlists some libertarian types of its own; this gets complicated). Underlying their hostility is an implicit theory of coercion that is worth grappling with, because it lies at the heart of today's culture wars. In that connection, consider Michael Warner.

**A War against Norms**

Warner is, to begin with, an English professor at Rutgers University. But he is probably better known as a leading queer studies scholar. And, more than that, he is an activist, closely associated with an extremely controversial group called Sex Panic!, which organized in the mid-1990s to oppose what it regarded as the squelching of sexual freedom by gay and straight conservatives alike.

I ought to say, not that it matters, that I am discussed in passing in Warner's new book, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life*. Warner quotes me on gay marriage and says I am "more honest than most" of his ideological adversaries: a compliment I can return in kind. Because *The Trouble with Normal* is, in large measure, an answer to Andrew Sullivan and other gay conservative advocates of homosexual marriage and assimilation, and because it concerns itself with various intramural disputes in the gay world (strategies for AIDS prevention and the like), booksellers will confine it to the "gay interest" shelves. That is a pity. Warner is that rarest of writers, an honest extremist who is smart enough to see through to most (though not all) of the depths of his own positions and who is fiery enough not to flinch. His agreeably written and commendably concise book thus turns out to be, among other things, a 200-proof distillation of the case against soft communitarianism.

For example, Warner is shrewd enough to see that the standard defense of gay marriage by gay activists is wrong. This defense holds out marriage as just one more lifestyle option. It is available to heterosexuals, so it should be available to homosexuals as well, and that's all there is to it. But this is wrong. Marriage, as Warner aptly puts it, is "a social system of both permission and restriction." Spouses and society alike view matrimony as something special and exalted; it is not merely allowed, it is encouraged. Far beyond merely creating legal arrangements, it is freighted with the social expectations and implicit requirements of hidden law. It is a bargain not just between two people but between the couple and society: The spouses agree to care for one another so that society does not need to, and society agrees in exchange to view their commitment to each other as inviolable and sovereign and, indeed, sacred.
Traditionalist conservatives understand that marriage confers special status under hidden law, which is why they so fiercely oppose extending it to homosexuals. I understand that marriage confers special status, which is why I favor extending it to homosexuals. And Warner, piping up from the radical left, also understands marriage's special status, which is why he opposes gay marriage. When marriage is available to gay people, he understands, gay people will be expected to marry, and married homosexuals will conduct themselves with the same (let's face it) smugness that characterizes married heterosexuals. "The effect," Warner says, "would be to reinforce the material privileges and cultural normativity of marriage." Homosexuals who do not marry will be regarded as less respectable or less successful than those who do.

In Warner's view, that would be a profound miscarriage of social justice. For Warner is against not just the sexual norms of the moment but the very notion of sexual norms. That is not to say he would decline to pass harsh judgment on a rapist. But where consensual sex is concerned, he insists, society should just butt out. Not only should the law stay out of the bedroom (a standard libertarian position), so should norms, because all norms create "hierarchies of respectability."

Warner opposes sexual norms for two reasons. The first is that he is a radical egalitarian. He believes in the moral virtue of diminishing differences—moral, economic, or political—between people and groups. There is no arguing with a radical egalitarian on that point, so I won't.

The second reason goes a little deeper. Warner makes a move which ordinary classical liberalism rejects out of hand but which has an undeniable kind of deep sense to it. In standard liberal theory, coercion and force involve violence or the threat of violence: "Your money or your life." Because, in modern democracies, the state possesses a monopoly on legitimized violence, a coercive policy will be, by definition, a state policy. Nothing that private people or institutions do by way of criticism or exclusion is coercive.

To Warner and others of his school, that view of coercion is laughably narrow and naive. Norms use the clubs of stigma and shame to punish deviants, nonconformists, and radicals. Many people would much rather be jailed than humiliated or ostracized, which is one reason American prisons are so crowded. In a psychological sense, the denial of respectability can be just as coercive as the denial of physical freedom. Nowhere in his book does Warner argue the theoretical case for his extended notion of coercion, but it is apparent on every page. He regards moralizing as a kind of mandating, speaks of "the effect of coercion in the politics of shame," and refers to the "deep coerciveness" of the sort of thinking that privileges marriage. In his world, all social norms are more or less coercive, which
means that all of them are oppressive when applied to consenting adults’ sexual or social lives.

Whatever its theoretical shortcomings, this sort of thinking exerts a broad attraction in today’s America. Lots of people view Gary Bauer’s or Jerry Falwell’s strident condemnations of the “homosexual lifestyle” as being every bit as oppressive and intrusive as, say, sodomy laws. For that matter, lots of people believe that moral criticism causes violence by fostering hate, or that moral criticism actually is violence (“words that wound”). Many people in America—a majority, maybe—feel queasy talking about “virtue” and “vice,” because that sort of talk implies judgmentalism, which implies a “hierarchy of respectability.” People prefer sanitized expressions like “values.” I would be curious to see what would happen if you visited a randomly selected college campus and asked the students whether it is right to judge other people’s lifestyles. My guess is that most students would be appalled at the notion.

What is useful about Warner is that, being both bright and radical, he has no use for the mushy middle, where most ordinary people are content to leave such ideas. He understands the implications of his view of coercion and does not shrink from embracing them. The sort of nightmare society that a Falwell or a Bauer dreams up in order to scare donations out of church ladies is precisely the sort of society Warner wants to create. To be sexually free, we need to be able to explore all possible sexual avenues with an open mind, and thus without fear of shame or stigma. Keeping certain sexual behaviors hush-hush means that most people never think about trying them, which amounts to “constraint through ignorance.” There should be no more closets of any sort. Rather, says Warner, let “all the gerbils scamper free.”

And so, in the end, it is not gay marriage Warner opposes: It is marriage, and all the conventional notions of shame and responsibility that go with marriage. He does not actually demand that marriage be abolished, because, being a pragmatist, he would rather undermine it by extending all its benefits to unmarried partners—in fact, to everybody. He is likewise not foolish enough to imagine that sexual norms could be eliminated anytime soon, but he believes that the proper role of socially enlightened activism is to favor de-norming at every turn.

Although Warner’s view is extreme, it is more influential than you might suppose. All three of the states and all but a handful of the municipalities that offer domestic partner programs for their workers include opposite-sex couples, who, of course, could perfectly well get married if they wanted the benefits of marriage. The large majority of corporate partnership programs also allow heterosexuals to participate. Who is to say, after all, that marriage is better than some other arrangement? Only recently, and with great effort, was the national welfare debate retrieved from the hands of nonjudgmentalists who argued that government’s job was to help the indigent, not to judge them.
Norms and Nature

I am not a soft communitarian because I think shame and stigma are sweet and lovely things. They are not. A weakness of the soft-communitarian position is its unwillingness to admit the truth in much of what Warner says. In some respects, norms are oppressive and shaming is coercive. Having admitted this, however, one can go on to see what Warner, and other anticommunitarians, do not: that soft communitarianism is less oppressive, usually much less so, than the real-world alternatives. Shame and hypocrisy are not ideal ways to deal with philanderers and small-time mashers, but they are better than Paula Jones's litigators and Kenneth Starr's prosecutors. Shame is valuable not because it is pleasant or fair or good but because it is the least onerous of all means of social regulation, and because social regulation is inevitable.

The implication of Warner's view is that the only just society is one without any sexual norms regulating the conduct of consenting adults. But, of course, a normless society is as inconceivable, literally, as a beliefless individual. What would a culture without shame or guilt or "hierarchies of respectability" look like? How is a shameless society even imaginable, given the unbudgeable fact that humans, like dogs and chimpanzees, look to each other for guidance and approval and clues on how to behave?

The fact is, there are going to be norms; the question is always, What sort of norms? In Warner's world, the norm would be one of extreme social permissiveness. People who expressed anything but approval of sexual adventurism would be stigmatized: shamed for engaging in the oppressive act of shaming. If you don't think this can happen, ask any student or professor who has been on the receiving end of a P.C. vilification campaign.

It is also a fact, I think, that shame is a core constituent of a social animal's temperament. Human beings crave the admiration of other human beings more than they crave anything else—even, in many cases, life. Warner seems to view shaming as a political sanction that, with enough effort, we can teach ourselves not to use. But not to shame or be ashamed is like not loving, not laughing, not eating, or talking. So the Warnerian project is to repeal not just shame but humanity. In that sense, Warner's utopia is like the Marxist utopia, which repealed greed. My guess is that Warner's normless sexual utopia would be about as successful, and about as good for the downtrodden and marginalized, as Marx's classless economic utopia turned out to be.

Oddly, the words child and children scarcely ever appear in Warner's book. This is an astonishing blind spot in a work of social criticism. Being a defender of gay marriage, I'm as tired as the next fellow of people who use children as a cover for all sorts of authoritarian arguments. Still, Warner seems to find the very concept of parenting unfathomable. The thought that sexual adventurers
might be expected to keep certain activities out of the sight of ten-year-old boys and girls, in exchange for being left alone, does not seem to have occurred to him. ("No, darling, that's not a game. Those two people are doing what we call 'fistfucking.'") If you believe, as seems plausible, that there is a genuine clash of interests between parents and sexual adventurers, then the old dictates of hidden law—"keep it out of sight," for instance—seem to be a pretty ingenious way to strike a balance.

Some especially conservative parents are indignant because sexual adventuring is too visible, while some especially radical adventurers are indignant because they are not allowed to copulate in front of City Hall. Everyone else wishes the conservatives and the radicals would stop pushing the envelope before the bargain collapses altogether, leaving nothing but cops and politicians and lawyers to tell us how to behave. In the end, the man who wants to replace norms with nothing is the best friend of the man who wants to replace norms with laws. Dr. Kevorkian no doubt thinks of himself as a great champion of the right to die. In fact, as is obvious to everybody but himself, he is a godsend to opponents of assisted suicide. Michael Warner is the Jack Kevorkian of sexual liberty.

The good news is that Warner will fail in his mission of de-norming the world. He will be unable to persuade American homosexuals to rise up and rebel against hidden law and its Main Street codes of behavior. The tide is running against him, and he knows it. Perhaps the most heartening aspect of Warner's book is its rage and despair over what Warner regards indignantly as the taming of homosexual politics and culture, the growing ascendancy of "gay" over "queer." Homosexuals are moving toward embracing the contract with hidden law. They want to follow the rules and be respectable, and the heterosexual majority seems more and more inclined to let them.

The further good news is that gradually, quietly, Americans are becoming aware of the existence of hidden law. Slowly—OK, sometimes very slowly, and with the legal establishment still winning more battles than it loses—Americans are beginning to rediscover the lost continent of convention that lies between law and libertinism, between banning and condoning. They are, I like to hope, beginning to see that the hidden constitution, with its elaborate rules of etiquette and its byzantine architecture of pretense and its elaborate hierarchies of respectability, is much like the written constitution: It restricts us so we can be free.
CHAPTER NINE

The Contours of Remoralization

Francis Fukuyama

Before we can begin considering how and under what circumstances societies can remoralize themselves, we need to consider what moral norms societies actually need to restore. The word “remoralization” presumes that there are certain moral values that are good for a given society, values that can be lost during a period of moral decay. Many people would question this premise (and therefore, the very topic of this discussion). Some would argue that moral norms are in a constant process of evolution, and that the norms of one period cannot be judged better or worse than those of another. Others believe that moral norms are the product of a kind of free cultural creativity that proceeds by its own internal logic, unrelated to the political or economic institutions and needs of the surrounding society. In any case, critics of the concept of remoralization would argue that it “privileges” one set of values—usually older or more traditional ones—over others that may be more progressive or at least no worse than the ones they replace.

I disagree with this point of view, because I think that there are important cultural values—that is, social virtues—that sustain both a successful liberal democracy and a prosperous market economy. A number of important theorists of democracy (most notably Alexis de Tocqueville) have recognized the dependence of formal democratic institutions on informal customs or mores. Much of the recent discussion of “social capital” elucidates the purely utilitarian benefits of certain specific social habits from an economic and political standpoint. The importance of cultural factors has been thrown into sharp relief in recent years by the transnational variance in transitions out of
communism; compared to the relative success of countries like Poland or the Czech Republic, the situation in, say, Belarus or Ukraine is difficult to explain except in cultural terms.

But which virtues or cultural values are necessary for the democratic political order that may be subject to loss and subsequent recovery? Here, I think it is useful to make a distinction between what I would label "ordinary" morality and political morality. What I label ordinary morality concerns the ability of people to cooperate with one another in groups, and encompasses virtues like honesty, reciprocity, the keeping of commitments, and responsibility to various communities, from the family to the neighborhood to the state. Ordinary morality is the basis for social capital. Political morality, on the other hand, pertains to the way that smaller groups relate to one another in a political order. It is possible to have a high degree of ordinary morality coexist with shocking political immorality, as when Japanese, who are exquisitely polite toward one another, have butchered Chinese because the latter stand outside their community. Conversely, tolerant liberal societies are prone to deficits in ordinary morality, precisely because liberal individualism tends to dissolve shared moral rules.

In Search of the Ordinary

The remoralization that is of interest in this discussion concerns not the recovery of political morality but of ordinary morality. That is, in a country like the United States, we take for granted the existence of liberal democratic macropolitical institutions that formally guarantee some version of moral universalism. The problem of moral decline concerns the loss of ordinary virtue (manifested by social trends like increasing crime, family breakdown, drug use, fraying trust, decline in civic participation, etc.) within the context of stable political institutions. This is not to say that political morality is not important: it is the chief moral issue in parts of the world like the Balkans or the Middle East, and remains an intractable problem in the United States. But the remoralization at issue here concerns how people behave toward one another in their individual families, neighborhoods, workplaces, and in civil society more broadly.

The distinction between ordinary and political morality is significant because there is strong reason for thinking that ordinary morality is deeply rooted in human biology while political morality is not. Human beings are not born as isolated individuals who have to be taught to cooperate with one another in small group settings; their cognitive and emotional faculties have evolved over time to enable them to solve problems of social cooperation.
On the other hand, ordinary morality, while natural, is usually limited to small groups of kin or friends. Human beings cooperate in order to compete; hence, antagonism between groups is as natural as cooperation within them. Concepts like racial and ethnic toleration, universal human rights, and the like are all socially constructed qualities that require either religious or political institutions to implement. The story of Western political development is an historical one of an ever-expanding radius of trust toward moral universalism, propelled first by Christianity and then by modern liberal democracy.

Human beings do not have social instincts in the way that ants or bees do; what they have are formidable natural capabilities for solving problems of social cooperation, and strong emotional proclivities for solving them successfully. Game theory suggests that cooperative social rules will evolve spontaneously among otherwise self-interested individuals if they are forced to interact with one another under the right conditions. Thus, while ordinary morality cannot be taken for granted, it is in some sense the default condition toward which human beings gravitate. Aristotle's view that man is by nature a social and political animal is more correct than Hobbes's view of the state of nature as a war of all against all. To raise the question of how societies remoralize themselves is therefore to put the question backwards: one needs to know what external forces have disrupted the natural orderliness of a society, and can assume that societies will naturally seek to remoralize themselves.

The Aristotelian view of the origins of ordinary morality stands in sharp contrast to the Judeo-Christian doctrine of original sin. The natural condition of human beings, by the latter view, is to live in sin; they can be rescued from vice only by divine grace. Moral behavior must thus be supplied exogenously, or to put it more concretely, morality must have a religious basis if it is to exist at all. This point of view is held not just by many religious conservatives, but by the anti-Christ Nietzsche himself, who once castigated John Stuart Mill as a "flathead" for believing that one could have Christian morality in the absence of belief in a Christian God. Many people observing cultural phenomena from a nonreligious perspective believe some version of this. John Gray, for example, has recently revived the Burkean critique of the entire modern project forseeking to replace religion and cultural tradition with rational institutions; he attributes American social disorder to a long-term working out of the internal contradictions of the Enlightenment.

Religion's Role

At this point, we need to leave the realm of theory and pose the empirical question of how important religion is to the possibility of moral order. At first
sight, the view that argues that religion is the sine qua non of moral order would seem to win hands down. Since the vast majority of human societies up to the past hundred years or so understood themselves religiously, it is very difficult to find many cases of remoralizations that were not expressed religiously. The Old Testament prophets, the periodic revival movements in Islam, the Protestant Reformation, and the current evangelical conversions in Latin America were all driven in the first instance by religious passion.

The actual situation may be a bit more complicated, however. For example, it may be that religion is simply the language that societies use to talk about morality, which they need for utilitarian reasons. While it is hard to argue that religion has not been very important to the process of actual historical remoralizations, the success of the process may not depend on actual belief in a transcendental God so much as on a spreading conformity with community norms that are reinforced but not created by religious ritual. It is possible to point to some cases like this. Japan after the Meiji Restoration in 1868, for example, experienced a moral renewal that was reflected not just in lower rates of violence domestically but in a new set of social values and institutions. While Meiji political elites made use of Shinto and emperorworship to bolster their legitimacy, they were engaging in an act of secular social engineering.

Something similar may be said of the remoralization that took place in the Victorian era in both the United States and Britain. Religion was of course very important to Victorian morality, and many of the social institutions created after 1850 were the product of various faith-based groups like the Wesleyan movement and the Salvation Army. On the other hand, there were secular aspects to the remoralization as well, as elites reacted to the social disorder brought about by the social changes that had taken place in the first decades of the nineteenth century. The very impressive drop in crime rates that occurred from the middle of the century to the year 1900 in many American cities and in Britain was due just as much to the establishment of modern police departments as to the activity of religious crusaders.

Asia more broadly provides important counterexamples to the view that moral order depends on religion—at least religion understood as moral rules laid down by a transcendent deity. The dominant cultural force in traditional Chinese society was, of course, Confucianism, which is not a religion at all but rather a rational, secular ethical doctrine. The history of China is replete with instances of moral decline and moral renewal, but none of these is linked particularly to anything a Westerner would call religion. And it is hard to make the case that levels of ordinary morality are lower in Asia than in parts of the world dominated by transcendental religion.
Contemporary Europe also provides an instructive example. If religion were as important to social order as many religious conservatives believe, then Europe, which has become far more secular than the United States over the past two generations, should be much more disorderly. But in fact the opposite is true. Most European societies have in fact experienced increases in crime, illegitimacy, and distrust over this same period, but not at levels comparable to those of the United States. Some have argued that Europe is living off of accumulated social capital from an earlier age, but this still does not explain why it should be more orderly than the United States, which has a far more dynamic and thriving religious tradition.

None of this should imply that religion is somehow not important or that remoralization can take place on a purely secular basis. But the opposite contention, that religion is a sine qua non of ordinary morality, remains to be demonstrated. Social norms have many other supports besides transcendental religion: they can evolve spontaneously in a rational process; they can evolve spontaneously on an arational basis; or they can emerge as a by-product of public policies undertaken by states.

**Better Living through Policy**

Public policy cannot by itself bring about a remoralization of society, but it can create conditions under which moral norms can regenerate themselves. It is clear, for example, that much of the decline of trust and the changes in civil society described by Robert Putnam were driven in part by simple fear. Even if one was not directly a victim of violent crime, the nightly cavalcade of crime reporting during the 1970s and 1980s, as well as the apparent breakdown of social order through failure to enforce so-called part two offenses like loitering and public drunkenness, led to a perception that society did not take the enforcement of norms seriously. Better public policies to control crime since that time, by contrast, have led to a "virtuous cycle" of cascading benefits: safer streets mean higher rates of participation in civic activities, higher levels of generalized social trust, and thus the greater ability of communities to enforce social norms that keep crime rates down in the first place. The so-called broken windows approach to crime control (e.g., the enforcement of rules regarding minor crimes like graffiti-writing or public disorderliness), as well as community policing, are both methods that recognize the fact that public safety is based on community norms, and both seek to enhance neighborhoods' abilities to remoralize themselves.

States shape morality through education policies as well. In the first decades of the twentieth century, public schools were seen not just as mechanisms for
transmitting skills and knowledge but also as vehicles for the socialization of
the vast number of new immigrants who flooded into the country at the turn
of the twentieth century. These new participants in American life were taught
to assimilate into a set of American core values that were seen by the post–civil
rights generation as hopelessly Euro- and ethnocentric, but they in fact em-
braced a range of middle-class values that are a good starting point for public
civility. In addition, public schools emphasized simple civics—that is, knowl-
edge of basic American institutions—that are critical to political participation.

Better crime control and education are two of the many positive state ac-
tions that can help provide necessary public goods. In addition, public policy
can assist in remoralization in a more basic way: by failing to do harm. There
are a number of policies over the years that have contributed to bad moral
outcomes. The most famous was the provision in the welfare laws that pro-
vided AFDC benefits only to mothers who were not married to the fathers of
their children, a perverse incentive that was blamed for some degree of fam-
ily breakdown and was remedied with the passage of the Personal Responsi-
bility and Work Opportunity Act of 1996. In general, efforts to turn welfare
into a straightforward entitlement and to reduce its stigma tended to erode
the distinction between the deserving and undeserving poor. Educational
policies like multiculturalism and bilingualism, designed to enhance the self-
esteeem of minority groups, have similarly had the perverse effect of decreas-
ing the level of shared culture and values between these communities and
the broader society.

In the end, no one factor alone can stimulate a contemporary remoralization;
public policy can only improve the conditions under which this remoralization
can occur. Human societies, propelled by innate human propensities for creat-
ing moral order, have gone through long cycles of moral decline and moral
renewal. Whether they will continue to do so under the technological condi-
tions of the twenty-first century we will only know in the fullness of time.
CHAPTER TEN

The Duty to Rescue: A Liberal-Communitarian Approach

Steven J. Heyman

When, if ever, should the law require individuals to act for the benefit of others? This issue arises most dramatically in connection with rescue. To take a classic illustration, suppose that while you are crossing a bridge you see a man struggling desperately in the waters below. Should you have a legal duty to throw him a rope, or to plunge in to save him, if you could do so without seriously endangering yourself?

In contrast to many European countries, American law does not recognize such a duty. This position was expressed most forcefully by Chief Justice Alonzo Carpenter of New Hampshire in a late-nineteenth-century case, Buch v. Amory Manufacturing Co. To refuse assistance in an emergency, he wrote, might transgress the most basic instincts of humanity and principles of morality, but would violate no legally enforceable duty. The law forbids me to injure others, but generally does not require me to protect them from harm. The situation would be different, of course, if I had some special relationship with the victim, such as that of parent and child. In the case under discussion, however, "the [man] and I are strangers, and I am under no legal duty to protect him." In short, the law does not require one to be a Good Samaritan.

Although this doctrine has often been condemned (in the words of William Prosser) as "revolting to any moral sense," it has been strongly defended by Richard Epstein and others on libertarian grounds. Individuals, they argue, should be free to act as they like as long as they do not injure others. The state cannot rightfully compel one person to act solely for the benefit of another. To be sure, there may be a moral duty to help others in distress, and

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mandating rescue might promote the overall good of the community. But the law has no business enforcing morality, nor should individual liberty be sacrificed for the sake of social welfare.

In this chapter I will argue, contrary to the libertarian view, that the problem of rescue does not pose an inherent conflict between individual freedom and the demands of morality or community. Instead, we can develop a theory of rescue that reflects the fundamental values of liberals and communitarians alike.

Rescue and the Common-Law Tradition

Consider two notorious incidents: the 1964 slaying of Kitty Genovese and the 1983 New Bedford tavern rape. In both cases, neighbors or bystanders watched as a young woman was brutally and repeatedly assaulted, yet they made no effort to intervene or call for help. Under current doctrine, their inaction breached no legal duty, however reprehensible it may have been morally.

Suppose, however, that a police officer had been present at the time. Surely we would not say that the officer was free to stand by and do nothing while the attack took place. The state has a responsibility to protect its citizens against criminal violence. It performs this function largely through its police force. An officer who unjustifiably failed to prevent a violent crime would be guilty of a serious dereliction of duty, which might result in dismissal from the force or even criminal prosecution. Thus the officer would have a legal duty to act. But what if there is no officer on the scene? In that situation, the state can fulfill its responsibility to prevent violence only by relying on the assistance of those persons who are present.

Contrary to the conventional view, there is strong evidence that, for centuries, the common law of England and America did recognize an individual duty to act in precisely such cases. According to traditional legal doctrine, every person was entitled to protection by the government against violence and injury. In return for this protection, individuals had an obligation not merely to obey the law but also, when necessary, to actively help enforce it. Ordinarily, of course, the government kept the peace through its own officers. When no officer was present, however, it was said, in the words of the great seventeenth-century English judge Sir Matthew Hale, that “the law makes every person an officer” for the preservation of the peace. Thus, individuals at the scene of a violent crime had a duty to intervene if they could do so without danger to themselves. If they could not, they were required to notify the authorities.
With the development of modern police forces in the nineteenth century, this tradition of active citizen participation in law enforcement gradually declined. In recent decades, however, it has become increasingly clear that effective crime prevention requires the efforts of the whole community—a recognition that is reflected, for example, in neighborhood crime watch and community policing programs. As the Genovese and New Bedford cases show, there are situations in which a simple duty to call the police may be crucial. In response to these incidents, half a dozen states have recently passed laws requiring those present at the scene of a violent crime to notify the authorities or provide other reasonable assistance to the victim.

This history offers valuable insight into the justification for a duty to rescue. The issue is often discussed, by libertarians and others, in terms of the rights and obligations of individuals viewed as private persons. In that capacity, individuals are generally entitled to pursue their own good as long as they refrain from injuring others. From this perspective a duty to rescue is difficult or impossible to find. By contrast, the traditional common-law doctrine suggests that the strongest ground for a duty to rescue is to be found in a conception of the public duties that citizens owe to the community and their fellow citizens. Just as citizens have a duty to support the legal order by paying taxes and serving on juries, so they should have an obligation, when necessary, to help prevent crimes of violence.

One can make a similar point about the imagery of the rescue debate. Discussion often focuses on the classic example of the drowning man. There the danger arises purely from natural forces, not from any human action. In that setting the potential rescuer and victim may appear to be mere "strangers" without any relationship or obligation to one another (a view that has been persuasively criticized by Mary Ann Glendon). In the Genovese and New Bedford cases, by contrast, the threat comes from wrongful human conduct. In this context, it is easier to recognize that the parties do have a relationship—one of common citizenship—that can give rise to a duty to aid.

**Rescue and the Liberal Tradition**

A duty to prevent violence finds support not only in the Anglo-American common-law tradition but also in liberal political theory. According to Locke and other natural rights theorists, individuals enter into society to preserve their lives, liberties, and properties. Under the social contract, citizens obtain a right to protection by the community against criminal violence. In return, they promise not only to comply with the laws but also to assist the authorities in enforcing those laws. In this way, Locke writes, the rights of individuals
come to be defended by “the united strength of the whole Society.” In On Liberty, John Stuart Mill recognizes a similar duty on the part of individuals. Although he rejects the notion of a social contract, Mill agrees that “every one who receives the protection of society owes a return for the benefit,” including an obligation to bear one’s fair share of “the labours and sacrifices incurred for defending the society or its members from injury.”

In addition to endorsing a duty to prevent violence, liberal thought suggests a way to expand that duty into a general duty to rescue. According to liberal writers, the community has a responsibility to preserve the lives of its members, not only against violence but also against other forms of harm. For example, Locke, Blackstone, and Kant all maintain that the state has an obligation to relieve poverty and support those who are unable to provide for their own needs. In Locke’s words, both natural right and “common charity” teach “that those should be most taken care of by the law, who are least capable of taking care of themselves.” Of course, this is also a major theme in contemporary liberal political thought.

From this point, the argument follows much the same lines as before. The state is bound to preserve the lives of its members. Ordinarily it does so through its own employees. Thus, if a rescue worker is present when someone is drowning, she clearly has a duty to provide assistance. When there is no rescue worker on the scene, however, the state may properly call on ordinary citizens to act on its behalf.

**Rescue and Communitarian Theory**

This look at Anglo-American common law and the liberal tradition has pointed to the justification for a broad duty to rescue. We can now state this rationale in general terms. The state is a community whose ends include the protection of its members from criminal violence and other serious harm. Individuals have a fundamental right to protection by the community. In return, they have a responsibility to help the community provide this protection by assisting a fellow citizen in danger. This is not merely a dictate of humanity or morality, but rather (as the late Judith Shklar argued) an obligation of citizenship.

Communitarian theory supports and deepens the argument for a duty to rescue. On this view, community is valuable not merely as a means to the protection of individual rights but also as a positive human good. Human nature has an irreducible social dimension that can be fulfilled only through relationships with others. The community has a responsibility to promote the good of its members. But this can be fully achieved only within a society
whose members recognize a reciprocal obligation to act for the welfare of the community and their fellow citizens. A core instance is the duty to rescue.

Of course, some might doubt whether contemporary society is characterized by the kind of community required for a duty to rescue. Community is not simply given, however; it must be created. Common action, and action on behalf of others, plays a crucial role in creating relationships between people. Thus the adoption of a duty to rescue might not merely reflect, but also promote, a greater sense of community in modern society.

The Contours of a Duty to Rescue

Now that we have developed a liberal-communitarian case for a duty to rescue, many questions arise about how the duty would apply in practice. In what situations would it arise? How much risk or effort would be demanded of a rescuer? When would rescue be the responsibility of individuals, as opposed to that of the community and its officers? What legal sanctions should be imposed for violations of the duty? And finally, what role do special relationships play in this account?

Advocates of a duty to rescue usually propose that it be restricted to cases in which one can act with little or no inconvenience to oneself. But this does not go far enough. Because its purpose is to safeguard the most vital human interests, the duty should not be limited to easy rescues, but should require an individual to do anything reasonably necessary to prevent criminal violence or to preserve others from death or serious bodily harm. Rescue should not require self-sacrifice, however. Thus the duty should not apply if it would involve a substantial risk of death or serious bodily injury to the rescuer or to other innocent people.

On this liberal-communitarian view, the preservation of person and property is a duty that belongs primarily to the community as a whole, to be carried out through its own officers and resources. This responsibility falls on individuals only in emergency situations when no officer is present. Moreover, the duty would often be satisfied by calling the police, fire department, or rescue services. A citizen would be bound to intervene directly only when there was no time to obtain such assistance.

In performing the duty to rescue, one acts on behalf of the community as a whole. For this reason, one should receive compensation from the community for any expense reasonably incurred or any injury suffered in the course of the rescue. Any other rule would mean that some people would be required to bear a cost that should properly be borne by the community at large, simply because they happened to be at a place where rescue was required. This principle of
compensation should meet the libertarian objection that (in Epstein's words) a duty to rescue would compel a person "to act at his own cost for the exclusive benefit of another."

Should one who violates the duty to rescue be subject to criminal punishment, be required to pay compensation to the victim (or the victim's survivors), or both? It is sometimes suggested that only criminal sanctions are appropriate, on the ground that rescue is a matter not of the private rights of the victim, but of one's public duty to the community. As I have tried to show, however, the ideas of individual right and civic responsibility are not mutually exclusive. An obligation such as rescue is owed to both the community and its members, especially the endangered person. While the duty aims to promote the common good, it does so by protecting private rights. It follows that one who wrongfully fails to rescue a fellow citizen can properly be held responsible not only to the community through its criminal law but also to the victim in a civil action.

Positive duties derive from community. But community is not limited to the political realm. In our own society, at least, it exists to a much greater extent within the family and other social groups and institutions. The obligations that inhere in such special relationships may extend beyond the general duty to rescue shared by all citizens. For example, parents have a responsibility not merely to save their children in an emergency but to protect and care for them at all times. In recent years, American courts have recognized a wide range of special relationships, such as that between a business and its employees, a landlord and its tenants, and a university and its students. The obligations that arise from such relationships—such as the duty to provide adequate security against criminal assaults—form an integral part of a liberal-communitarian account.

Conclusion

Libertarians contend that a duty to rescue would infringe the freedom of individuals by compelling them to act solely for the benefit of others. As both the common-law and liberal traditions teach, however, freedom has little value without the protection of the community and its laws. Far from diminishing liberty, the recognition of a duty to rescue would enhance it by strengthening protection for the most basic right of all—freedom from criminal violence and other serious forms of harm. And by requiring action for the sake of others, a duty to rescue also has the potential to promote a greater sense of community, civic responsibility, and commitment to the common good. In this way, we can justify a duty to rescue that is consonant with both the liberal tradition and the values of community.
CHAPTER ELEVEN

Does Socioeconomic Inequality Undermine Community? Implications for Communitarian Theory

Richard Coughlin

Communitarianism has sometimes been criticized for overlooking, or at the very least downplaying, the role of economic forces generally, and socioeconomic inequality in particular, in shaping social relations in the United States and other advanced (or "modern") societies. In a minor way, I count myself among the critics (albeit one broadly sympathetic to the communitarian project), having made the following observations in a 1996 Journal of Socio-Economics article:

There is something fundamental missing in these [communitarian] discussions. Membership in a community (at least as this is understood in modern societies) implies a certain degree of access to the economic and political resources that the community has at its disposal. Vast differences in economic status . . . tend to prohibit the formation of any sort of meaningful community ties. For example, it is virtually impossible for the homeless person who lives under a bridge not too far from my house, and who is daily seen begging outside local stores, to be a member of the community in which I live. To speak of "community" without reference to the massively unequal distributions of income and wealth that actually exist in . . . the United States and many other societies, and all that follows in terms of living conditions and life chances, is akin to homilies about the "family of man"—nice sounding words with a well-intentioned uplifting intent, but with little real meaning.

Steven Lukes expresses similar (and far less sympathetic) sentiments in a 1998 article published in Dissent. Explicitly focusing on articles published in
The Responsive Community since its inception in 1990, Lukes contends that the communitarian debate has been "drastically" limited, with the economy as the "major absentee." Lukes goes on to state: "There is very little here about the moral and cultural consequences of market processes, and virtually nothing about the ramifications of economic inequality."

Lukes's criticism, which is typical of leftist critiques of communitarianism during the 1990s, may have some merit, but it is overstated. A more careful reading of communitarian writings reveals that socioeconomic factors have not been entirely overlooked. In The New Golden Rule, for example, Amitai Etzioni alludes to the role of socioeconomic factors both as "enablers and constrictors of autonomy," adding, however, that this is a vast and important subject that would require a separate volume to be properly treated. In addition, Etzioni devotes sections of several chapters of Next: The Road to the Good Society explicitly to questions of socioeconomic equality, offering specific proposals that include assuring a "rich basic minimum to all," providing universal health care coverage, and "limiting inequality" as key items on the communitarian agenda.

Communitarians have expressed some concern about socioeconomic inequality, but it is not a topic that they have explored sufficiently. In this article, my main contention is that there is a distinctively communitarian rationale for wanting to limit socioeconomic inequality—namely, that extreme inequality undermines civic participation and the sense of community shared by members of the broader society. By promoting communities that are segregated along socioeconomic lines, extreme inequality weakens relations among the different groups that make up the community of communities, undermines concern for the common good, and weakens civil society and social solidarity. At the end of the article, I discuss how much inequality communitarians should accept and under what conditions.

My discussion is limited to the instrumental consequences of socioeconomic inequality and does not refer to its implications for social justice, although the latter is clearly important for communitarian theory. In addition, the examples I will draw on are taken from the United States, thus limiting the extent to which broader generalizations may be drawn. However, this article should have at least some implications for other advanced (or "modern") societies.

**Inequality and Communitarianism's Core Concerns**

Communitarianism differs from the conventional ideologies of both the right and the left in that it does not begin with an a priori set of assumptions about
the role that socioeconomic inequality plays or ought to play in society. This lack of a clear a priori position on inequality can be viewed as a weakness of communitarian theory, and various critics have not been reticent to make this point. But viewed in a different light, this situation is merely a matter of focus and emphasis. In terms of setting priorities, communitarianism has tended to address those questions that are foundational to its core concerns, such as how to develop a sound conception of morality, what role group identification (including the role of race and ethnicity) plays in social harmony or conflict, and how to achieve a balance between individual liberty and social order in modern society. This is more than a full plate, and it is too much to expect that any theory or perspective can cover everything at once.

I would, however, agree that, at least until recently, communitarians have tended to assume, even if they don’t explicitly state, that American society has been sufficiently equal, both in terms of opportunity and outcomes, to allow for the development of strong, vital communities. For communitarians the chief threat to community in American society has not been class conflict or an excessive degree of socioeconomic inequality, but an excess of atomistic individualism, whether based on a hyperactive concern with individual liberty or an obsession with the pursuit of personal pleasure. The communitarian project has mainly concerned itself with questions concerning the relationship between “autonomy and order,” of how to achieve a balance between the pursuit of individual self-interest and sustenance of the common good. Neither autonomy nor order necessarily involves a primary concern with socioeconomic relations as long as the latter are sufficiently benign that they do not undermine either autonomy or order or both. Through the 1970s or so, it could be argued with some justification that American society was “equal enough” (or at least moving in the right direction) to allow the question of socioeconomic inequality to be set aside as a central focus of communitarian attention. This assumption of “equal enough” has become untenable in the face of what appears to be a trend toward increasing socioeconomic inequality, and it is now incumbent on communitarians to squarely address the question of socioeconomic inequality.

**Etzioni’s “Next” Step: Limiting Inequality**

In his recent book, *Next*, Amitai Etzioni formulates several proposals for socioeconomic policy reform. These proposals represent the clearest statement to date of a distinctly communitarian set of socioeconomic policies. His proposals include guaranteeing a “rich basic minimum standard of living” for all people, irrespective of their conduct, that includes shelter, clothing, food,
and basic health care. Etzioni also proposes a limited form of guaranteed employment, with the understanding that a labor market stimulated by a growing economy is the best way to provide jobs, but absent this "community jobs [should be made] available for all those needing work." Most germane to the topic of this article, Etzioni argues that current levels of socioeconomic inequality are too high, and need to be reduced. He contends that in order to achieve a society that is a "community of communities," the economic distance between the rich and poor cannot be allowed to grow to too great a level:

If some members of a community are increasingly distanced from the standard of living of most other members, they will lose contact with the rest of the community. The more those in charge of private and public institutions lead lives of hyperaffluence—replete with gated communities and estates, chauffeured limousines, servants, and personal trainers—the less in touch they are with other community members. Such isolation not only frays social bonds and insulates privileged people from the moral cultures of the community, but it also blinds them to the realities of the lives of their fellow citizens.

Here, Etzioni outlines distinctively communitarian reasons for wanting to limit inequality, and his policy proposals give substance to this prescription. The purpose of this article is to elaborate on the communitarian position on socioeconomic inequality. To begin with, I will explore the implications of some research on social networks, religious participation, and residential housing patterns. This research points consistently to a variety of negative effects of socioeconomic inequality on civic participation and community.

**Social Networks and Inequality**

The pattern of associations that connect individuals to one another and to larger social circles is a fundamental building block of community. Sociological research into the nature of social networks over the past two decades or so, especially looking at the relationship between social networks and social structural variables, provides a glimpse into how socioeconomic factors can encourage or obstruct the development of affiliative associations and hence community. An individual's social network includes some combination of ties to the immediate family and other kin, friends and other close associates, and people with whom relationships are less intimate. In general, each type of network tie offers some advantages, but extremes in any one category appear to be detrimental to the formation of healthy community ties. For example, strong family ties may provide what Christopher Lasch described as a
"haven in a heartless world," offering individuals succor, moral and even material support not readily available elsewhere. Communitarians often point to strong families as the foundation of strong communities. At the same time, an overly heavy reliance on kin to the exclusion of other types of ties can lead to isolation from the wider community, with a concomitant emphasis on caring about and trusting only one’s family. For example, Edward Banfield provides a stark portrait of “amoral familialism” in his description of the social life of southern Italian peasants. At the other extreme, a tendency to restrict one’s social ties exclusively to impersonal relationships with strangers may, in terms of developing a strong sense of community, be no different in effect from the social isolation of the hermit. Without intimate relationships, people become in reality the “unencumbered selves” that Michael Sandel criticizes Rawls for postulating in theory.

The pertinent question here is how social structure, specifically patterns of socioeconomic inequality, is related to the characteristics of personal social networks. The relevant empirical findings are several. First, sociological research supports the commonsense notion that people generally tend to associate with others with whom they share basic social characteristics—a tendency that social scientists refer to as “homophily.” In addition, and not too surprisingly, researchers have found that the further the social distance between people—as measured by differences in education, income, and occupation—the less frequent and strong their social network connections with one another are. Indeed, there appears to be persuasive empirical evidence that socioeconomic status exerts a variety of distinctive effects on the patterns of social ties that individuals establish and maintain. For example, using data from the General Social Survey, David Marsden reports that more educated people tend to have larger social networks overall, with a lower proportion of kin in “confiding networks” consisting of people with whom “important matters” are discussed. Marsden also notes that more educated people tend to have less “dense” confiding networks, meaning that fewer of those they name as friends are in turn associated with one another, and that the networks of people with more years of formal education are more varied in terms of sex and age. However, the social networks of people at the high and low extremes of socioeconomic status have a greater tendency to be closed off from wider social circles of relationships—in other words, they have a higher tendency toward so-called inbreeding. Marsden concludes that “occupational groups at the extremes of the status distribution have the highest tendencies toward inbreeding, while groups in the middle of the distribution have positive, but smaller, tendencies to confine their relations to others within their group.”
Mark Granovetter’s work in social network research reveals that “weak ties,” consisting of acquaintances, friends-of-friends, and other similar social connections, often provide valuable information and contacts that facilitate activities such as learning about job openings, finding housing, and, I would add, accessing various opportunities for civic participation. Weak ties, Granovetter insists, are “indispensable to individuals,” and foster social integration rather than inducing greater alienation. The inference I draw from this is that smaller, more inbred social networks at the lower reaches of the socioeconomic strata also lead to fewer and less extensive weak ties, and form part of a larger pattern of social and economic isolation in urban ghettos described by William Julius Wilson in *The Truly Disadvantaged* and other writings.

Putting together these and other findings from the social network research literature, we can construct a rough picture of what sorts of socioeconomic relations conduce toward the highest levels of individual participation in community. Holding other factors constant, people who are well-educated, not too dissimilar from other community members in terms of socioeconomic status, and not at either extreme of socioeconomic status will tend to have social networks that are wider, less inbred, and therefore most favorable to community participation. Likewise, persons who would tend to be most at risk of social isolation are those with little or no formal education and with low socioeconomic status, those whose social networks therefore tend to be restricted to kin or otherwise have a high degree of inbreeding. These are also persons who would tend to have few or no “weak ties” linking them to the wider society. These characteristics comprise a fairly accurate portrait of the impoverished “underclass” and describe a pattern also consistent with the contemporary European conception of the poor as “les exclus” (the excluded).

Those among the upper stratum of society appear to share with the poor the risk factors for social isolation that stem from highly inbred social networks, and indeed the wealthy’s experience of “community” may be limited due to their lack of social interaction with a broad cross section of society, but their situation is quite different from that of the poor. The upper strata do not experience the same kind of negative consequences as the poor in finding out about a job, a house to rent or buy, or other sorts of benefits that wider, less inbred social networks confer.

While social isolation often creates personal problems for poor individuals, it also creates problems for the society as a whole. The atomization of society into groups segregated according to socioeconomic status limits opportunities for participation in the wider society and weakens the degree to which the larger society can be considered a community.
Religious Participation

Communitarians have been understandably interested in the role of faith-based organizations as one of the pillars of civil society. Obviously, the role that religious groups play in defining core values and behavioral norms, and the extent to which religious congregations serve to bond people together in worship and often collective action, makes them a key type of community from a communitarian perspective. The relationship between religion and socioeconomic inequality may not be clear at first blush, at least to those unfamiliar with the literature on the sociology of religion. Studies of religious participation leave little doubt that the socioeconomic profiles of churches reflect existing patterns of societal inequality. For example, based on a large-scale study of religious participation, one researcher concluded that “People meet together for worship within the basic sociological groupings into which they are born” (emphasis added). Two other researchers concluded that religious congregations tend to be highly “internally homogeneous,” and that “strong” religions help to create both “distinctive networks” and clearly delineated boundaries separating the congregation from others.

Religious congregations both mirror and focus the inequalities of the wider society. From a communitarian standpoint, religion’s positive contribution to fostering a stronger “community of communities” is undermined by the extent to which religious congregations tend to structure themselves along existing lines of socioeconomic stratification. This stratification is in turn reinforced by what one student of the sociology of religion terms the “amazing class segregation” of religious congregations. The lesson seems to be that the extent to which participation in organized religion offers opportunities for wider civic engagement depends to a significant degree on one’s place in the socioeconomic hierarchy. Middle-class congregations will tend to promote participation in the broader society while upper- and lower-class congregations will tend to be more isolated. Extreme inequality isolates more people.

Residential Housing and “Neighborhood”

“Neighborhood,” yet another building block of community, appears to defy precise definition as a concept, and its usage varies according to whether one is speaking about an urban center, suburb, or rural setting. However, there is no doubt that where one lives in relation to others structures communal social relations. Moreover, the social identification of a person’s place of residence is imbued with powerful significance. Indeed, one observer goes so far as to assert: “The single most powerful expression of social status may be one’s address.”
Communitarians have rightly paid considerable attention to the implications of racial segregation in housing in the United States. Less conspicuous in discussions of residential housing patterns, however, are the purely socioeconomic factors that affect, for better or worse, the building of community. While it is true that a host of factors (e.g., discrimination, restrictive mortgage lending practices, zoning regulations, and public housing policies) serve to create or reinforce ethnic or racial boundaries delimiting "neighborhoods," housing patterns are mostly the predictable outcome of *market forces*. Individuals may exercise some choice in selecting a geographical location to live in, but such choices are bounded on the upper end by how much they can afford to pay. Persons of upper- or upper-middle-class status are free to elect to reside in a low-income or working-class neighborhood, but for obvious reasons they do not often do so. More importantly, the obverse is certainly not true: low-income, unskilled, or unemployed workers cannot decide to move up (or, in the case of American suburbs, "out") to even middle-class housing, much less to desirable upper- or upper-middle-class neighborhoods. The asymmetrical nature of constrained choices in the housing market, coupled with the great significance of where one lives both as a marker of social status and a crucial factor in determining access to social goods such as desirable schools, high quality public services, and a low crime rate, tends to produce patterns of residential housing that are relatively homogeneous in terms of social class—like social networks, like religious congregations. Thus, the role of "neighborhood" as an instrument for community participation is constrained by existing patterns of socioeconomic inequality.

The tendency for neighborhoods to reflect underlying socioeconomic forces in the housing market may not in and of itself be a problem for the formation of community at the neighborhood level. Neighborhoods segregated by socioeconomic status may be able to form strong communities. However, extremes of socioeconomic inequality produce housing patterns that tend to limit participation in the wider society, just as social networks and religious congregations affected by extreme inequality do. At the lowest socioeconomic strata, individuals are often trapped in enclaves where living conditions are poor, public services substandard or nonexistent, access to educational and employment opportunities severely constrained, and a host of other destructive conditions present. In many instances, socioeconomic barriers are reinforced by racial or ethnic discrimination and their counterpart, residential housing segregated by race or ethnicity. At the opposite end of the spectrum, the most affluent individuals display an increasing tendency to withdraw to luxury apartments where access is closely controlled by doormen or to estates or so-called gated communities in the suburbs or the country-
side. Whatever the motivation, the end result of housing with elevated levels of segregation along socioeconomic lines is the same: a serious undermining of the potential for the development of the kind of communities and participation in civil society to which communitarianism aspires.

Inequality in a Communitarian Society

Thus far my discussion of social networks, religious congregations, and housing patterns supports Etzioni’s contention that “limiting inequality” is critical to realizing the communitarian vision of the good society. The question remains, however, of how far efforts to limit socioeconomic inequality need to go in order to achieve this vision.

How much socioeconomic equality would communitarians prefer under an idealized set of circumstances? Or, stated somewhat differently, what sorts of socioeconomic distinctions would communitarianism prescribe according to its core principles for a communitarian society built from scratch? Although it is not possible to describe in detail what such a society would look like, I would like to suggest a few key principles of socioeconomic stratification that can be derived from communitarian theory.

First, absolute equality of outcomes is out of the question. From a communitarian point of view, imposing absolute equality makes as little sense as accepting grossly unequal outcomes based on market dynamics. Indeed, one is probably as detrimental to the formation of strong and healthy communities as the other. Communities, like wider societies, need to recognize and reward individuals who are creative, hard-working, and who exert themselves beyond the bare minimum required. Although in some instances community recognition may be achieved through symbolic rather than monetary means—for example, a public memorial or a medal—a community in which an unskilled worker earns as much as a physician (roughly the situation that prevailed in the former USSR, where physicians were disproportionately women) would be as unworkable on communitarian grounds as a community in which a twenty-year-old website programmer makes many times the salary of a caregiver in a nursing home or childcare center (a situation that prevailed in the United States in the late 1990s at the height of the Internet mania). In the first case, the functional virtues of the marketplace are denied; in the second case, the market is allowed to play havoc with reasonable societal priorities.

Second, under a communitarian approach, individual efforts should be encouraged and rewarded according to some measure of contribution to the common good, through the marketplace where this occurs but by non-market
means, including subsidies, where needed. Setting aside the challenging ques-
tion of exactly how such a metric could be formulated and applied, I ask only
that we accept the possibility that with sufficient thought and discussion
such a thing would be possible. The operative principle here would be to sup-
plement market-based incentives and rewards with ones based on some cal-
culus of contributions to the common good, recognizing that markets are not
the sole or ultimate standard by which social value can be measured.

Third, recognizing that some types of economic activities are actively
detrimental to the common good, an idealized communitarian system would
contain a structure of disincentives to counter areas where the marketplace
confers rewards upon (or is neutral to) activities that are destructive of the
common social good. Industrial polluters, manufacturers of products harm-
ful to health, and purveyors of gratuitously violent films, to cite just a few
obvious examples, should expect to have their business activities heavily
taxed and/or tightly regulated. It is important to note that taxing or regu-
lating such behavior need not entail heavy-handed censorship or the arbit-
rary exercise of moral authoritarianism, but it should involve making judg-
ments on grounds other than exclusively market-based criteria. For
example, a communitarian principle of differential economic reward would
recognize that a dedicated and talented high school teacher is inherently
worth more to society than a marketing executive employed by a tobacco
company.

As a condition of minimizing social barriers and maximizing opportuni-
ties for the development of shared values, the idealized picture of commu-
nitarian society I envision would be free from invidious extremes of indi-
vidual wealth and poverty. Instead it would be characterized by a social
structure—or habitus, to use Pierre Bourdieu’s apt terminology—that offers
broad inclusion rather than sharp distinctions based on socioeconomic sta-
tus, and that explicitly includes factors beyond pure market dynamics as the
basis for differential rewards. Such a social structure might, in fact, look
quite a lot like the “middle-class society” that appears in popular American
mythology and in the descriptions of many observers of the American scene
going back to Tocqueville. There appears to be strong empirical support for
the notion that the closer one gets to “middle class” status (broadly con-
ceived) the greater the affinity for a commonly shared set of cores values.
For example, Alan Wolfe concludes the United States is “one nation, after
all,” but his study of the core values Americans hold looks only at the mid-
dle strata of society. Wolfe’s conclusion offers both hope and, more impor-
tant, guidance to communitarians concerning the possible benefits of
greater socioeconomic equality.
What Can Be Done?

The forces that have produced existing, unacceptable levels of socioeconomic inequality in the United States are immensely powerful and deeply rooted. The experience of recent decades shows the raw power of markets, especially in an increasingly globalized economy that drives down wages in manufacturing, renders many other jobs obsolete, and yet at the same time provides rich rewards for a privileged few. The dominant political view in American politics, which with a few exceptions cuts across party lines, has supported rather than challenged the primacy of market economics. Moreover, as this article has described, patterns of social relations tend to reflect, and even magnify, underlying socioeconomic disparities.

While the task of limiting, or even reducing, inequality presents formidable challenges that I can barely begin to address here, I will suggest a few constructive steps that can be taken. We might begin by recognizing that certain public policies are part of the problem. For example, tax cuts that primarily benefit upper-income brackets serve to exacerbate already severe levels of inequality, and should be categorically opposed. Similarly, more needs to be done to buffer the impact of market forces on low-income, working families. The Earned Income Tax Credit (EITC) is a good example of such a policy. EITC should be expanded and, more importantly, better publicized and made easier for people with lower levels of formal education to access. At the community level, more can be done to pursue initiatives that include people from diverse socioeconomic backgrounds. One example is interfaith councils that bring together the leaders and activist members of a broad range of religious congregations and community organizations to engage in dialogues and formulate initiatives. Another example is neighborhood associations that seek out and forge alliances with one another on issues that have broad community impact. Although probably not much can be done to address patterns of socioeconomic segregation in neighborhoods themselves, cooperation among diverse neighborhood associations on problems of shared concern may make some progress toward breaking down social barriers.

The Ties That Bind

Andrew Carnegie, in his day one of America's richest men, observed that the "problem of our age is the proper administration of wealth, so that the ties of brotherhood may still bind together the rich and poor in harmonious relationship." Achieving such a "harmonious relationship" in the United States consistent with communitarian precepts and ideals requires a substantial narrowing of
the distance between the rich and poor. A reduction in baseline socioeconomic inequality would have the benefits of extending social networks and of offering wider opportunities for civic engagement via religious groups and residential neighborhoods that reach out to include a wide range of citizens rather than walling off citizens by socioeconomic status. As important as limiting socioeconomic inequality may be, however, it is only one part of the larger task of building strong and healthy communities—a necessary but not sufficient condition for building a society based on communitarian principles. In addition, it is important to recognize that there may be dimensions of invidious inequality grounded in social divisions independent of the misdistribution of economic resources, something that Mickey Kaus suggests in *The End of Equality*. These and many other related issues remain open to future discussion.

It is important to guard against utopian speculation in attempting to envision what a fully realized system of communitarian socioeconomic stratification might look like, but there is little doubt that communitarian principles would produce a quite different, and more desirable, distribution of rewards than is currently the case in the United States.
CHAPTER TWELVE

Americans as Communitarians: An Empirical Study

David Karp

At the end of 1996, The Communitarian Network conducted a national poll, using a random sample of American adults, measuring support for both general and specific communitarian positions. This first empirical study also provides a baseline for future studies in that it will allow one to determine if communitarian ideas are gaining or losing support over time, as the efforts of The Communitarian Network and others to spread communitarian ideals continue.

The heart of the study rests on an intellectual, normative, and political assumption: that when studying which virtues a society upholds, what its core values are, and which institutions and policies best convey these virtues and values, the old dichotomy between liberals and conservatives no longer prevails. The old dichotomy focuses on the respective role of the state versus that of the private economy; the new focus is on normative commitments and moral values—on what sometimes is called culture. Here the most important distinction, at the foundation of the study at hand, is among those who express great concern for individual autonomy—individualists (which includes libertarians, laissez-faire conservatives, and civil libertarians); those who seek more social order, based on strong enforcement of moral norms by the state if necessary—social conservatives; and those who attempt to reconcile the two—the communitarians. Again, this typology is based on what people call “cultural” or “moral” issues; liberals are usually identified as people concerned with economic and social issues, and hence they are not included in the typology.
Groups that are charted at opposite sides of the spectrum in the older paradigm are grouped together here. Civil libertarians, traditionally classified as left, are coupled with laissez-faire conservatives and libertarians, who are traditionally classified as right, because all of these groups share a preoccupation with liberty. Social conservatives, traditionally lumped with laissez-faire conservatives, are here considered a group unto themselves in order to emphasize their concern with order and their willingness to rely on the government to impose this order by, for example, enforcing bans on abortion and homosexual activities and instituting prayer in schools. Communitarians, interested in minimizing the antagonism between liberty and order, focus on voluntary compliance with mores. (This new three-way typology and the rationale behind it is discussed at length in Amitai Etzioni’s new book, The New Golden Rule: Community and Morality in a Democratic Society.)

**Ideological Preference**

Survey results show a fairly high degree of ideological consistency among the sample. More than 80 percent of the respondents consistently adhered to either individualist, communitarian, or social conservative positions, indicating that this tripartite division is a useful classification of contemporary public philosophy. ("Consistent" is defined as the respondent holding one position more often than either of the other positions and for at least six of the items.)

Fourteen of the fifteen substantive items in the survey were designed to distinguish communitarian from individualist and social conservative positions. As a whole, 58 percent of those surveyed showed a clear communitarian preference. Of these communitarians, nearly half (48 percent) showed a secondary preference for social conservative positions, that is, when they did not support communitarian positions, they tended to choose social conservative positions. Thirty-nine percent of the communitarians held a secondary preference for individualist positions and the remaining 13 percent were evenly split in their secondary preference.

One substantive item of the survey did not distinguish communitarians, individualists, and social conservatives, but was included in order to test the communitarian claim that Americans tend to believe social problems have a moral or "cultural" basis. Specifically, when we asked people what they thought the main source of our country’s social problems was, 45 percent of Americans believed the source was “moral,” 28 percent believed it was “political,” and 17 percent believed it was “economic.” (It might be of interest to note that this was the only question in which a significant portion of the
respondents volunteered that the provided alternatives did not satisfy them; 6 percent suggested that the source was elsewhere and 4 percent indicated that they did not know the answer.)

A Sense of Balance

One main question was aimed at tapping the key differentiating issues among the three groups. Fifteen percent of the respondents supported the individualist position that "we should vigilantly protect our rights against the intrusion of government." Twenty-six percent supported the social conservative position that "in an age of moral decay, Americans need most to live up to their social responsibilities." Fifty-four percent embraced the communitarian position that "we should carefully balance our individual rights and social responsibilities."

When we asked "Good citizenship means most of all . . .," predominant support was essentially split between a more communitarian position, "contributing to one's community" (34.3 percent), and the more social conservative position, "obeying the law" (34.0 percent). Slightly less support (27 percent) was given to the individualist position, "providing for oneself and one's family."

Moral Enforcement—Encourage or Legislate?

Several questions were directed at finding out Americans' viewpoints about the government's role in fostering virtue. When asked directly about the government's role in influencing morality, the plurality of Americans (45 percent) chose the individualist position that the government should "not get involved because morality is everyone's personal business." Thirty-five percent favored the communitarian response, in which the government should "discourage, but not prohibit immoral acts." Fifteen percent favored the social conservative response in which the government should "prohibit immoral acts."

As asked specifically about the role of the government in legislative changes that might affect the rate of divorce, respondents overwhelmingly supported the individualist position of "leaving it to the couple themselves to decide." Twenty percent favored the communitarian view of "not changing the law, but discouraging divorce," and 15 percent favored the conservative view of "changing the law to make divorce more difficult." Both this and the previous item demonstrate that there is still significant support for the individualist position. Respondents tended toward nonintervention, at least in matters that affect them directly. The social conservative position, that the govern-
ment ought to play a direct role in enforcing morality, received the least sup-
port.

Character Education

Two questions spoke to the general issue of promoting virtue by specifically addressing character education. The first asked about the appropriate role of public schools in this area. Most respondents (63 percent) selected the communitarian response, that public schools should “teach only the values we all share.” Twenty-two percent took the conservative position that they should “teach religious values.” Here support for the individualist position, that they should “not teach values at all,” was the smallest—only 10 percent.

In another question, when Americans were asked about high school community service programs, 54 percent took the communitarian position that high schools should “sponsor community service programs but not require them.” Thirty-five percent supported the conservative position that high schools should “sponsor and require community service for graduation.” Only 8 percent took the individualist position that high schools should “not sponsor community service programs.” The pattern for both of these questions was identical. Most Americans favored moral education, but opposed requiring it. Few, however, would dismiss it out of hand.

The Family

The study sought to assess Americans’ views of various models of the family. When asked, “What kind of family structure do you think would be best for kids?” most respondents (58 percent) supported the communitarian position of having “both parents sharing responsibility for chores and child-raising.” Twenty-four percent supported the conservative position of having the “mother at home while the father works.” And 17 percent supported the nonjudgmental individualist position that “there is no one best structure.”

Social Order

Schools and families are supposed to bring up young people who internalize the values of their society. When these efforts fail, the question arises of how social order is to be maintained. Three items of the survey directly addressed this issue. When asked, with regard to police, what our top priority should be, substantial support (62 percent) was given to the communitarian position, “monitoring police closely, but giving them more leeway.” Only 18 percent
supported the conservative view of “giving police more leeway in catching criminals,” and 17 percent supported the individualist position emphasizing “to protect citizens from police abuse.”

Another item also contrasted civic protections and crime control.

Here when asked, “Which of the following statements is closest to your view regarding random drug testing for illegal drug use?” support again was highest (48 percent) for the communitarian position, which holds that “the government should be able to conduct random drug tests only for people who have jobs that put others’ lives at risk (such as bus drivers and pilots).” Thirty-five percent favored the conservative position that “the government should be able to conduct random drug tests on anyone.” Only 15 percent endorsed the individualist position that “the government shouldn’t be able to conduct them—random drug testing is an unacceptable violation of privacy.”

In the final social order item, the communitarian position received less support. When asked about the best way to deal with prostitution, most respondents (42 percent) favored the conservative position that the best way is “longer sentences for prostitutes and their customers.” Twenty-six percent endorsed the individualist stance that the best way is to “legalize prostitution.” The communitarian position, which addresses the problem by enhancing informal social control, obtained the least support (25 percent). In this case, the alternative suggested that the best way is to “publish customers’ names.”

The low number for the communitarian response may be somewhat misleading. The communitarian response is not commonly suggested, especially in contrast to the other solutions. Some communitarians, for example, James Fishkin in Democracy and Deliberation, argue that many communitarian positions require thoughtful consideration because they are neither self-interested nor intuitive. Such may be the case in this instance, and future studies ought to contrast immediate responses and deliberative responses.

**Economic Welfare**

Two items of the survey are a slight variation on the standard tripartite division of the others. They distinguish communitarians from individualists and from political liberals. Both of these items address issues of economic welfare. When asked, “Which comes closest to your view on the poor?” the communitarian view that the “local community organizations should have the primary role in taking care of them” received the strongest support (48 percent). The liberal position that “the government should have the primary role in
taking care of them” received support from 22 percent of the sample, as did the individualist position that “the poor must learn to make it on their own.”

The second item addressed the extent to which the private sector should take responsibility for social problems. Most respondents (48 percent) took the communitarian view that “corporations should be encouraged to provide some goods or services to their communities at no cost.” The liberal response that “corporations should be required by law to provide some goods or services to their communities at no cost” received significant support (29 percent). The least support (19 percent) went to the individualist position that “corporations should focus on making products and profit.”

The Community of Communities

In one of its position papers, The Communitarian Network argues in favor of a new approach to America’s growing diversity. The position rejects the notions of a melting pot (which entails the melting away of ethnic traditions and subgroup cultures), but also cautions against unbounded tribalism. It calls for pluralism within unity; for a community of communities in which the subgroups accept certain shared values and institutions but otherwise maintain their distinct natures. We asked our fellow citizens what they thought about the new position. Thirty-eight percent agreed with the communitarian position that “people of different racial, ethnic, and other backgrounds should be encouraged to maintain separate identities, but also share a commitment to America as a nation.” Ten percent endorsed the individualist position, which encourages Americans to “maintain separate identities, that is, maintain diversity.” The strongest support (50 percent) was for the social conservative position that Americans should “be Americans, period.”

Demographics

With every increase in level of education, support for communitarian ideas increased while support for social conservative ideas decreased. (Individualist support came from all levels of education.) For instance, 46 percent of the college graduates polled believed that contributing to the community was the essence of good citizenship; only 35 percent of the high school graduates believed this. In contrast, 39 percent of the high school graduates thought citizenship is grounded in obedience to the law while only 12 percent of the college graduates took this view. Income, traditionally correlated with education, produces similar results: those with higher earnings are more communitarian and less conservative than those with lower earnings.
Individualists were more likely to be male than female (by almost 2 to 1). Communitarians and social conservatives were more likely to be female, but the differences between the sexes were not as great as with the differences in education and income. Finally, individualists tended to be young people, communitarians tended to be baby-boomers, while social conservatives tended to be older folks. For instance, 44 percent of the baby-boomers (ages 34-54) were dedicated communitarians compared to only 32 percent of the younger cohort (ages 18-33) and 35 percent of the older cohort (ages 55 and up).

Conclusion

In sum, the poll demonstrated significant support for numerous communitarian positions, while the rest of the public seems to be somewhat more socially conservative than individualistic on several issues (except in the case of legislating morality). The fact that many of those who are not primarily communitarian hold some communitarian positions suggests that continued educational efforts may further expand the communitarian camp.
PART THREE

COMMUNITY
CHAPTER THIRTEEN

Developing Civil Society: Can the Workplace Replace Bowling?

Alan Wolfe

Treatments of suburban life in the 1950s featured a sharp contrast between the world of work and the world of community. The former, populated by men, emphasized hierarchy, obedience, material rewards, and formal procedures, while the latter, dominated by women, was characterized by voluntarism, friendships, talk, leisure, and—at least in the account of feminist social critic Betty Friedan—great unhappiness. Now that the proverbial commuter railroad platform is crowded not only with men but with women, and now that the trains run earlier in the morning and later in the evening to accommodate the frenetic work schedules of a more competitive capitalism, the ties of trust and mutual dependence upon which communities rely have been as radically transformed as company loyalties and employer-employee relations.

In my recent book, One Nation After All, I report on interviews with 200 Americans around the country. The interviews dealt with moral matters that are at the heart of contemporary concerns. As they talked to us about their perceptions of their suburban communities, middle-class Americans painted portraits of their community ties that give strong support to the idea that America is depleting its “social capital.” Here is a sprinkling of their comments:

“It’s almost as if we set up our own islands. It’s a street full of islands. And, you know, we would love to have a great relationship and great neighbors and that sort of thing, but it has just never evolved.”

“We don’t know who those people are or how they spend their time. We pass them on the street. We talk across the fence, but socially we don’t do things with our neighbors to speak of.”

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“People are a lot more isolated.”
“I’ve been living eight years over here and I still don’t know my neighbor.”
“There’s absolutely no sense of community here whatsoever. I’ve never found it anywhere.”
“Strangely enough, I am unbelievably and sad disconnected from the community that I live in. Do I identify with Brookline? I do not.”
“The way the suburbs are built today, I don’t think there’s a sense of backyard barbecue communities.”

From comments such as these, America’s suburban communities do seem to be chilly places. Devoid of people during the day, they are filled with people sitting behind television or computer screens in the evenings, too self-preoccupied to live a Tocquevillian life of civic engagement.

Nor is it difficult for the middle-class Americans to find a cause for the lack of community they feel: everyone is working too hard. “People just have less time,” said Rachel Benjamin, a Brookline, Massachusetts, dentist. “When you look at the number of hours people spend at work now, the whole issue of living in the suburbs has cut time off of people’s days. Having dual career families cuts time out of the day.” Asked why in his opinion communities seem less active, Derek Langer of Cobb County, Georgia, said, “I think the big companies transplanting people have something to do with that... A lot of executives are moved around the country. [People] were transferred every two years, no matter what. When two years came around, time to go somewhere else.” If there has been an eclipse of community, the cause is the workplace. So great have become the demands of the job that the obligations of the neighborhood have had to give way.

Even among more traditional families in which women remain at home during the day, a deep feeling exists that life has simply become too busy to accommodate a strong sense of community. Ashley George of DeKalb County, Georgia, a homemaker, would like to interact more with her neighbors, but nobody, including herself, has the time. Cobb County’s Judy Vogel remembers enough of her college sociology to offer us a short course in Durkheim’s theory of anomie. Although she, too, is a homemaker, she feels special concern for her female neighbors who hold jobs: “There’s nobody for backup. You’re working. You’re expected to work. Your child has an ear infection. There isn’t a grandmother or an aunt or a cousin to call.” That’s why, according to her reading of the situation, “people are more isolated... you’re into your big house with the door closed, and you’re not out there with your neighbors.” Suburban housewives find themselves facing demands on their time little different from the workaholic schedules of their husbands, and something has to give. Brookline’s Alexander Onafri, who does work, won-
orders "how volunteer organizations in communities survive" these days now that so many women, who once staffed them, are in paying jobs.

**Workplace to the Rescue?**

In fact, though, membership figures show that Americans are still "joiners." Moreover, the organizations to which they belong still tend to be civic and religious rather than purely social. But by themselves, membership figures cannot answer the question of whether our respondents are less civically active than similar suburbanites a generation ago. Certainly, many of those with whom we spoke, by emphasizing how little sense of community participation they felt around them, were indicating support for the idea that some thinning out of American social life has taken place. Still, there is more to look at before we can conclude that America's social capital has been depleted to seriously low levels. Our figures suggest that work-related organizations are more common in American middle-class life than social and fraternal ones. To the degree that we look at the place in which people live for evidence of the decline of social capital, rather than where they work, we may be looking in the wrong place.

One of the sharpest criticisms made of Robert Putnam's "Bowling Alone" thesis is that it idealized a world dominated by men and left the impression that the decision of so many women to enter the workforce was responsible for the decline of civic involvement in the community. Putnam, in subsequent formulations of his thesis, responded by suggesting that no verdict could be given to the question of whether working women were responsible for declining social capital. Our interviews suggest that because women are working, they are not quite as available for civic duties in their communities as they once were. But, at the same time, like men, they are more available to engage in civic activity at work. Jeremy Toole of Cobb County thinks that these days people get about 90 percent of their social connections from the workplace. Most of his friends come from the office, and he thinks his wife may be jealous of that fact. Then he pauses before adding that she, too, works and 90 percent of her friends come from her job.

For every middle-class American woman who may not be involved in a local organization, there are many more who are involved in their workplace settings. "I think people's lives revolve around their work. They make their friends at work, they do their community service through work," says Diana Hamilton of Sand Springs, Oklahoma. Elizabeth Tyler no longer feels part of Brookline because its liberal politics conflicts with her increasingly conservative sensibilities. But, she adds, "I feel very much like I belong to a community of work. I
very much belong to a community with my own office, with my own company, within my own industry, and I am very much involved in community affairs in Cambridge, where my office is, and in Boston.”

Examples of work-based civic groups are everywhere. Groups like City Year and Read San Diego work with employers to find ways in which employees can take a day off work to become involved in tutoring inner-city children or cleaning vacant lots. Caroline Carlson of Brookline was “flabbergasted” from her City Year experience to learn what it was like to live in a neighborhood without parks, while Diane Sveressen just thinks there has to be somebody to offer reading opportunities to those who have too few of them.

The Hudson Institute’s John Clark has written that “although most discussions of civic engagement, eroding social capital, failing trust, and so on refer in passing to the workplace, no one examines closely the relationship between work and community.” While we did not observe people at work at the close level he recommends, we did find that workplace involvement has to be taken into account in any effort to portray the state of civic America.

The Office versus the PTA

Despite the fact that social and civic engagement continues to flourish in America, if often in places different from where people live, there is reason to question whether the quality of ties made at the workplace can be compared with those we generally associate with the local community. Different spheres of social life tend to be associated with different kinds of social relationships: family ties reflect a level of intimacy, and can promote a level of anger, that we would never expect of ties between members of a parent-teacher organization. Of all the various kinds of dependencies we develop with each other, economic ties have always been the most suspect from an ethical or moral point of view. Because we form such ties to promote the highly secular activities of getting and spending, friendships and connections developed at work generally are assumed to have an instrumental character: we use people, and they use us, to solicit more business, advance our careers, sell more products, or demonstrate our popularity.

Economic ties are therefore often dismissed as not quite real, authentic, or genuine enough. This is a point that can be traced to the great theorist of capitalism, Adam Smith. In The Theory of Moral Sentiments, Smith pointed out that the patron-client relationships associated with feudalism, because they were based on necessity, could not be equated with friendship, a relationship that should be premised on sympathy. Although the implication of
Smith's point is that free-market relations will not be characterized by feudalistic necessity, a case could be made that modern capitalism requires that people give to their company, and to their coworkers, not only their physical labor but their emotional labor as well. If so, it follows that even if the decline of civil ties in the neighborhood is being compensated by new ties formed at work, the instrumental character of the latter cannot be an adequate substitute for the loss of the former.

This may well be true: our middle-class respondents thought of the social ties they developed at work in very instrumental terms. Jane Kates of Sand Springs, who is now a homemaker, is extremely down-to-earth and practical in her thoughts about her social contacts. "I think it depends on probably where you spend most of your time," she said. "When I worked, my friendships were work-related. When I quit working and started doing more schoolwork with the kids, my friendships became school-related. . . . I can see that as I progress through age here, that as I get into more volunteer things, that my friendships are formed around them." Shortly after we talked with her, we talked with Toni Cartwright, an administrative assistant. "I think most people get most of their socializing out of their work experience, just because it's a must situation. You have to go to work, and it's the only place you have a group of people." For these women, work is simply where they are, so, making the best of it, that is where they form their connections with others.

Brian Fischer, a regional sales vice president in Cobb County, was one of those who wondered whether such instrumental ties could ever be truly satisfactory. Asked where people form their most important social networks, he at first responded in a way typical of many with whom we spoke: "It used to be the family. And then to a lesser degree residential. But it has become business." This trend bothers him. He told us:

It has become watered down, because we have two categories of friends. We have real friends that you share stuff with, that you care about and will help. And you have all the other people that are friends. They're just people you know. We've kind of lost that . . . a real friend is someone that you bond with and you have a bond with two or three other people in the world. . . . We don't have hundreds of friends. You have hundreds of acquaintances that you call friends. . . . People don't connect over their lives anymore, people's lives are so transient that you connect for times and places. Now the question is: Does that diminish the relationship because it's on a temporary basis?

Mr. Fischer has clearly answered his own question: something has gone out of the world because so little is left in the world to make the kinds of truly meaningful ties that give life its depth and meaning.
One way to interpret Mr. Fischer’s comments is to suggest that the literature dealing with civic decline has tracked something important, but not necessarily in the right way: it is not the overall decline in group membership that is crucial—for, when added up properly, there may not be that much of a decline—but a change in the qualitative nature of those ties that matters. Active engagement in social and civic life is important, not as an end in itself, but because it expresses an altruistic desire to do something for others. If, instead, people are joining groups to do something for themselves—to win friends and influence people—then society could experience a rise in organization memberships and still be facing a situation of depleting social capital. Only a handful of our respondents, it turns out, indicated any particular attachment to self-help, twelve-step recovery groups, often pictured as exemplifying an obsession with the self. Still, the fact that, in spite of their organizational activities, so many of them believe that selfishness in America has increased suggests that, in their view of the world, the quality of the social ties they experience are not as rich as they ought to be. On the other hand, these are optimistic people who believe that whatever problems exist, a solution will be found.
CHAPTER FOURTEEN

Self-Sacrifice, Self-Fulfillment, and Mutuality: The Evolution of Marriage

Don Browning

Our intensifying national debate about marriage and the "divorce culture" is also, at least implicitly, a debate about models of marital love. Do we have a right to demand that marital love yield a high degree of personal fulfillment? And do spouses, as a corollary, have a right to terminate a marriage that fails to produce such personal satisfaction? Or is such an expectation inimical to stable marriages? Should young people rather be taught that marital love entails continual self-sacrifice? The divorce culture is often blamed on the prevalence of the personal fulfillment emphasis, while some of the most powerful reactions against the divorce culture—the Promise Keepers movement is an example—seem to fall back on the traditional, self-sacrifice theme.

Based on a new opinion survey, one thing seems clear: couples today perceive themselves as practicing a style of marital love quite different from that of their parents. While contemporary couples tend to see their parents as having emphasized self-sacrifice in marital love, most describe themselves as practicing a form of marital love that puts a greater emphasis on mutuality. Whether this perceived shift from self-sacrifice to mutuality bodes good or ill for marriage remains unclear. What is clear is that today's couples see themselves as approaching marital love in a different spirit from that of the past.

For our new book, From Culture Wars to Common Ground: Religion and the American Family Debate, my coauthors and I—Bonnie Miller McLemore, Pamela Couture, Bernie Lyon, and Robert Franklin—surveyed 1,019 Americans in cooperation with the George H. Gallup International Institute. These men and women were asked about their marriages and how they defined love
in a successful marriage. We gave them three different definitions of love to choose from: (1) the self-sacrifice option (love "means putting the needs and goals of your spouse and children ahead of your own"); (2) the self-fulfillment model (love "fulfills your personal needs and life goals"); and (3) the mutuality standard (love "means giving your spouse and children the same respect, affection, and help as you expect from them").

A clear majority (55 percent) of Americans said that love in a good marriage is best characterized by mutuality. But, our respondents perceived their parents as having approached marriage differently. When asked to characterize their mothers’ and fathers’ approach to marriage, less than 30 percent said their parents would have selected mutuality as the preferred style. Fifty-six percent thought their mothers would have selected self-sacrifice; 40 percent thought their fathers would have selected self-sacrifice, while 28 percent thought their fathers would have selected self-fulfillment.

Conflict, Cohabitation, Religion, and Gender

One may note that very few (5 percent) of our respondents chose the "self-fulfillment" option as best. But when people were asked which model of love they followed when in an actual conflict with an intimate partner, 13 percent chose the more individualistic view of love while only 45 percent chose mutuality and 28 percent self-sacrifice. People acknowledge, as one might expect, that in the heat of conflict they are more self-regarding than when considering relationships in the abstract.

There was one revealing exception to the overall pattern of the survey. Cohabitating, nonmarried respondents were far more inclined than married respondents to choose the self-fulfillment option, and far less inclined toward the self-sacrifice choice. Fifty-two percent of cohabiting individuals believed a good relationship correlates with mutuality, but only 17 percent believed self-sacrifice is important, while fully 21 percent were willing to say that love as self-fulfillment is best.

Overall scores in the survey varied somewhat according to age, education, income, marital status, religious experience, political convictions, and race. The young were slightly more inclined to emphasize mutuality and self-fulfillment than self-sacrifice. The more highly educated were also higher on mutuality.

There was also a somewhat predictable difference in emphasis between mainline and evangelical Protestant respondents. In situations of conflict with intimates, religious liberals were high on mutuality. Sixty-one percent of
Episcopalian and 49 percent of Presbyterians (both mainline denominations) elected mutuality. Only 13 percent of Episcopalian elected self-sacrifice as did only 18 percent of Presbyterians. On the other hand, Southern Baptists (the largest evangelical denomination) were less likely to choose mutuality and more likely to choose self-sacrifice than either religious liberals or the population as a whole. Thirty-nine percent of Southern Baptists preferred self-sacrifice in the heat of conflict, in contrast to 28 percent for the population as a whole.

Finally, women were significantly more likely than men to define ideal marital love in terms of mutuality and significantly less likely to opt for self-sacrifice. Sixty-one percent of women chose mutuality, in comparison to only 48 percent of men. Conversely, 44 percent of males linked self-sacrifice with a good marriage while only 33 percent of females made that connection. Among African-Americans, the gender gap was even more pronounced. Seventy-six percent of black women opted for mutuality, in contrast to a mere 33 percent of black men. Only 14 percent of black women saw self-sacrifice as ideal, in contrast with 48 percent of black men.

**Turn Back the Clock?**

What generalizations can we make about this data? While our data says nothing about how an earlier generation actually saw marriage, it does seem to show that today we perceive our model of marriage as changing—couples see themselves as emphasizing mutuality to a far greater degree than their parents did. To be sure, the preference for mutuality remains a function of gender (with women gravitating more to this definition than men), of income and education (with higher income and education individuals favoring mutuality more), and of political-religious orientation (mutuality is more popular among members of liberal, mainline religious denominations than among members of conservative evangelical ones).

Yet the growing consensus around mutuality suggests that efforts to beat back the divorce culture through a simple reassertion of older ideas of self-sacrifice may not meet with success in contemporary society. On the contrary, we seem to be in the process as a society of redefining our marriage culture with a new emphasis on mutuality. Although there is surely a place for self-sacrifice in marital love, it is best to conceive it as the extra effort needed to restore a relationship to mutuality.

The Promise Keepers movement might seem to represent an important exception to this trend. Their leadership stresses both traditional self-sacrifice and the role of the husband as the “spiritual leader” of the family—ideas that
might seem to part ways with the contemporary emphasis on mutuality. Significantly, however, nine out of ten attendees surveyed at the Promise Keepers October Washington rally told pollsters from the Washington Post that "husbands and wives should 'share equally' in doing the housework, disciplining the children, and 'making the big decisions.'" So even the members of this culturally conservative movement appear not unaffected by the move toward mutuality in the larger marriage culture. (This is true in spite of the persistent tendency of some leaders of Promise Keepers to designate men as the family member charged with the responsibility of making final decisions about what constitutes mutuality and fairness.)

The primary lesson is that our marriage culture is evolving—something that in our policy discussion and cultural debate we need to acknowledge. The task of overcoming the divorce culture and building a more healthy marriage culture should not simply attempt to turn back the clock on our ideas of marriage, but rather should build constructively on the ideal of mutuality that has become so central to our contemporary understanding of the marriage bond.
Chapter Fifteen

Peer Marriage

Pepper Schwartz

Our generation has been the first to witness the emergence of "partnership" or "peer" marriages on a large social scale. Such marriages differ from their traditional counterparts in at least four key respects: men and women in these relationships regard each other as full social equals; both pursue careers; partners share equal authority for financial and other decision making; and, not least important, husbands typically assume far greater responsibility for child rearing than in the past. Many of us—including much of the feminist movement, of which I have been a part—tend to regard these marriages as a major social breakthrough, the culmination of an arduous, generation-long effort to redefine women's roles and to secure for women the same freedom and dignity that society has traditionally accorded to men.

Yet in recent years conservatives, particularly the adherents of the "pro-family" or "family values" movement, have increasingly called for a rejection of the peer marriage ideal and a return by society as a whole to the traditional role-differentiated model. Bolstering their case is a significant body of traditional social theory arguing for the superior stability of the role-differentiated marriage, in which the husband serves as sole provider and main figure of authority, and the wife bears the lion's share of responsibilities for child rearing and day-to-day household maintenance.

Contemporary concerns with marital and family stability are certainly warranted. In a society with a 50 percent divorce rate—in which a host of social pathologies can be traced directly to havoc in fatherless or broken homes—policymakers and theorists are right to place a high priority on
measures aimed at keeping families intact. Yet it is far from self-evident that the road to greater marital stability lies in a return to tradition. Over the past generation, I would argue, broad changes in society—and in the expectations that men and women bring to the marital relationship—have undermined much of the original basis of the traditional model of marriage. In reality, as I will try to show here, peer marriage offers a new formula for family and marital stability that may be both more durable and better adapted to the demands of contemporary culture than the older form. New data from studies that I and others have conducted support the notion that peer marriages are at least as stable as traditional unions and may in the long run prove more resilient vis-à-vis the special social pressures that marriages confront today.

**Marital Stability and Marital Satisfaction**

There is a close connection between marital stability and happiness or satisfaction in marriage—in both practice and theory. Even the most hard-headed theorists of the traditional model—such as sociologist Talcott Parsons or economist Gary Becker—have invariably sought to reconcile their advocacy of gender-based role differentiation with the possibility of marital satisfaction. To justify the traditional division of labor in marriage purely on the basis of men’s and women’s different biological aptitudes, historical experience, or cultural training is, after all, not a difficult theoretical task. But to posit happiness and mutual satisfaction as the outcome of such a union is another matter.

This is not to say that happiness was or is impossible to achieve under the traditional marital regime. Many people, especially when the larger culture supports it, find happiness in holding up their part of the marital bargain: women who like to be in charge of the kitchen, and men who want to bring home the bacon but do not want to cook it. In the past, and even today, this contract has worked for many people. Increasingly, however, it does not work as well as it used to. It did not work for me as well as it worked for my mother, and it didn’t work for her all the time, either. The gender-based division of labor, so automatic for so much of history, increasingly fails to bring the promised emotional fulfillment that was supposed to be a major part of its contribution to family satisfaction and stability—emotional fulfillment which is increasingly vital to marital stability today.

We may contrast the experience of my mother’s generation with that of my own. Like so many women of her era, my mother traded service for support, a transaction with which she usually seemed content. She bore almost
complete responsibility for raising her children and at the same time had full charge of household upkeep: cooking, cleaning, keeping my father's closets and drawers impeccably neat, and so forth. My father, not atypical of his generation, was a man who never packed his own suitcase for a trip. In return, he provided handsomely—beyond my mother's wildest dreams, since she had grown up in poverty and was forced to drop out of high school to support her ailing mother and her youngest sisters. Having met my father as a secretary in his fledgling law office, my mother was very grateful to have been pulled from destitution into a different social class. Later she could afford to finish high school and college, raise three children, and become a docent in an art museum. Her lifestyle with my father was something secure and in a sense wonderful, exceeding all her childhood expectations.

The arrangement worked well for my father also. He was not born to privilege. The eldest of five growing up on a farm in Indiana, he put himself through law school, transferring from the University of Chicago to night school at Loyola when times got rough. He scrambled to better himself and his family. He and his wife had the same goal: to achieve the means for the good life. They entertained clients and traveled.

But my father also expected my mother to do everything he told her to do. After all, his own father had been dictatorial; it was something a woman owed a man—even though, in my grandfather's case, his wife had purchased the farm for the family. No matter. Leadership at home was owed a man as part of his birthright. When my mother—an intense, intelligent woman—would occasionally resist an order or talk back, my father's response to her was scathing and uninhibited.

What was the bargain my mother willingly made? She had a husband who loved her, who created an increasingly luxurious environment, and who ordered her around and reminded her—almost incessantly—about how lucky she was to have him. Love and what my generation of women would call patriarchal control went hand in hand. On my mother's side, gratitude, deep resentment, and anger all came in a neat package. The marriage lasted fifty-five years, until my mother's death. Children were launched. The marriage could be declared a success. Nevertheless, under today's circumstances, I would expect such a marriage to survive ten years at best.

Today my mother would have had a chance at her own career, at which she had the talent to excel. She would have had a new identity as a human being with core rights and her own sense of entitlement. (Surely, she promoted mine.) She would have had a different standard of equality and different ideas about equity. She would probably not have thought it enough to
have been rescued from poverty. She would have felt entitled to a different style of family decision making, and she would have had the options—and the cultural support—to demand more. But if my father had remained the same man he was when I was growing up, he would not have acquiesced. Under contemporary circumstances, the marriage most probably would have broken up—much to my own, my siblings’, and probably my parents’ disadvantage.

And that is one reason why I believe peer marriage—a marriage founded on the principle of equality and supported by shared roles and a greater chance of shared sensibilities—is an adaptation in the direction of greater family stability rather than instability. Indeed, in contemporary culture, a peer or partner relationship between spouses has become increasingly vital to keeping families intact. It also offers new advantages to children, to which I will return in a moment.

We must be clear, however, that the mere existence of separate careers does not guarantee a peer marriage. Such a marriage also requires a comprehensive reconceptualization of the partners’ roles. Dual incomes alone are insufficient to guarantee stability.

**Money and Work**

Indeed, much empirical research, some of it my own, indicates that labor force participation and achievement of high income by women destabilizes marriage. A number of studies, including the well-known Income Maintenance Study done out of the University of Michigan, found that when one raised the income of low-income women—hoping to stabilize families by reducing poverty—divorce increased substantially. Theorists have deduced that, under such circumstances, growth in income simply opens a new option for women to leave the relationship, an option that many of them exercise. Moreover, many studies show high-earning women with higher breakup rates. It is unclear whether high earnings make women less willing to tolerate unwanted behaviors or other disappointments on the part of their spouses, or whether men find women who are ambitious or aggressive (or who possess other traits consonant with career success) unsatisfying to be with in the long run. At any rate, the correlation is real enough.

Nor do couples necessarily adapt smoothly to equalization of income and status between partners. In *American Couples*, a study of 6,000 married, cohabiting, and lesbian and gay couples, Phil Blumstein and I found that a partner’s power rose in relation to his or her relative income as compared with
that of the spouse or live-in lover, but not necessarily in the ways we would have predicted. Women’s power rose and became equal to their partners’ when they had equal income—but only if they had a supportive ideology that allowed them to claim equal power. And power did not necessarily increase proportionally to the income differential. For example, more power did not release women from as much housework as one might expect. Higher-income career women did less, but not equivalently less, and their partners did not do proportionately more. (Male partners of high-earning women did feel their partners were entitled to do less housework, but did not feel required to do more themselves!) Feminists may be inclined to despair: are men so resistant to participation in household labor that nothing will induce them to pitch in appropriately?

Yet—and this is the key point—it remains to be seen whether the tensions we found are the permanent consequence of change or merely transitional pains that arise as couples, and society as a whole, grope for a new definition of the marital relationship. Many men are clearly uncomfortable with the weakening of the traditional male role as sole provider. And, notably, there has been little effort—outside a small and probably unrepresentative “men’s movement”—to reconceptualize the husband’s role under these new economic circumstances. However, several changes are conspiring to move society as a whole beyond this sometimes painful transitional phase: transformations in the economy, in the attitudes of younger men, and in the cultural definition of marriage itself.

In the first place, in the contemporary economy female income has become an important ingredient of family prosperity (even, in many cases, a necessity). Economists have long recognized that household income has maintained stability in the United States over the past decades only through large-scale entry of women into the workforce. The two-income household, once an exception, is now increasingly the norm.

Furthermore, corporate restructuring and downsizing have tended to intensify the trend. Women’s labor force participation has become increasingly vital to family stability in a society where job security is, for all but a few, a thing of the past. Men are now beginning to realize that their hold on continuous employment after age 40 is, to say the least, shaky. By age 55, less than half of all men are still fully employed. Women, having many of the skills necessary for a service-oriented society, stay employable longer and more steadily. Indeed, in our society, the nonworking wife is increasingly becoming a symbol of exceptional wealth or conspicuous consumption—or of a major ideological commitment either to the patriarchal family or to a vision of the female as the primary parent.
There are signs that these new economic realities are beginning to affect attitudes among men in their twenties. Young boys today are increasingly growing up in two-parent families where females are either the chief provider or an essential contributor to family income. Moreover, they understand their own economic futures as providers to be far from secure. Partly as a result, more and more young men are seeking in marriage someone to be part of an economic team rather than an exclusive parenting specialist. Just as women have in the past sought "a good provider," so, I predict, men will increasingly want to marry (and stay married to) a woman who can provide her share of economic stability.

But possibly the most important change has come in the subtle cultural redefinition of the marital relationship itself. In a society in which divorce is prevalent and the economic independence of both spouses is the rule, marital stability depends increasingly on factors of personal satisfaction and emotional fulfillment. The glue holding marriages together today is neither economic necessity nor cultural sanction, but emotion. Marital stability in contemporary society increasingly depends on sustaining the emotional satisfaction of both partners. It is here that peer marriage shows its special advantages.

Under these new economic and cultural circumstances, the ability of men and women to participate in each other's lives—to build companion status—becomes essential to marital survival. Equality is a crucial ingredient of this form of intimacy. When women have validation in the outside world through career, and when couples can operate as a team on both economic and home issues, partners become more similar to each other and achieve greater emotional compatibility—or so I would hypothesize on the basis of my research with peer couples. With more outside experiences to bring to the marital community, the woman becomes a more interesting companion for the long run. Moreover, whatever competition or tensions may result from this new arrangement, women today probably need some of these career-related personality traits simply to stay competitive with the women men increasingly meet in the workplace. This was less important in a society where home and family were sacrosanct and a mother and wife—no matter how far she was from being a "soul mate"—was automatically protected from outside contenders for her spouse. However, that is not the society we live in any more, nor is it likely to return. And even though income creates independence and therefore opportunities for separation, the recognition that spouses would lose their mutually constructed lifestyle if the marriage ended has its own stabilizing effect, as I have found in my interviews with dozens of peer couples.
Love versus Money

Of course, even today, if one were to analyze marriage in purely economic terms, the traditional model can seem to offer certain advantages over the peer arrangement. Becker and others have contended that, at least during child-raising years, couples with the woman in a full-time mothering role tend to gain more income. And a few studies have shown that men with working wives have lower incomes than men with nonworking wives. Economically ambitious couples probably calculate correctly that one parent, usually the male, should be released from most parental duties to earn as much as he can; the payoff here will lie in enhanced family income and social status, in which both partners presumably will share.

But this approach fails to address the real problem at the base of today’s shaky marital system—maintaining a high standard of emotional fulfillment. “Efficient” role allocation frequently leaves partners leading parallel and largely separate lives. Mom and Dad did that—each an expert in their separate spheres. It worked when there was less expectation that marriage should produce a soul mate, and when Mom’s tolerance levels were higher for the habitual carping at dinner. While this system did and does work for some, it tends to diminish emotional partnership. People in such “parallel marriages,” financially secure, look at each other ten years later and say, “Why you?”—and they divorce, often with children in primary grades.

Secrets of Peer Success

One key to the success of peer unions lies in joint child rearing—the creation of a male parenting niche in day-to-day family life. Indeed, I would go so far as to say that joint child rearing constitutes the secret of successful peer unions and a new pathway to marital and family stability in contemporary life. Joint child rearing cements a new intimacy between husband and wife and, research shows, builds a critical and difficult-to-sever tie between the two parents and the children.

Some theorists in the past have actually argued against a model of significant daily paternal participation in parenting, on the grounds that male involvement will erode the natural dependence of men on women and that men, resenting the extra burden, will ultimately leave. Of course, a lot of men are leaving in any case. And certainly some studies, particularly among working-class men, show child care and household labor participation to be associated with lower marital satisfaction. Still, other
researchers have found large numbers of men whose perception of shared participation correlates with greater marital satisfaction.

On the woman's side, moreover, the picture is not at all ambiguous. Shared labor has a major impact on women's satisfaction in marriage—and since more women than men leave relationships, this is a significant finding. A 1996 study by Nancy K. Grote and others showed that the more traditional the division of labor, the lower marital satisfaction was for women (though not for men). However, both men and women reported higher erotic satisfaction and friendship with one another when household labor, including parenting, was shared more equitably.

My studies and others show several other important benefits to joint child rearing: First, the more men participate, the more attached they are to their children. Second, the more they parent, the more grateful wives are. Third, under joint parenting, it becomes harder for either the husband or the wife to consider leaving. And finally, unless the men are manifestly awful parents, children benefit from their father's attention, skills, and additional perspective. This extra parenting and contact with the father can represent a real boon for children.

While my study draws from interviews with only about one hundred couples, some research based on large data sets reinforces my findings. In Bitter Choices: Blue Collar Women In and Out of Work, E. I. Rosin showed that a substantial number of working-class women interpreted the husband's help with children and housework as an expression of love and caring. A very interesting study by Diane Lye at the University of Washington found, among other things, that men who had the lowest divorce rates had the highest interaction with their sons around traditionally male games—football, baseball, etc. Interestingly, the same was true of men who participated in similar activities with their daughters. Other studies have found a lower divorce rate among men who attended prenatal classes.

Still, one may argue that we are talking here about atypical men. Only a certain kind of fellow will participate in a prenatal class: peer men are born, not made. Yet that is not what I found in my own research. Most men I interviewed in egalitarian marriages did not come to them by way of ideological motivation, nor were they married to women who described themselves as feminists. The usual road to peer marriage was happenstance. The four most common routes: (1) A serious desire on the part of the husband to father more, and more effectively, than he himself had been fathered (men in these situations were frequently wrestling with significant pain left over from paternal abuse, neglect, or abandonment). (2) A job that required shift work or role sharing and which, over time, greatly attached the father to the par-
enting role. (3) A strong-willed working partner who presumed egalitarian marriage; men in these cases were mostly prepared to structure the marriage any way their wives (often not declared feminists) preferred to have it. (4) The experience of an unsatisfactory, highly traditional first marriage in which the wife was perceived as too emotionally dependent during the marriage and too economically helpless after it was over; men in these cases consciously selected a different kind of spouse and marital bargain in the second marriage.

Were they happy with their new bargain? Most of these men expressed pride in themselves, their wives, and their home life. Were these typical egalitarian marriages? It is impossible to say. But these marriages, while not invulnerable, looked more stable for their integration—in much the way traditional marriages often appear: integrated, independent, and satisfied.

"Near Peers"

Some of the most troubled contemporary marriages, I have found, are those, in essence, caught between the old and the new paradigm—marriages that are neither fully traditional nor fully peer. I called such couples "near peers," since they professed belief in equal participation but failed to achieve it in practice. I believe the experience of such "near peers" may lie behind some of the frustrations that lead conservatives and others today to declare, in effect, that "We have tried equality and it has failed." In reality, what many couples have tried is inequality under the label of equality—an experience which has given equality, in some quarters, a bad name.

In "near peer" marriages, the wife typically devoted vastly more energy to the children while holding down a job. Although the husband made certain contributions to child rearing and household upkeep, and professed an eagerness to do more, actual male performance fell short of the intended ideal, stirring the wife's resentment. In most cases, "near peer" men still controlled the finances and exercised veto power over the wife. The wife, performing a full-time job outside the home with little or no relief inside of it, was typically caught in a "slow burn" of inward anger. Paradoxically, such women did not long for more equality, since they assumed it would bring more of the same—increased responsibilities with no substantial male contribution. These women felt trapped and overwhelmed and many of them, I found, would have been happy to leave the workforce if it were financially possible. Furthermore, all their power—and much of their pleasure—continued to reside in the mothering role. They loved their children, felt compromised at the inadequacy of parenting time, and, perhaps surprisingly, rarely considered
that one answer might be greater paternal participation. In truth, many such women were unwilling to surrender hegemony at home.

In such marriages, each spouse typically clings to his or her traditional powers while simultaneously craving a more partnership-oriented relationship. The result is emotional disappointment and conflict. Women in such relationships tend to view egalitarian gender roles as oppressive—seeing more respect, security, and satisfaction in the role of full-time mother. Yet they simultaneously resent the husband’s low participation and quasi-autocratic behavior, since they feel they have earned equality and crave it on an emotional level.

**Roadblocks and Suggested Policy Reforms**

While I have found that there are many different routes to a stable peer marriage, achievement of such a relationship is not automatic, as the experiences of the “near peers” attest. Several barriers stand in the way.

In the first place, it is often hard to avoid role differentiation, especially when partners have been strongly socialized to one or the other role. For example, it is simply not in the couple’s best interests for the “bad cook” to prepare dinner while the good one does dishes. Even though cooking can be learned—quite easily, in fact—the startup costs (bad meals for a while) stop most couples in their tracks. The better the homemaker-parent and the more outstanding the provider, the less likely there is to be taste for change.

Other inhibitors to peer marriages include the gender-based organization of jobs in the outside world (which affect evaluations of each partner’s career prospects), and the overall pull of the status quo. Yet in a sense, the biggest roadblock we face is our sense of the possible. Many women and men simply do not believe an egalitarian marriage is feasible—unless they happen to be in one. Even many who desire the peer model do not believe it can be achieved within ordinary working schedules. And most women expect significant male resistance and see a risk in asserting themselves, fearing that conflict with their husbands will lead to defeat and deeper resentment on their own part, or even divorce.

These are all reasonable cautions. The pleasure of sharing the day-to-day administration of home and family is not apparent to many men, especially those socialized to the older model. Nonetheless, today we find an increasing number of young men and remarried men actually yearning to be an involved parent. This represents a shift in ideology, a new view of “what is important in life.”
However, women, too, need to change. Many women are used to being taken care of and are trained for submissive interaction with men. In effect, they set up during courtship many of the inequities they will complain about in marriage—and ultimately flee from. They want intimacy, yet they often establish conditions—such as maximization of mate income—that subvert family time and marital closeness.

In addition, there are several public policy reforms that might assist in the formation of peer marriages and thereby help anchor families of the future. Such reforms might include classes on marriage and the family in high school, where young men and women can learn a model of partnership, equity, and friendship; more pressure on employers to offer flextime and on-site child care, so that individuals are not penalized for their parenting choices; and afterschool care in the public schools (until 6 P.M.).

There also needs to be more cultural support from the larger society. Most parents do not want to see their sons in the role of primary parent, do not want their sons’ careers compromised, and still view a woman’s work—including care for children—as unmanly. Moreover, most women are not encouraged to think of themselves as potential providers; only recently have they come to imagine themselves as fully committed to careers. I know there is a great split of opinion over whether young mothers should work at all, much less be encouraged to be responsible for their own economic welfare. But I would suggest that too much specialization in parenting and insufficient equality of experience may be more injurious in the long run than the difficulties involved when both partners juggle work and home.

Conclusions

We must recognize that there is no one form of marital organization appropriate for all couples. But I believe the “pro-family” or “family values” movement has been needlessly antagonistic to feminist models of marriage. After all, the two sides in this dialogue share some important goals: we do not want marriages to break up unless they absolutely have to; we want children to be loved and cherished and brought to adulthood in an intact family if there is any way it can be accomplished without punishment to either the children or the parents; we want people to want to form lasting bonds that strengthen the extended family.

The big question is how best to accomplish this. I suggest that shared parenting and increased spousal satisfaction are the most effective routes to family stability. I think that newfound feelings about equity and emotional
closeness are essential to modern marital durability. Peer relationships will be good for women, children, and families—and a great benefit for men as well. Peer marriage is not a feminist or elitist vision. It is a practical plan to lower the divorce rate. But in order to see how well it works, society needs to offer the cultural and structural support to permit both men and women to parent, to participate in each other's lives, and to have the time together that a strong relationship requires. Whether peer marriage will actually work better than traditional marriage is, at this point, a matter of conjecture. We do know, however, that traditional roles have failed to ensure stability. The new model is an experiment we can ill afford to ignore.
Phillips Avenue has been the main business street of downtown Sioux Falls, South Dakota, almost since the city's founding in the 1870s. It was the hub of local commercial life in the 1880s, when the original dirt sidewalks were replaced by wooden planks, and in the 1920s, when electric trolleys clanged up and down the street all day. In the late 1950s, in the heyday of postwar prosperity, the three busiest blocks of Phillips, from 9th Street to 12th Street, housed six men’s wear stores, fourteen women’s wear stores, seven shoe stores, a Sears, a J.C. Penney, a Woolworth’s, a Kresge’s, a Newberry’s, a Sheraton hotel, and the local headquarters of both the Lions and Kiwanis clubs.

Then the malls came, as they did everywhere. There were three of them, clustered on a two-mile strip along 41st Street, a few miles south of downtown. The decisive event was the opening of Empire Mall, which grew to 180 stores. The year Empire opened, three downtown department stores (Sears, Kresge’s, and Newberry’s) moved there, although the two local ones soon failed. Some of the smaller traditional merchants on Phillips Avenue hung on through the eighties, but the opening of a Wal-Mart on 41st Street in 1991 finished most of them off. The one remaining downtown drug store began losing money, forcing its pharmacist-owner to sell out, and the last men’s clothing store finally gave up in the winter of 1997.

But if all this sounds like the beginning of a chronicle of urban failure and blight, it isn’t. In the nineties, this Main Street of an old blue-collar city has been sprouting incongruous buds of upscale trendiness. Minerva’s Restaurant is a good example. Unlike many of the enterprises on Phillips Avenue, it is
reassuringly familiar to those who walk by it: Minerva's has been operating successfully at the same location for more than twenty years. But in the seventies Minerva's was a meat-and-potatoes kind of place. Crêpes were available for the diner who possessed more exotic tastes. Those who preferred seafood were limited to walleye from local waters, or else frozen shrimp. Now you can have just about anything—tilapia, mahi-mahi, salmon flown in fresh from Alaska the same day, and other exotic options.

Not that anyone would say Sioux Falls has become an exotic place. Even with a population that has swelled to 120,000, and an influx of foreign arrivals that it never had before, Sioux Falls remains a safe, quiet, friendly outpost of upper-Midwest conservatism. But Sioux Falls has nonetheless changed dramatically. Twenty years ago the leading local industry was meat-packing; now it is credit card processing. The sprawling Citibank campus built on the outskirts of town employs 3,200 people, and its presence has attracted a dozen other companies doing similar back-office work. Sioux Falls has another distinction that places it in the forefront of economic change: more than 80 percent of area women who have school-age children are in the workforce, a percentage said to be higher than in any city of its size in America.

Sioux Falls has not only changed; it has expanded and broadened out to the world. Twenty years ago its location limited the jobs it could do, the customers it could sell to, and the people it could attract. Now there are no such restrictions. "We have become more global," says Evan Nolte, the Chamber of Commerce president. "There are no limits to where we market." John McLaughlin, an education finance consultant, came to Sioux Falls from Tennessee by way of Minnesota. He could just as well be running his company anywhere. But technology, he says, "has made this city capable of being competitive with the rest of the country. It allows wealth to be created here, and power to be created here."

"Face to Face Is Very Expensive"

If the economy of the nineties has given Sioux Falls energy and expansive dreams, it has also changed the rhythms of everyday life. Like towns all over the American map, and without really knowing it, Sioux Falls has made a bargain in the past thirty years, and is now living with the consequences. The bargain is, on one side, an explosion of freedom and choice. Not just the freedom to sip espresso and order fresh salmon, but the freedom to do business anywhere on the globe, to communicate with London or Tokyo in a matter of seconds, to live on the safe, quiet prairie without all of the economic or
cultural sacrifices this would have entailed a generation ago. That is Sioux Falls's triumph of the nineties, and it is hard to find anyone on Phillips Avenue who would be willing to give it up.

But it is only one side of the bargain. The other side is the erosion of custom, of predictability, of patterns of conduct that are known as community. Commercial enterprises on Phillips Avenue used to be built on local habit and stable relationships, but now most of them seem hostage to an unpredictable sequence of bottom-line decisions made somewhere far away. Everywhere one goes on this ordinary street one finds ordinary institutions and customs being devoured by the global economy.

The inhabitants of Phillips Avenue don't spend much time talking about community—or civil society or social capital—but they do like to talk about relationships. To a remarkable degree they talk about commercial relationships, the ones that used to exist between doctor and patient, storekeeper and customer. They are keenly aware of how important those bonds used to be, and how they have come apart in the economic turmoil of the past two decades.

Banking is perhaps the best example. The two big banks in downtown Sioux Falls eye each other warily, just as they did two decades ago. They are still competing hard. But they are not the same institutions they once were. One is now a branch of USBank, which operates in seventeen states. The other is a branch of Wells Fargo, based in San Francisco. Neither one is crowded inside most of the time. The banks practically make people use the automated teller machines. Wells Fargo, which had seventeen teller windows in the seventies, is now down to six. USBank charges some of its customers an extra dollar for every teller visit they make. And the bankers themselves have been caught up in a vortex of competitive pressure that leaves them uncertain from year to year what company policy will be, where the CEO will be located, and even what the company will be named.

Not that Sioux Falls isn't used to a little absentee ownership. The big downtown banks were colonies of Minneapolis institutions for as long as anyone can remember. Still, there was a personal quality to banking that remained intact all the way into the nineties. The farmer or merchant who came downtown for a small business loan stated his case to a local manager who gave his approval, more often than not on his personal judgment about the applicant's competence and character. But now that they have gone national—or global—the big Sioux Falls banks no longer have an intense interest in lending money to small businesses. They make most of their money from loaning larger amounts to much bigger fish—and from individual customers who use the machines, stay out of the way, and help keep the teller
count low. “Face to face is very expensive for us,” admits Jim Mirehouse, district manager of USBank’s Sioux Falls office. “We try to minimize the face-to-face number as much as we can.”

The lending process at USBank is this: A customer who wants to borrow less than $250,000 sits down with a salesman who simply takes down the information, sends it to a computer in Minneapolis, and gets back a sheet of paper with a “score” telling him whether the loan has been approved or not. The salesman may or may not know the applicant, but his opinion of the applicant’s character has nothing to do with the decision. Nor does USBank make any apologies for the standardization of what used to be a highly personal service. “What we’re trying to do,” says Mirehouse, “is become the McDonald’s of banking, so a customer when they see a sign will know what you can get there.” What happened to the bank’s loyalty to its customers? USBank answers that question with another question: what happened to customer loyalty? As the manager sees it, the conversion to loaning money by formula has been matched, if not exceeded, by the customer’s willingness to shift his business wherever the return is a little better at a given moment. “You’ve got a very mobile customer,” he says. “Price is what you have to get them on.”

But wherever the responsibility may lie, it is clear that there has been an erosion of relationships in downtown Sioux Falls in almost every significant aspect of commercial life. In 1957, for example, there were three pharmacies on Phillips Avenue, each of them operated by the druggist himself, dispensing sympathy and friendly advice along with prescriptions. Today, although one of the three remains open, the vast bulk of the business has moved to the 41st Street strip. Along one two-mile stretch of 41st there are eleven different pharmacies, each part of a supermarket, discount store, or other mass retail outlet. The druggists’ contact with customers is minimal. They simply fill one prescription after another, as quickly as possible, eight hours a day.

Of course, the transformation of the pharmacy business merely tracks what has occurred in the practice of medicine itself. Four decades ago the downtown corridor boasted six general practitioners, nine dentists, an osteopath, and a podiatrist. They all practiced solo or in groups of two or three. Today that form of practice is gone. Medicine is in fact thriving in Sioux Falls: there are 500 doctors in town, including cardiologists, orthopedic surgeons, and a whole range of other specialists not previously available there. But they are involved in a profession utterly unlike the one that was practiced on Phillips Avenue a generation ago. Virtually all of them have been caught up in the bottom-line economics of health maintenance organizations. Working in clinics toward the outskirts of town, where patients see a doctor who happens
to be on duty at the time they arrive, physicians’ opportunities for personal contact with the patient are, for the most part, little better than those of the pharmacist. It would be foolish to imply that the technical quality of health care has declined in Sioux Falls, or that the people are less healthy as a result of the conquest of medicine by market forces. But it would be equally foolish not to acknowledge that something important has been lost as well.

**Can Relationships Be Marketed?**

Critics have written a great deal about the emergence of Wal-Mart and other giant retailers, and the ensuing decline of the Main Street merchant. But the problem is much larger than retailing. It is the depersonalization of ordinary commerce, of the little rituals of human economic interaction that have long resided somewhere close to the core of what most of us consider a decent life. Buying groceries is one such interaction, but so are banking, visiting the doctor, and filling a prescription.

In the fifties and sixties local commerce in America stood for the most part outside the dictates of global economic forces. True, the American consumer products of the postwar years were promoted by mass media advertising, just as they are today. But the final sale, in most cases, was conducted in a local store. While the local businesses of a generation ago were as interested in making money as the current ones, the difference was that these businesses were *personal* institutions. The parties knew each other and were invested in a continuing relationship. In communitarian terms, that is an enormous difference. Today local commerce not only has ceased to protect people from global economic forces, it has become a symbol of them. The drive-up pharmacy window and the ubiquitous ATM send an inescapable message, and the customers who use them, however they may appreciate the convenience, understand the message all too well.

The drawback to this personal commerce of a generation ago was its shortage of choice for the customer. While one could take comfort from the stability of commercial relationships, it was an age of bland white bread, weak coffee, and bad beer. What we have done over the past generation in local commerce, as in many phases of life, is trade relationships for choice. The vast majority of us would not cancel that trade if we could. Choice is simply too attractive. So the task for communitarians is not to condemn the transformation; there is little to be gained by indulging in nostalgia for lost soda fountains or in cursing the existence of Wal-Mart. The damage done by Wal-Mart is enormous, but it has been done and cannot be repealed. The task is to look for ways to reintroduce human relationships into local commerce.
To a remarkable extent, experiments in this direction are being conducted all over the country. One can see them in the efforts of New Urbanists to graft pedestrian-scale shopping into planned residential developments such as Kentlands in Maryland, Laguna West in California, and North Boulder in Colorado. Thus far, however, none of these projects has managed to generate a successful retail component to match its neotraditional values. Residents seem to want them, but the problem of operating small stores profitably in an urban enclave along a freeway has yet to be solved.

A similar experiment can be seen in the “town center” movement that seeks to create brand-new downtowns in sprawling postwar suburbs that have never had them before. In dozens of affluent suburbs scattered across America, developers are creating shopping malls designed to look like old-fashioned Main Streets, with “town squares,” sidewalk cafes, and a conscious effort at pedestrian-friendliness. Some of these town centers—such as the ones built in Reston, Virginia, and most recently in Redmond, Washington—are creative and appealing to look at, and are attracting more than enough customers to make money. The difficulty is that they recreate traditional commerce only in a physical sense, not a social sense. The merchants in the new suburban town centers are the same ones that do business in the huge regional malls—chain stores staffed by transient part-time employees whose relationship with the customer is minimal. While town centers are an interesting idea, they are not a significant step in the direction of human-scale commerce.

But more important steps are being taken, and in the most appropriate places: the Main Streets of small-town and small-city America. It is common to find downtowns whose primary commercial streets had most of their storefronts empty a few years ago, and now have 80 percent of them occupied. These are not the merchants of the 1950s; they are not selling hardware or groceries or men’s socks. They are niche merchants, selling unusual items or providing a personal shopping experience that retail malls are unable to provide.

But whatever they sell, they represent a revival of genuine local commerce. In Sioux Falls one can detect signs of this revival even in such unlikely places as the banking business. On the corner of 11th and Phillips, in a brand-new red brick building, is the Dacotah Bank. It looks like the two giants down the street, but in fact it is something entirely different. It is an experiment launched by a country bank from the small town of Huron, 100 miles away, hoping to take advantage of the big banks’ growing reputation for sterile impersonality. Then there is Founders Bank, a venture backed by affluent physicians hoping to capture some of the medical trade.
All of these upstarts are essentially selling the same thing: relationships. "The big banks don't care anymore," they tell customers. "We care about you." Deerfield Bank, another upstart, hired two doormen, Bob and Ossie, just to greet the customers and make small talk with them. The president of Docotah Bank, David Bangasser, grills hot dogs on the sidewalk at noon on Fridays. "Does it look stupid for the bank president to be out there grilling hot dogs?" he asks, and then he gives the answer: who cares? His bank has a point to make, and they will make it any way they can.

Not all of the newcomers will succeed; there are simply too many of them, with too little capital. Even Docotah Bank, considerably better financed than most, would be in trouble if the giants decided to play genuine hardball and cut their spread on interest rates down to a point or two. So the upstarts are playing a very chancy game. But what matters most about the banking competition is the mere fact that it is taking place. Everyone on Phillips Avenue appreciates the prosperity of the moment, and yet everybody also knows that something is missing. The missing element is relationship. It is a word that every business on the street is eager to use.

On the corner of Phillips and 10th is the old Eastwold Drug Store, now renamed Statz Drug. Steve Statz and his wife, Julie, bought it a couple of years ago from a pharmacist-owner who was losing money. Statz, like many of the new proprietors on Phillips Avenue, is trying to prove something. His family has been running drug stores since 1915, when his grandfather set up shop in the little town of Parkston, an hour west of Sioux Falls. The Statz family business has changed with the years as it has had to, opening up near the malls on 41st Street and branching out into home health care and equipment rental. But Statz has wondered for years if he could re-create an old-fashioned family store downtown, a walk-in place with a soda fountain and a friendly, patient pharmacist.

So he is trying. Whether it will work remains to be seen. Any effort to revive a family-owned drug store might seem like a foolish move. "We can't make any money competing with Wal-Mart on price," says Statz. "If you try to go head to head with these people, you lose your shirt." Nor can a family drug store compete very well for labor. Pharmacy school graduates can go to work for Wal-Mart, Walgreen's, or one of the other giants at an annual salary of $50–60,000 for a 40-hour week. Steve Statz can't afford to pay them that.

But he is doing something that the chain store pharmacists don't do—are all but prevented from doing—and that is cultivating a relationship with the customer. The chain pharmacists crank out prescriptions so fast they scarcely have time to talk to the person across the counter, let alone inquire about personal problems. The pharmacists at Statz make conversation with the customers.
They do compounding and mixing of remedies, the way old time druggists did but modern supermarket pharmacies generally will not. And unlike the chains, they deliver.

**Saving Downtown: A Little Irony Never Hurts**

As the malls opened in the 1960s and 1970s, 41st Street was thriving, populated largely by the businesses that had fled downtown. In the mid-1970s, copying other communities, Sioux Falls tried converting Phillips into a pedestrian mall to save it. That move was a disaster. Unable to drive down Phillips or park along the street, people stopped coming there at all. By 1980, 40 percent of the retail space was empty.

Over on 41st Street, after years of wooing by Empire Mall, the glitzier chains like The Limited and Eddie Bauer finally decided in the early 1990s to come to Sioux Falls. By the end of 1993 the big national stores had all but invaded Empire Mall. But as they did, the rivalry with Phillips Avenue began to change. While Empire was never a locally owned institution, at least the tenants were local. Then, within the space of a few months, that ceased to be true. Once 41st Street became attractive to the Gap and Victoria’s Secret, the rents rose too high for the homegrown merchants. One by one, they disappeared.

More than that, the clientele and image of the mall changed as well. On weekends Empire began attracting huge crowds from rural South Dakota and from out of state, and generated messy traffic jams. Sioux Falls residents began advising each other to stay away on Saturdays—“It’s all farmers and teenagers.” As a result, almost by default, Phillips Avenue began to reclaim its position as the hub of local community. It also began to turn upscale. Now on an ordinary Saturday morning the parking lots at Empire Mall are full of RVs and pickups. But the Volvos are downtown. They belong to doctors buying expensive camping equipment at Great Outdoors, or Citibank managers browsing at the Irish import store or having lunch at Minerva’s.

Phillips Avenue hasn’t become quaint or gentrified; it’s about as dowdy looking as it ever was. A few conspicuous eyesores, like the State Theater, vacant for more than a decade, serve as reminders that there is still a great deal of ground to make up. But it isn’t difficult to see what’s happening. Downtown shop owner Jeff Danz, sipping a dark roast coffee at a table in his cafe, sees it in many places besides Sioux Falls. “Downtowns will resurface upscale,” he says. “The malls will be all big box. They will be the nuts and bolts of commercial life. We’re going to become cool.”

The revival of downtown Sioux Falls has been a patchy sort of revival, to say the least. There are many products that cannot profitably be sold there,
many small but important economic transactions that are not going to take place there anytime soon. No one is going to open up a grocery or a hardware store on Phillips Avenue in the next few years. Still, it is a genuine revival, and it parallels the changes currently taking place in communities all over the country, in cities larger than Sioux Falls and in much smaller towns as well.

The history of efforts to revive downtown commercial corridors is one of failure: from pedestrian shopping malls and federally subsidized hotel-convention center projects to the replacing of older shopping blocks with suburban-style malls and, in a few cases, the bulldozing of entire downtowns and building of malls and parking lots on the empty ground. Now, though, an increasing number of communities have switched to a strategy of historic preservation, and this has been demonstrably more successful. Towns and cities that considered their Victorian shopping districts to be eyesores a decade ago are now promoting them as tourist attractions, and drawing large weekend crowds. At the same time, nearly every decent-size community has a strip mall that is half-vacant or more. Many of these shopping-centers look as dilapidated and obsolete as the most forlorn small town Main Street.

But in the end, as even the most ardent preservationists concede, it is not physical preservation or any physical features at all that bring an urban retail corridor to health. It is the return of a commerce based on human interaction, on stable relationships, on the small comforts that derive from the intercourse of buyer and seller, professional and client, week after week and year after year, during all the seasons of ordinary life. Those relationships have eroded in recent times, but they are starting to return, for the simple reason that people realize what has been lost. That's the important communitarian lesson that Phillips Avenue and its counterparts across America can teach us.
CHAPTER SEVENTEEN

Boston’s Ten Point Coalition: A Faith-Based Approach to Fighting Crime in the Inner City

Sasha Polakow-Suransky

On May 14, 1992, mourners gathered at the Morningstar Baptist Church in Boston’s impoverished Mattapan neighborhood to pay their last respects to Robert Odom, a murdered gang member lying in wake. But as Jerome Brunson approached Odom’s coffin, a group of gang members barged into the church, attacking Brunson and nearly stabbing him to death. The event stunned Boston’s black clergy and served as a catalyst for the Ten Point Coalition (TPC), a faith-based approach to violence prevention in the inner city spearheaded by Boston pastors Jeffrey Brown, Ray Hammond, and Eugene Rivers.

The Ten Point program called for religious leaders to take to the streets and engage in one-on-one evangelism with drug traffickers, with the goal of helping them develop work skills or get into college. It called upon missionaries to serve as advocates in juvenile courts. Congregations adopted gangs and transformed churches into sanctuaries for at-risk children. The ambitious plan also called for churches to run neighborhood watches and open rape crisis centers with services for battered women. More controversially, religious leaders agreed to inform police of children who they deemed a threat to community peace. By targeting the most dangerous youths and pointing them out to police, Ten Point did in fact contribute to the incarceration of young black men from their own community. Yet, as religious leaders, the pastors were in a unique position to tell gang members “we don’t want to do your funeral.” To many pastors, seeing young men in a cell rather than a coffin was easier to stomach. By serving as a bridge between the largely white
police force and the black communities of Dorchester, Roxbury, and Mattapan, TPC defused much of the tension and distrust that had developed between black residents and police officers over the years. The law enforcement community played an important role as well. Events that would have provoked racial polarization a few years before were resolved cooperatively: police promised thorough investigations of brutality cases rather than ignore the demands of black leaders. Positive relationships developed between black church officials and police and probation officers. As a result, law enforcement officials were able to operate with a new sense of legitimacy in communities that had previously seen them as an occupying force, making it far easier for them to implement new programs aimed at reducing gang activity. Given Boston's history of violent racial confrontations—namely, the busing crisis of the 1970s—this newly forged alliance was no small accomplishment.

More than a decade after the bloody funeral of Robert Odom at Morningstar Baptist Church, TPC has gained a nationwide following. Offshoots have been implemented in Memphis, Tulsa, Indianapolis, and numerous other cities. Eugene Rivers is on Karl Rove's Rolodex, and faith-based initiatives have the ear of the White House. Yet despite a stunning drop in youth homicides in the late 1990s, violence in Boston has not disappeared. And the day-to-day operations of TPC have been anything but smooth. Leadership battles have plagued the Boston TPC, and have on several occasions erupted in public view. Harvard academics have called into question whether the so-called Boston Miracle can be attributed to clergy intervention or whether it was in fact the result of a new interagency law enforcement strategy. And TPC replications throughout the country have faced similar challenges, as leadership scuffles, residual community-police tensions, and funding shortages put hurdles in their path. Eleven years into this much-heralded communitarian experiment, there are more questions than answers. Can clergy-police partnerships reduce violence independent of other interventions? How can Ten Point programs be implemented without becoming embroiled in ugly power struggles? And do the “ten points” coined in Boston actually work in other cities with different histories and present-day challenges?

**Did Ten Point Stop the Violence?**

Prior to 1992, clergy efforts to prevent youth violence were patchy at best, scattered across the city, and lacking in coordination. But the Morning Star incident shocked black church leaders into forming a unified front. Boston's youth homicide rate had hit an all time high of 62, and police relations with black
communities were dismal. The early to mid-1990s were also a time of widespread hysteria about juvenile violence. Reverend Rivers's close friend John Dilulio had written in _The American Enterprise_ of a coming generation of "superpredators," a massive cohort of poor inner-city black males who would send crime rates skyrocketing. As a result of the youth crime scare, nearly all fifty states passed legislation making it easier to transfer juvenile offenders to adult courts and adult prisons. And although Dilulio's predictions turned out to be wildly inaccurate, Boston did have 152 homicides in 1990—many of them involving young black men as both victims and perpetrators—and there was a consensus that something had to be done. The Ten Point Coalition represented an entirely new and untested approach. Its goals were ambitious and the plan resonated with an increasingly desperate law enforcement community that commanded little respect in the communities most plagued by violence.

The launch of TPC also coincided with an unprecedented new program—Operation Night Light—which paired probation officers with police. Prior to 1992, probation officers interacted with kids in their offices and during the day only. The same kid could go home and defy his probation curfew that night with very little to fear in the way of punishment; due to a lack of coordination between probation and police officers, squad cars would often drive right past an offender not realizing he was in violation of his probation or parole. But Night Light changed all this. Probation officers visited clients at home and at night. They rode along in police cruisers, scanning the streets for violators. Within months, the message had gotten out. "They didn't know police could talk to probation," says a Boston law enforcement official involved in Night Light. "Now they know probation isn't a joke."

Then in 1996, an interagency collaboration known as Operation Ceasefire came into effect. Much like Ten Point it began from the premise that a small, concentrated group of offenders are responsible for the bulk of violence in inner-city neighborhoods. By mobilizing the Boston Police, the ATF, state and federal prosecutors, probation and parole officers, gang outreach workers, and the Harvard researchers who helped design the program, the city aggressively intervened in the most gang-infested neighborhoods with threats of long prison sentences, round-the-clock police and probation surveillance, and targeted arrests. This strong display of authority helped reduce the average monthly homicide rate dramatically in the initial months. In November 1996, for the first time in over a decade, there was not a single murder in the under-24 age group. The success of Operation Ceasefire has ironically given way to a bitter debate in Boston. David Kennedy, a Harvard senior researcher who helped design the Ceasefire intervention, has argued that Ceasefire was far more influential that Ten Point in bringing the violence to a halt.
Writing in Gary Katzmann's 2002 Brookings Press volume, "Securing our Children's Future," Kennedy lauds the accomplishments of Ceasefire to the point that virtually every other intervention, including Ten Point, is dismissed. "There is no reason to think that everything that came before Ceasefire contributed to violence prevention in the city," writes Kennedy. "It is worth noting that none of the jurisdictions that have since applied Ceasefire-like interventions, with often quite promising results, have had a history of any of the elements some have deemed essential to Boston's success: activist clergy, police/probation partnerships, broad public health violence-prevention initiatives or any of the rest." Kennedy's Ceasefire-centric interpretation is further elaborated in a September 2001 Department of Justice publication "Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire." Written by Kennedy in collaboration with Harvard Kennedy School of Government colleagues Anthony Braga, Anne Piehl, and Elin Waring, the DOJ report relies heavily on statistical data showing a sharp decline in the homicide rate after the Ceasefire launch in May 1996 compared to the mean from 1991 to 1996.

But the initial post-Ceasefire trend has not held, and homicide rates are once again creeping upward as many violent offenders serve out their sentences and return to the streets. Kennedy blames the spike on the collapse of Ceasefire. In a July 2002 Boston Globe article that infuriated police and clergy, Kennedy wrote, "Ceasefire participants were soon spending as much time, or more, going to the White House, Congress, other cities, and handling press as they were fighting crime." Kennedy also attacked as a "myth" the "persistent and dangerous" notion that Ten Point "had stopped the killing." While Kennedy has been outspoken in questioning the strong claim that Ten Point single-handedly stopped the violence, his written work makes an extremely strong claim for Ceasefire as the sole catalyst for the steep drop in homicides in 1996 and 1997. But is this argument valid?

According to a Boston law enforcement official who has worked closely with both Ten Point and Ceasefire, the Kennedy argument is "self-serving." Rather than the decline of Ceasefire, the official insists, "They went to jail and came back," referring to the violent youths arrested in the late 1990s. "The Department of Corrections hasn't corrected anything. . . . Once they get warehoused, they learn in the university of the prisons how to beat the system when they get out. They go back to their old turf and kids who are there now have better access to available firearms." According to this official, Ceasefire has simply evolved with the times and many Ceasefire participants were "more than a little peeved at the perceived intellectual leadership of our Harvard partners . . . it's intellectually arrogant to think you can come in here and it's going to stay forever. It's got to stay liquid. There's no
magic bullet, no cure for all society's needs." And these days the returned gang members know that their visibility got them locked up the first time around and therefore they are now going underground.

**Bridging the Police-Community Divide**

Reverend Rivers acknowledges that Ceasefire was a major factor that itself evolved independently from what the black clergy were doing. But, he asks, "had the city not deracialized law enforcement, would Ceasefire have succeeded in a racially polarized context?" This seems to be the central question. While the Ceasefire program showed demonstrable results within months of its implementation, it is highly unlikely that it could have succeeded had Ten Point not laid the groundwork by defusing the long-standing racial tensions between the police department and the black community. "[The solution] couldn't have been Ceasefire because the youth-police relationship was terrible," says one pastor intimately involved in Ten Point. Without the "honest broker" intermediary role played by the clergy leaders, tensions would have remained insurmountable and any aggressive police intervention would not have gone smoothly.

Reverend Ray Hammond points to three critical events during the 1990s that helped to transform this relationship. In 1989, Carol Stuart was murdered in the mixed neighborhood of Mission Hill. Her husband, Charles Stuart, called the police and described the assailant as a black man. Mayor Flynn called in all detectives and a witch-hunt ensued; black men were stopped throughout the city. In the end, Charles Stuart committed suicide and evidence emerged that Stuart had murdered his own wife. Then came the St. Clair Commission report, which meticulously chronicled police misconduct in Boston. Hammond recalls, "we began to recognize that there were a few officers responsible for a large number of the citizens' complaints. If we could find a way to ally with those trying to do a good job there might be an opportunity." In 1994, Paul Evans became police commissioner and he proved to be a promising partner. When a botched police raid knocked down the door of the elderly minister Accelyne Williams in 1994, Evans immediately called black community leaders to assure them there would be a full and open investigation. Hours later he was on TV admitting that the police may have made a mistake. Compared to the culture of secrecy and hostility that had prevailed before, this proved to be a turning point. Black religious leaders were willing to work with Evans, often more so than his own police union, which at one point gave him a vote of no confidence.

The role of Ten Point in "deracializing" police community relations was vital. "Without that, it would have just been Boston race wars," says Rivers. Taking into account Kennedy's work, Jenny Berrien and Christopher Win-
ship of Harvard have argued that Ten Point “partially ameliorated” the situation in inner-city Boston by supporting the police in removing violent offenders from the streets and criticizing them in cases of excessive force. This provided law enforcement with “an umbrella of legitimacy” under which they could work effectively in neighborhoods where they had been previously perceived as no better than an occupying army.

At the same time, by criticizing police when they overstepped their bounds, the church leaders maintained respect within their communities for the most part (though Rivers’s house was once targeted in a drive-by shooting). As Hammond puts it, “If you do the right thing we’re going to do everything we can to back you up. If you do the wrong thing, we’re going to do everything we can to blow the whistle.” As a result of this newfound cooperation, when the white prosecutor Paul McLaughlin was murdered by a black gang member in 1995, church leaders actively assisted police in locating the perpetrator within the community and police refrained from launching an indiscriminate dragnet that would have polarized the city along racial lines. And the positive relationship has continued. In 2002, after a spate of police shootings, black religious and community leaders issued a statement calling for a thorough investigation and praised Police Commissioner Paul Evans’s record of reforms within the police department, which aimed to reduce deadly use of force incidents. In a dramatic sign of changing times, a white police commissioner found himself being defended by a group of black pastors in the face of harsh criticism from the police union. As Rivers quips, “Al Sharpton would never be able to do his number in Boston.”

**Cracks in the Foundation**

But no sooner than it began, Ten Point found itself hobbled by its own success and the internal disputes that came with it. As the press descended upon Ten Point, Rivers emerged as a spokesman. His rhetorical flair and off-the-cuff remarks made ideal sound-bites for the media hordes. Reverend Hammond, a doctor who gave up his practice to enter the ministry, and Reverend Brown, who was more than a decade younger than the others, faded from public view. There were ideological tensions as well; Rivers sought help from left and right and took frequent pot-shots at the black intellectual elite, calling Henry Louis Gates’s W.E.B. DuBois institute at Harvard a “Cotton Club on the Charles” and criticized Urban League and NAACP leaders. Having alienated many prominent local black leaders, Rivers began to alienate his partners as well.

As the conflict reached a breaking point in 1997, a division of labor helped defuse the tension. Rivers founded the National Ten Point Leadership Foundation (NTLF) with the hope of spreading the Ten Point model throughout the
country. Reverend Hammond took charge of Boston operations. Soon afterward Reverend Brown got out himself, shifting his focus to the World Council of Churches where he is spearheading an effort to export the Ten Point strategy to cities such as Rio de Janeiro, Belfast, Durban, and Bogotá. Yet despite the division of labor, tensions in Boston still remain. Rivers runs the NTLF out of the Ella J. Baker house in Dorchester, seat of his own Azusa Christian Community and a sanctuary for the neighborhood’s troubled youth. Residue of the leadership battles are still visible as well: Rivers’s NTLF website prominently declares that the Boston TPC is not a member of the NTLF. And in 2001, a youth worker from the Baker House was seen distributing leaflets at one of Hammond’s Boston Ten Point coalition press conferences. The leaflets called into question Hammond’s work and demanded a larger role for Baker House. Calling the squabbling a disgrace, one Boston police officer lamented to the Boston Globe, “. . . it’s about egos and alliances and one up-manship.”

These days Rivers is projecting a milder, more conciliatory persona. When discussing replications of Ten Point, Rivers is quick to point out the leadership issue is one of the major stumbling blocks. Likening the situation to Martin Luther King’s relationship with the Southern Christian Leadership Conference in the early days of the civil rights movement, he insists that you need prominent leaders to “bless it and not block it.” Even when an exciting new program comes to town, the excitement it generates may not be enough to overcome long existing divisions within the community. “Every place you go with a sizable black church population, you will find the same problem. The big challenges revolved around getting significant power players to come to an agreement,” says Rivers. Even if large congregations don’t take leadership roles in Ten Point, their blessing is essential. “You need their sanction,” he adds. Otherwise, warns Rivers, “if it doesn’t flop, it’s going to be incredibly difficult, a close to exhausting uphill battle.” Rivers offers the example of Louisville, Kentucky, in 1998, where he watched Ten Point fall flat on its face due to a power struggle. “What was contested was who should be the lead point person to convene the first meetings,” recalls Rivers. But Louisville seems to be the exception rather than the rule. NTLF programs have found their way to Indianapolis and Gary, Indiana, as well as Memphis, Tulsa, and several other cities have modeled faith-based programs on the original Boston program.

**Exporting Ten Point**

Ten Point replications vary from city to city. Whereas pastors walking the streets in Boston put them in contact with gang members, in other automobile-centered cities walking the streets isn’t as helpful. In Memphis, unlike
Boston, clergy got involved at the behest of police, who had never had particularly good relations with the black community despite a substantial black presence on the force. Before bringing the churches on board, the Memhis Police formed a partnership with its rival agency, the County Sherriff’s office. “That should go in the Guinness Book of World Records,” says the Reverend Tommy Sullivan, who heads the Memhis Ten Point Coalition. “Then they went and asked the faith community. That’s a miracle,” he adds. As in the Boston Ceasefire model, Memhis law enforcement gives a stern message: “If you don’t listen, we’ll lock you up.” Sullivan’s program aims to stop kids in trouble with the law from becoming repeat offenders. “They get two messages, one of hope and one of a certainty,” he says. Officially, 35–40 churches participate in street canvassing. Other programs include homework dropoff centers, computer classes, literacy projects, and job training through neighborhood churches. But establishing trust between the two sides hasn’t been easy. Racial profiling is alive and well in Memhis and many in the black community harbor ill will toward law enforcement agencies. “The church community has been promised and lied to so much that they just don’t trust the police or the Attorney General because they’ve been defrauded so much,” says Sullivan. “We’ll never get everybody, but many churches will unite . . . to try to combat gangs and drugs.”

In Tulsa, Oklahoma, Ten Point began with a law enforcement block grant, but ministers were involved from the beginning. The partnership has helped relieve tensions somewhat between police and the black community in Tulsa according to Tulsa Police Captain Walter Busby, who is African American himself. Nevertheless, mutual suspicions remain. Black officers sued the Tulsa Police Department over the lack of hiring and promotion of minorities in 2001. And the same year the U.S. Department of Justice launched an investigation of the Tulsa Police Department’s alleged excessive use of force. Unlike the early days of Ten Point in Boston, the focus in Tulsa is largely on an older population. Police asked ministers to visit particular trouble spots, including bars after they closed in the wee hours of the morning on weekend nights. After the intervention of religious leaders, Busby says there was a significant drop in the number of people hanging out at trouble spots. “We saw a drastic reduction in violence,” he adds.

But these days the situation in Boston is changing as well. Reverend Hammond notes that much of the focus these days is on re-entry programs. Many men in their early and mid-20s have been released and are now returning to their old neighborhoods. “It’s the kids we missed in the 1990s coming back out,” as Hammond puts it. But these days, new gangs have taken over their old turf, and new leadership has taken over their old gangs.
Devoting time and resources to this new problem has been challenging for Hammond’s Boston Ten Point Coalition as it tries to continue its original mission of working with young people. The challenge, says Hammond, is “adding this without diminishing our commitment to kids. . . . If we dropped our guard there we’d be paying the price in 2005 and 2006.”

Conclusions

In the eleven years since TPC was established, faith-based violence prevention programs have increasingly come into vogue. The right, fueled by the Bush administration’s rhetoric of compassionate conservatism, has given its blessing. But it remains unclear whether this will go beyond kind words and turn into hard cash. Even so, President Bush’s much-touted faith-based initiatives bill collapsed in the Senate in April, leaving it devoid of any language giving incentives to religious charities. Meanwhile, the left has approached the issue with less enthusiasm, displaying a reflexive aversion to anything involving religion. And while broad efforts to roll back social services and replace them with religious-based charities are disturbing, Ten Point faith-based programs actually fill an essential niche in the American inner city, playing a role that only churches can play effectively, bolstered by their moral authority and deep ties to the community.

In many ways, the Ten Point model has been a victim of its own success. As with any successful program, the media spotlight spawns power struggles. But if the Ten Point model is to genuinely succeed, egos must be sacrificed for the greater good, whether that involves ministers competing for press attention, police unions questioning their chiefs reforms, or academics contesting the effectiveness of various programs. Ten Point’s greatest accomplishment is that it has fostered community improvement by way of forming an unlikely and previously unimaginable partnership between police and black churches. For it to fail as a result of internecine bickering on either side of the newly bridged divide would be unfortunate and ironic, given the progress that has been made. Elsewhere, racial tensions between police and black residents remain, despite the Ten Point plan. What developed naturally in the wake of the Morning Star attack in Boston may not come so easily in other cities. Indeed, the deracialization of police community relations in Boston was largely an unintended consequence of the Ten Point program, yet it is a vital prerequisite for any effective violence prevention strategy. Until police have an “umbrella of legitimacy” in inner-city neighborhoods and black church leaders no longer feel brushed off by the department’s top brass, genuine progress in fighting crime is unlikely to occur.
Today's leading source of ideas on how to design American communities is not a high-tech urban laboratory or a latter-day Buckminster Fuller but something much less exotic: the places Americans built in the nineteenth century and the early decades of the twentieth. Why should these older communities exert such power over designers' and planners' imaginations? Because these old places tended to be—and in many cases still are—more complete and more well-rounded than the single-purpose subdivisions of the last forty years.

In the test of time, communities built in the early 1900s have turned out to be much more soul-satisfying than the developments churned out since World War II. Communities in the early twentieth century and before frequently had an intimacy that supplied a joyful depth (and a dollop of gossip) to everyday life: adults knew most of their neighbors, their character, and their idiosyncrasies. Children walked to school, church, and ball fields on a grid of well-watched sidewalks. The essentials of daily life were close by—in corner stores, neighborhood bakeries and taverns, and other locally rooted enterprises. In their heyday, eloquently recounted in Alan Ehrenhalt’s The Lost City, neighborhoods like St. Nick’s parish in Chicago’s “bungalow belt,” or Bronzeville, in that city’s not yet devastated black ghetto, possessed a combination of customs, institutions, and authority figures that helped to discourage bad behavior and encourage responsibility.

Though by no means problem-free, the neighborhoods built three or more generations ago had resources for overcoming setbacks, and offered plentiful
satisfactions for people of every income level. For that reason, traditional neighborhood and town designs are increasingly being deployed against contemporary American ills: isolation, diminished community life, and inadequate guidance for the young.

The Physical Elements of Community

Those who are reapplying the principles of older communities generally choose one of three names for their work: "Traditional Neighborhood Development," "Neotraditional Development," or "New Urbanism." The first two are fairly easy to understand. Murkier is the term "New Urbanism," which was coined in an attempt to provide a common umbrella for those who want buildings and towns to look like places from the past and those who, on the other hand, believe in historically effective community layouts but prefer their buildings distinctly modern. In any case, the style of the architecture turns out to be of secondary importance. It is the community layout, culled from American and, in some cases, European experience, that is critical to the aims of this movement.

What are the key precepts of the New Urbanist community? Above all, a belief in the importance of the public realm—streets, sidewalks, parks, and gathering places. In a well-conceived New Urbanist community, the individual buildings work together to form coherent public spaces, where people will see and talk with one another. A New Urbanist residential area is almost always a walking neighborhood; houses are close enough together and close enough to the street that neighbors cease to be strangers. The architects who have done the most to push this movement into public consciousness, Andres Duany and Elizabeth Plater-Zyberk of Miami (allied with others such as Berkeley architect Peter Calthorpe), lay out neighborhoods on the basis of a "five-minute walk." Within a quarter-mile a resident should reach a neighborhood park, services such as a dry cleaner and a convenience store, and a spot where buses, trains, or shuttles can stop. In prominent locations within the community are schools, churches, and civic buildings—testaments to the New Urbanists' insistence on using the power of architecture to affirm civilization's highest strivings.

New Urbanist developments tend to have narrow streets (to slow the traffic), on-street parking (to shield pedestrians from the passing vehicles), front porches (preferably at least eight feet deep, to encourage people to use them), and public ways with pleasant, well-defined edges—picket fences, hedges, rows of trees. Garages are dethroned from their place of honor in the modern subdivision. No 18-foot blankness of garage door dominates the street—New Urbanists relegate the garage to the back of the lot (where it stood in-
conspicuously in the 1920s and 1930s), or they recess it behind the house’s facade or put it on an alley, making the house once again an attractive, expressive part of the public scene.

According to the newsletter *New Urban News*, over 100 such developments are currently in planning or under construction, most of them in a broad territory from Pennsylvania and Maryland through Virginia, the Carolinas, Florida, Alabama, and Tennessee, plus Colorado and the Far West. The most ambitious development to break ground is Celebration, a town for up to 20,000 inhabitants that the Walt Disney Company began building two years ago on the outskirts of Orlando. Two notable developments closer to completion are Duany/Plater-Zyberk’s Kentlands, a 356-acre undertaking begun in 1989 in Gaithersburg, Maryland, within commuting distance of Washington, D.C., and Harbor Town, a 130-acre project planned by RTKL Associates of Baltimore and begun in 1989 on Mud Island in the Mississippi River, a bridge trip away from downtown Memphis.

**The Web of Community**

New Urbanists seek more than pleasant aesthetic effects—they aim to create a different, more neighborly social life within their communities. The crucial question therefore is: do their grids and buildings and design principles actually achieve this? Do these places turn out to be the cohesive neighborhoods that their developers promise? To answer this, I interviewed people living in Kentlands, Harbor Town, and older towns built along the lines the New Urbanists are trying to revive. I discovered that on the whole these communities deliver what the New Urbanists say they will. With shallow front yards and smaller house lots than in most conventional developments, residents say there is a noticeable increase in neighborliness. “If you’re out doing yard work, everybody stops and chats,” says Steve Christian, a Kentlands homeowner. “After a big snowfall, we helped each other shoveling the driveways and all had chili afterward. There’s more of a sense of a community than anywhere else we’ve lived.”

Steve’s wife, Sandra, a stay-at-home mom, told me she had felt “terribly isolated” in the townhouse development where they lived before moving to Kentlands. “It cleared out at 9 A.M.,” she recalled. By contrast, at Kentlands, where she takes care of their young son except when volunteering at the white-columned Rachel Carson Elementary School, there are a number of parents around during the day, and they are easy to meet, since the houses are close together and people frequently go out walking—to the swim club, to a nearby shopping center, to the lake, or to nowhere in particular.
Harbor Town resident Jim Howell says that in the conventional development where he previously lived, on the east side of Memphis, he and his wife "might have known two to three neighbors on each side of us. Here at Harbor Town, we know fifty neighbors. You live closer together, the streets are narrower, and you know so many more people because you're out walking and things are going on. People in the afternoon are out in the yard or on their porches. They bring grills out to the garages. There's a cocktail party in somebody's house." After Jim's wife, Amy, gave birth last summer, six- and seven-year-olds would come to the door and ask, "Is it convenient for me to come and see the baby now?" Jim observes, "It's a more protective environment."

This setting benefits children as much as adults. Youngsters in a traditional neighborhood obtain a healthy degree of autonomy—difficult to get in a cul-de-sac subdivision. More is within easy reach because of the compactness, and there are numerous routes everywhere over an extensively connected street network. Faith Kusterer, a Kentlands mother, notes that her daughter Elena walked to the piano lessons she took for two years in the home of her instructor, a woman they knew within the development. "She could go to the store alone on her bike to get anything from candy to school supplies," Mrs. Kusterer added. "It's afforded her some opportunities to be out in the community and to be independent."

James Krohe Jr., a writer who lived and worked for six years in Oak Park, Illinois—a gridplanned Chicago suburb founded in the nineteenth century, now containing 53,000 people in its 4.5 square miles—says that in many old communities the availability of public transportation helps youngsters to explore their world and to mature. "It was not unusual for Oak Park kids 13 or 14 years old to have a relationship with the larger city—to take classes or go to private schools in the city," says Krohe. "Compared to the suburbs immediately to the northwest that were not served by Els [Chicago's elevated public transit lines] and that were less served by commuter rail, kids in Oak Park were much more comfortable moving about in the larger metropolis."

What the vast majority of developers seem to have forgotten, then, in creating the automobile-dependent suburbs of the past half-century, is that youngsters need a modulated introduction to the world beyond their block, so that they can cope with, and learn to thrive in, a country that has never been, and never will be, entirely safe or homogeneous. The typical suburban subdivision of the last few decades tries in the main to withdraw its children from society's difficulties, inadvertently leaving them without the skills and judgment to manage unfamiliar situations. "There's a fearfulness I find in kids in the newer suburbs," Krohe says. "They can't mix. They can't go anywhere without private transportation. The most horrific examples of violence I recall in the Chicago
area were kids from the suburbs who got lost in the city and were raped or robbed because they weren't prepared and didn't know what to expect." Youngsters from Oak Park, by contrast, learn to size up situations "so they won't be bullied so easily when they are exposed to danger," Krohe observes. "It makes them competent and confident members of a larger society."

**It Takes a Village**

Of course, minor troubles occur everywhere. In compact traditional communities they are likely to be noticed and to stir a response. In Shorewood, Wisconsin, an early-twentieth-century Milwaukee suburb, Philip Nero tells of the time his son fell from his bike, and a man who saw the mishap comforted the boy and walked him the rest of the way to school. Would this happen in a conventional subdivision? Sometimes. But the closeness and visibility characteristic of a traditional community makes it easier for such acts of neighborly assistance to take place.

By the same token, misbehavior, when it occurs, is also likely to be noticed. "When kids do something they shouldn't, they are often caught doing it," says Barney Gorin, a Kentlands homeowner. "They're often yelled at by somebody other than their own parent. For example, one neighborhood kid set off a smoke bomb in someone's house. After that, he was in deep trouble with a big chunk of the neighborhood." For some time, his movements were closely monitored by adults leery of what would happen next. "Since then," Gorin relates happily, "his behavior has come around to where it should be."

Many New Urbanist communities feature a range of housing, not separated into rigidly exclusive tracts. Kentlands contains apartments, row houses of varying sizes, and detached houses. Above the garages of some of the detached houses are small units that can be rented out or used as home offices. Mostly these are rented to singles. The result is neighborhoods with some diversity of ages and incomes—from young renters on tight budgets to middle-aged and older people with comfortable incomes. (Duany initially argued that auxiliary apartments would enable grandmothers to live next to their children and grandchildren; so far, extended families do not appear to be in a rush to reassemble in this fashion.)

Residents of New Urbanist neighborhoods generally prefer a degree of diversity, believing it helps ward off the insularity exhibited by subdivisions containing only a thin slice of society. "I've always thought it's very important for our children to know lots of adults other than us—to have other role models, models of decent human beings—and that certainly has happened here [in Kentlands]," says Mrs. Kusterer. Family breakups do occur—whether at the same rate
as elsewhere is not known. Sociologist Ray Oldenburg, in his 1989 book *The Great Good Place*, argues that an absorbing community life relieves some of the pressures on a marriage and consequently promotes family stability.

In any event, the mix of age groups, when combined with a traditional community’s close-knit social structure, offers what is probably a stabilizing influence for the children of divorce. In Mariemont, Ohio, a leafy one-square-mile suburb of Cincinnati laid out in the 1920s and interwoven with apartments, row houses, duplexes, and detached dwellings, there are many older people, and a number of them volunteer for an after-school program for children, many from single-parent families. Former mayor Richard Adams says quite a few single-parent households have moved to row houses in Mariemont from other municipalities, in part because children in the village of 3,100 receive a traditional community’s tremendous social asset—a balance of supervision and community-monitored freedom of movement that is hard to achieve in a conventional subdivision.

In a vigorous traditional community, institutions spring into being as conditions call for them. Fifteen years ago, for instance, Mariemont generated an organization of residents 55 and older, the MariElders, which reaches out to elderly people who have begun slipping into isolation. Supported by village taxes, the MariElders involve people in tours, lectures, card games, and other activities. The organization has been invaluable, Adams says, because “there were an awful lot of people who were eating alone all the time.” Kentlands, too, is giving birth to an energetic institutional life. The three-year-old Kentlands Community Foundation promotes educational programs, as well as charitable and philanthropic work in the Gaithersburg area, including concerts, town lectures and debates, and food and clothing drives. Every time a house is sold, four months of homeowners association dues are allocated to the all-volunteer foundation. The homeowners association so far has given the foundation more than $117,000. Traditional communities foster in their citizenry the ability to use local government to positive effect. In a place like Oak Park, Krohe says, “government is big enough to do you some good, but small enough that you feel you could have some impact on it. There is a sense of interdependence, unlike the sense in the outer suburbs that government is just a nuisance that takes your taxes.”

**Hopeless Nostalgia?**

New Urbanists are sometimes criticized for promoting a nostalgic vision that does not square with how Americans actually live at the end of the twentieth century. Many of the criticisms, however, are half-truths.
Consider the charge of “classism.” Some assert that New Urbanism is an upper-middle-class phenomenon ill-suited to the majority of Americans. It is true that much of the New Urbanist housing in the suburbs is beyond the financial reach of poor families. But this is a function more of suburban real estate economics and exclusionary zoning than of some inherent flaw in New Urbanist concepts. There are New Urbanist developments that do in fact house people of modest income. In Starkville, Mississippi, for more than twenty years, Dan Camp has been building the Cotton District, a compact, pedestrian-scale precinct with a charm redolent of Charleston, South Carolina—and he has been doing it with inexpensive houses and small apartments whose monthly rents range mainly between $250 to $550, with no government subsidy of any kind. A former shop teacher with a love of architecture and urban design, Camp has mastered the art of constructing dignified, well-crafted dwellings on cheap land.

If New Urbanism were just for the affluent, there would be no Cotton District. Nor would there be a renovated public housing project like Diggs Town in Norfolk, Virginia—a formerly crime-ridden slum that has been made livable through New Urbanist techniques. Pittsburgh-based UDA Architects, a practiced exponent of New Urbanism, cut new streets and sidewalks through Diggs Town’s anonymous no-man’s-lands and added sociable porches to the fronts of apartment buildings. Occupants were given individual front and back yards, sometimes bounded by picket fences to create the careful gradations of public and private space that fostered order and control in neighborhoods years ago. Those alterations, carried out with the intention of nurturing neighborliness and safety, have cut lawlessness substantially and generated a sense of community. Diggs Town is far from unique. Henry Cisneros, in his last year as Secretary of Housing and Urban Development, declared that New Urbanism would be a central element in the federal agency’s efforts to salvage housing for the poor in cities around the country. New Urbanism is not a toy of the affluent.

A second line of criticism focuses on modern mobility: people’s employment, shopping, and leisure activities are now scattered across sprawling metropolitan areas, so it is futile to try to inculcate a sense of geographic community. True, few of the people who live in Kentlands or Harbor Town also work there and form all their meaningful social connections within its boundaries. What is especially troubling is the difficulty New Urbanists have run into in their attempts to build up a cadre of local merchants and other businesspeople, who in the past were indispensable elements in a town’s or neighborhood’s identity. One remedy for this may be public policies that encourage developers to include employment and retailing in their plans. Developers may
have to make special efforts to attract owner-operated retailers—perhaps by granting them financial concessions. Duany has argued that developers should regard local stores as an amenity, just like a park or a recreation complex, and subsidize it, at least in the beginning. He also argues that the number of stores in these developments will grow over time, since retailing follows, rather than leads, population growth.

The idea that people are destined to have ever weaker neighborhood ties seems questionable in light of the increasing number of people working at home either part- or full-time. With the growth of computers, faxes, modems, and other modern communication devices, it may be that more people, rather than fewer, will be both living and working in the same place. As that happens, it will be important for these home-based workers to have services and gathering places, such as cafes, close by. Neighborhood gathering places could offset the isolation of working alone and help generate a never-obsolete quality: geographic community. To accomplish that, New Urbanist instruments of physical design will be invaluable.

Of course, with a whole generation of Americans having grown up in isolated outer suburbs, such neighborly interdependence may, unfortunately, not be what most people immediately look for when they shop for a home. In the Washington Post, reporter Steve Twomey told of Lori and Bob Scarbrough, who had lived in Herndon, Virginia, a suburb where they and other residents would pull their car into the garage, enter the house by an interior door, and rarely have contact with the neighbors. When they first looked at Belmont Forest, a New Urbanist town that Duany/Plater-Zyberk designed in northern Virginia, the Scarbroughs, now in their early fifties, were concerned that the houses were built too close together. But they moved in, and now love the coziness and neighborly camaraderie. Libby and Walter Cable, who arrived in Belmont Forest from a similarly isolating suburb in Annandale, Virginia, were likewise concerned at first that they would lack privacy. But now, as they share the close-knit community with their two daughters and grandchildren and swap front-porch talk and visits with neighbors, they think of their new surroundings as a supportive and comforting re-creation of the small-town life of their upbringing.

Allison Bradfield, who lives with her husband and two small children in Belmont Forest, finds that the sidewalk activity, the front porch life, and the sheer proximity of dwellings in the neighborhood counteract the anonymity of the usual suburban development. She knows every one of the twelve families on her street, she reports, and “what all of them do, where they’re from, and what they want of life.” She acknowledges that “if you didn’t want to know your neighbors, you wouldn’t want to live here.”
That is perhaps the biggest issue of all facing proponents of New Urbanism: just how many Americans are there who actually want to live in a community where they will know their neighbors, and be known by them? Are walkable neighborhoods just a small market niche, or something that millions of American families would find to their liking?

Probably the strongest indication that the New Urbanist town is more than a hobbyhorse for nostalgic visionaries is the Walt Disney Company's decision to build an entire New Urbanist community near Orlando, complete with schools, parks, lakes, an old-fashioned walkable downtown, a health campus, up to one million square feet of office space, and neighborhoods full of houses in historical styles. Celebration started construction in the spring of 1995 after nine years of painstaking preparation, involving the prominent New York urban design firm Cooper, Robertson & Partners in cooperation with Robert A.M. Stern Architects. This is no minuscule niche project—its 4,900-acre tract, buffered by a 4,700-acre greenbelt, is to be developed with up to 8,000 houses and apartments. It has been estimated that by the time Celebration is completed in eight to ten years, some $2.5 billion will have been invested. Celebration elevates New Urbanism from the province of mostly small, local, and often contrarian developers to the realm of amply financed corporations. As America's leading caterer to the middle-class imagination, Disney, in its new community-building role, has already stirred great interest among architects, builders, and developers, not to mention the general public. With the level of talent that Disney is able to call on, Celebration will likely be good enough, big enough, and conspicuous enough to affect the direction of American building.

Obstacles in the Road

New Urbanist communities, then, tend to uphold central principles of good citizenship: vigorous involvement in a geographic community; interchange with people of different stations in life; a healthy combination of guidance and independence for youngsters; responsive local government; and local support of culture, charity, and philanthropy. All of this amounts to a kind of communal bulwark against the impersonality and materialism of today's mass culture. If the true test of New Urbanist design is how the people within its boundaries conduct themselves, particularly their public lives, then by that standard New Urbanism seems to be a success.

It is indisputable that for every Kentlands that is under construction, there are still a hundred newly built Isolation Estates, where the family of a physician never crosses paths with the family of a mail clerk, and where there is
little incentive to stroll down the block, because it is a dead end. And even in traditional communities, whether new or old, it is a formidable task to attract and keep assortments of small, locally owned stores—in times past, the very embodiment of a neighborhood's personality and convenience. The vastly enlarged consumer market-sheds created by the automobile have caused a large decline in mom-and-pop establishments, a loss that traditionalists, despite their ambitions, are hard pressed to combat.

Nonetheless, the New Urbanist movement is the brightest hope to arise in community design in a long while. The next step is to break down the barriers that prevent developments like Kentlands and Harbor Town from being built in much of America. The inflexible hand of zoning should be loosened so that mixtures of housing—gradations of different kinds, sizes, and prices—can be included in a community, and so that small stores, cafes, and other hallmarks of a sociable neighborhood can legally be built within walking (or biking) distance of people's homes. Transportation departments must change their standards—which favor wide roads and maximum vehicular use—and start injecting pedestrian comfort into their calculations, for walking is a prime source of community consciousness.

If we are serious about building cohesive communities, we would demand that governmental and educational institutions reconsider their policies on what to build and where to build it. Branch post offices would not be oriented mainly to the convenience of 18-wheelers, but would be designed to enhance community gathering places; few services generate as much local interchange as a well-placed post office. Boards of education would integrate their schools into neighborhoods rather than granting educators their selfish wish for dozens of acres of parking, lawns, and athletic fields—a wish that consigns high schools to edge-of-town sites and prevents students from circulating through the community and its business section, the way students did in an era when town centers contained the communities' major functions.

If we take the well-being of communities seriously, we would do all these things and more. The past half-century has been spent creating a smooth, well-advertised world of shopping malls, megastores, profusely equipped houses, and the ultimate in private motorized transportation—a consumer paradise, in the view of its proponents, but in reality a centerless zone where what is on TV seems more compelling than the public life outside the door. We can do better. If we turn our energy to it, the lives of individuals, families, and communities will reverberate with the improvement.
PART FOUR

COMMUNITARIAN POLICIES
Discussions of matters concerning public affairs are often couched in terms acquired from our legal culture. The implicit assumption is that both sides (rarely is there room for more) will state their position like lawyers in court, in the starkest possible way, drawing on whatever arguments they can marshal, even if these greatly distort the facts and vastly misrepresent the other side. In yesterday America, in the world before September 11, civil rights and public safety were often discussed in this way. On the one side, libertarians made strong, uncompromising cases for liberty. In effect, practically any suggestions made in the name of shoring up our safety, including the anti-terrorism measures urgent upon the country by a 1996 commission on national security, were severely criticized as unnecessary invasions of our freedoms. The government (a.k.a. Big Brother), not terror, was considered the main threat to liberty.

On the other side, the political right characterizes the ACLU and its sister organizations, liberal in general, as undermining the moral fabric of the country, destroying its social order, inviting terrorism.

In the weeks that followed September 11 the country pulled together. A strong spirit of community prevailed. Bipartisanship governed. Differences were not suppressed, but they were worked out. Posturing was largely replaced by a competition for who could do more and better for the nation by working with the other side.

Congress—working with the White House—sorted out where the new point of balance would be between our all too evident need to enhance public safety
(especially facing the threat of terrorists using weapons of mass destruction) and our profound commitments to respect and uphold our rights. The old habits did not disappear. There were those who argued that practically any measure aimed at protecting the homeland was going to "shred the Constitution" and "do the terrorist work for them." Others argued that Americans' lifestyles had brought this crisis upon them. Jerry Falwell pointed a finger at "the pagans, and the abortionists, and the feminists, and the gays and the lesbians who are actively trying to make that an alternative lifestyle, the ACLU, People for the American Way, all of them who have tried to secularize America." But, as illustrated by the key documents that opened the public policy deliberations—the administration's position outlined by Attorney General John Ashcroft and the counterproposal by Democratic Senator Patrick Leahy—the main representatives of both sides lowered their voices and moved toward one another. Although differences continue to exist, as they ought to, they are couched in terms that leave the door open to civil dialogues, productive exchanges, and reasonable policies mindful of both safety and rights.

The Balance

A good place to start is to note that the Constitution has always been a living document and has been adapted to the changing needs of the times. This is evident if we recall that until the ACLU reinterpreted the First Amendment in the 1920s, it was hardly a steelly protector of free speech. More dramatically, if we were to rely on the unchanging text of the Constitution, then of course we would have no right of privacy, which the Constitution does not even mention; we must recall that privacy is a right fashioned as recently as 1965! If we can create a whole new right out of the penumbra of the Constitution, we surely can refashion it some, not because we have just experienced the most devastating attack on our homeland ever, but because we face more and worse.

Even if we were to stick merely to the Founding Fathers' text, the governing Fourth Amendment is not phrased in the absolute way the First is. It does not state that Congress "shall make no law allowing search and seizure" or anything remotely like it. It states that there be no unreasonable searches. It is one of only two rights-defining amendments that recognizes, on the face of it, the importance of taking into account the public interest. Indeed, the courts have long recognized that our right to privacy must be weighed against our need for public safety (and public health).

The next step is to draw on this very general principle for more specific guidance as to when to give priority to privacy and when to public safety. Meeting major new challenges as they arise provides one criteria. Thus,
when new privacy-invading technologies have been developed over recent years, we introduced massive new regulations to protect medical privacy and some to enhance financial privacy. Now, there is a massive new threat to public safety that deserves new consideration.

Next, as we introduce new safety measures, we ought to focus on those that are minimally intrusive and highly productive in terms of public protection, and avoid those that have the opposite profile. It is perfectly reasonable to argue that if we allow public authorities—after they obtain a warrant—to tap phones and open mail, we shall also enable and allow them to monitor e-mail and read encrypted messages. As we allow police to scan crowds in public spaces, so we should allow computers. And we might consider retaining as spies agents who have an unsavory character.

Moreover, once we put our mind to it we can reduce the clash between the need for safety and the traditional formulation of our rights. Civil libertarians have opposed devices that allow authorities to pinpoint places from which people make cell phone calls. Rescuers find them very useful. Lets add an on/off switch. The ACLU opposed the introduction at airports of x-ray machines that can determine if people are carrying concealed weapons under their clothes. (Barry Steinhardt, associate director of the ACLU, stated that he fears custom agents could see you in your birthday suit—and put the pictures on the Internet.) Maybe now the ACLU will find these devices tolerable once it notes that in order to be scanned people need to sign a consent form, and that the pictures are quite opaque.

At the same time, it is repugnant even to talk about detaining Arab Americans the way we did Japanese Americans during War World II. Requiring all Americans to carry government-issued I.D. cards at all times and stopping people at random to demand identification, common in Europe, is another measure that is both a gross violation of our basic rights and contributes very little to public safety.

Still other measures may require considerable deliberation. Stopping and questioning all Arab Americans constitutes a massive violation of privacy and does little for public safety other than squander police and FBI resources. However, paying special attention to young males with new flight licenses seeking to travel on a major airline who seem Middle Eastern may be a kind of profiling that is justifiable. It seems to meet the criteria often used by law: it is what a reasonable person would find, well, reasonable.

In all such deliberations, it is crucial to note that nations have not lost their liberty as a result of a small accumulation of increased safety measures that pushed them down a slippery slope to the unraveling of their constitutional rights; they lost their freedoms when public authorities
failed to respond to urgent public needs. We face a major new challenge. To argue that most any strengthening of the devices and procedures used by public authorities to enhance public safety would “drive a stake through the heart of the Constitution” or “make us do the terrorists’ job for them by turning us into a people like them,” is going to stand in the way of engaging in carefully reasoned deliberations about how far we should go—and where no terrorists should make us dare to tread.

The Specifics

Reasonable people can differ on the specific issues that are at stake. Sometimes there is room for true alarm. When it was suggested that immigrants should be able to be detained, without being charged or tried, for “indefinite” periods of time, this seemed to set a very worrisome precedent for dealing with people in a free society. At the same time, it makes sense to allow judges to extend the period suspects are detained if evidence is presented to a judge that indicates their release will endanger the public. In contrast, most people might have trouble understanding why the FBI is still not allowed to receive information the CIA collects overseas (on the grounds that it would violate our privacy law). Imagine that the CIA intercepts a conversation in a Middle Eastern country that indicates that Osama bin Ladin has just given the green light for the next attack, this one with a small nuclear device, to his American associates. It seems difficult to comprehend that this information will be kept from our domestic law enforcement authorities. The Constitution is not a suicide pact.

As these lines go to press, much attention has been paid, as it ought to have been, to the balance between public safety and rights such as the right to privacy, anonymity, due process, and freedom of movement. Much less attention has been given to military violations of the First Amendment. For decades now, based largely on the way the press helped generate opposition to the war in Vietnam, the armed forces have drawn the lesson that the military is better off if the public is informed as little as possible about its plans and actions. We have early indications that the same will be true for the war against terrorism. This tough issue deserves more attention. Here too we must find a better point of balance, which most likely requires more access for and disclosure to the media. Many disastrous operations—concocted by planners with little understanding of the cultures and societies involved, trained on computer war games—would gain a healthy reality check if they were dissected by the fourth estate. I am not arguing for disclosing every-
thing. Naming CIA agents who work covertly in other countries is criminal, and I would ban the publication of how to make nuclear weapons in one's basement. But there is much more room for disclosure without violating such taboos.

Immigration rights bring up a complex set of issues that deserve airing well beyond the issues concerning public safety. The difficulties start with the observations that every one who is in the United States (or for that matter, anyplace) has some inalienable rights, say those enumerated in the UN Universal Declaration of Human Rights. At the same time, few disagree that immigrants do not have all the rights of American citizens—for instance, they cannot vote. (In some other countries they are accorded these rights in local elections.) Where to draw the line has been a difficult and highly charged matter. It seems to require especially urgent attention not merely because practically all those who attacked us were foreigners, but also because we seem to mix harsh measures (deporting immigrants who committed a minor crime even if married to Americans and if they have American born children) with very lax ones (often allowing illegal immigrants who have been granted a hearing to roam free until the hearing and not acting when they simply do not show up, in the many thousands). Possible future deliberations have to draw a much sharper line between legal immigrants and illegal “immigrants.” The former have come to these shores after being relatively carefully reviewed (including their criminal record), often after having waited for many years for their turn, with the understanding that they will become full-fledged Americans in due process. Illegal “immigrants” are foreigners who first entered the United States by violating the law or who stayed beyond their allotted time, often without any or only minimal preliminary screening, jumping the long queue of their own countrymen and women, and to whom no promise of citizenship was ever made. Treating immigrants and law-violating foreigners quite differently seems to make sense. (It might be said that we need the millions of illegal “immigrants” for the work Americans do not wish to do. In that case, we should increase the level of legal, scrutinized, immigration rather than allow those who came here only on a tourist or student visa to make that decision for us.)

The discussion of racial profiling has been especially troubling, starting with the term itself. Whatever group one has in mind—Muslim Americans, Arab Americans, or Middle Easterners—does not constitute a race (the U.S. census counts them as whites). Any way one looks at these groups, they are either a religious group or an ethnic group, but not a race. By referring to the
matter at hand as one that concerns racial rather than ethnic profiling, one plays on the strong emotion the abuse of African Americans invokes, which has no equivalent in our history. Next, in the tradition of extreme advocacy, reference is frequently made in this context to the mass detention of Japanese Americans during World War II—warning us that we should not treat our Middle Eastern citizens this way—and in the process disregarding the fact that we made great progress in this matter, to the point that nobody—not even on the extreme right—as much as mentioned anything remotely resembling such acts. It would have been unacceptable even if public authorities merely asked a few questions of the millions of Muslim Americans, despite the fact that all the terrorists, as far as we knew in the days following September 11, were members of this group.

However, given that there were strong indications that other hijackings or chemical or biological attacks (using crop dusters) might well be about to strike, it would have been extremely unreasonable not to ask a few extra questions of Middle Eastern young male pilots with recent licenses about to mount long-distance flights. Just think: if this marker had not been used and authorities had to question all young male or even merely all pilots, the screening would have taken a hundred times longer—allowing ample time for the terrorists lying in wait to act. The law has long recognized the reasonable person rule, permitting that which a reasonable person would do. If using the ethnic marker under the said circumstances was unreasonable, it sure is hard to understand what reasonable is.

Special Interests

In the recent intensive debate over which laws to enact, little attention has been paid to the fact that enacting them is at best half the story. Passing laws that are supposed to enhance our safety turns into a bitter illusion when special interests (to the extent that they dared not block their enactment) prevent their enforcement. If the enforcement of civil rights needs to mind public safety, surely profits ought to yield to national security.

In 1996 Congress enacted an immigration act aimed at preventing terrorism. The act responded to the finding that about 3.5 millions foreigners who came to this country on temporary visas simply stayed once these expired. These illegal immigrants included sixteen out of nineteen of the terrorists directly involved in the September 11 attack on America. The law called for setting up a computerized entry-exit system to provide information on aliens entering and leaving the country and required educational
institutions to provide the INS with up-to-date information on foreign students. However, after objections by border towns' Chambers of Commerce, the legislation was gutted to remove the provision providing for the computerized tracking system. What is now needed is more than verifying whether those whose visas expired left the country (as this is written, the United States, unlike many other free societies, has no record of who is leaving). If such temporary visitors don't depart, they must be located and deported. These recommended measures do not reflect an anti-immigration sentiment; it is grossly unfair that those who have been often waiting for many years to gain the right to immigrate to the United States to remain in queue while those who stay in the United States illegally become de facto immigrants. One could readily imagine increasing substantially the number of legal immigrants if desired and still deport those who violated the law.

Also, temporary visas are granted for specific purposes, say for a period of study. Better enforcement is needed to ensure that educational institutions comply with the requirement to report to the INS when those who came here on such a visa do not show up at their doors. They are in the United States on false pretenses from day one. At least we need to learn what they are up to. Given the new reality, one hopes that both business and educational institutions would now fully support such new measures and cease to lobby against them.

The airlines have effectively blocked or diluted numerous security measures recommended by various commissions and public authorities, not because they are callous but because of the costs they impose on the strapped industry. In 1990, Congress wanted to introduce background checks on all airport employees, but as Walter V. Robinson and Glen Johnson of the Boston Globe report, the airlines hired former director of the FBI and CIA William H. Webster to lobby against these safety measures. As a result, they were much curtailed. In 1996, a measure that would have made for a much tighter screening of baggage was greatly scaled back following major campaign contributions by the airlines.

Furthermore, the airlines relegated airport security to small profit-hungry companies that hired the cheapest labor they could find, barely checked their backgrounds, and gave them minimal training and slight supervision. When these guardians of our security failed practically all objective tests of their surveillance, the airlines pressured the Federal Aviation Administration to rely only on what in effect are sham tests. (From then on, the FAA used in its tests the same device, a huge make-believe bomb, and often sent the same
tester through the same screening spots.) The airline industry might well be unable to foot the bill for the kind of security we now require. It should hence insist that the federal government take over airport safety rather than participate in the con game that has been much of airline security since September 11, 2001.

The federal government long feared that terrorists’ communications would become impenetrable once they got their hands on top-of-the-line encryption systems. It is widely believed, although this obviously cannot be proven, that even our all-powerful National Security Agency is unable to crack these coded messages. In any event, the FBI and CIA strongly favored either not exporting such powerful encryption software or including in it a “back door” that would allow authorities to penetrate these systems. However, the software industry pressured Congress time and again to scale back whatever export limitations were in place and successfully prevented the introduction of back doors.

The industry did not rest its case on its desire for fatter profits. It, along with civil libertarians, argued that Big Brother wanted to snoop on innocent people, ignoring that the government was seeking the same powers in cyberspace that it already had in the world of phones and mail (e.g., eavesdropping on communications only after a warrant was granted by a court). The industry also maintained that if it did not sell top-of-the-line encryption systems overseas, some other country would, refusing to take into account that several other nations have introduced back doors into their systems or could not be trusted to have refrained from doing so. Anyhow, the industry did not rely much on the strength of its arguments; to ensure that it had its way, it made substantial campaign contributions. The last export control to be removed, in 1999, was announced on a day before a major fundraiser to take place in Silicon Valley. One reason we had no warning before September 11 is that terrorists can now use top-of-the-line encryption.

But all this was before. Perhaps, special interests will begin to lose their political clout in this new era. Hopefully, the business community will now fully support the introduction of new security measures (which after all protect their workers, managers, and customers). And to the extent that these measures are beyond what an industry can afford, they will lobby for the government to cover the costs rather than dilute the measures. And members of Congress, if they cannot find it in their hearts to drastically reform campaign financing, at least will continue to do for all measures that concern public safety what they did in the first weeks after the assault: refuse to accept donations or solicit any.
The Three-legged Society

Communitarians have long been interested in the proper division of labor, resources, and authority among the government, the private sector, and the community (voluntary associations and religious institutions included). Over the last few years, much has been made about the need to steer more services to the private sector and to communities. Whether we leaned too far in this direction was an issue some of us have been concerned about, even before the assault on America. Privatization of prisons raised numerous issues, as did the ways we privatized the purchase of plutonium from Russia and removed exports controls on high-power technologies of great interest to foreign powers to accommodate business (see Next: The Road to the Good Society [Basic Books, 2001] for more documentation).

In addition to security, public health is a communitarian service of the highest order. It concerns itself with those matters that affect all of us rather than just certain individuals. When individual desires conflict with the needs of the community, say if parents neglect the immunization of their children, or libertarians argue that each person, rather than the city, should fluoridate their water (even though the public is stuck with many of the costs of dental care), public health is there to speak for the rest of us. And of course it deals with infectious diseases and the threat of biological warfare. The time has come to accord much more standing, resources, and authority to public health.

Homeland Security Starts Overseas

When all is said and done, there is something profoundly wrong about separating these domestic deliberations from discussions about how we are going to try to prevent terrorism from rising (rather than “hardening” the targets they seek to strike). Here the most telling observation is that free societies rear or sponsor few international terrorists; authoritarian and totalitarian nations are their primary homes. If we try to deal with terrorist attacks mainly by heightening our defenses, we shall need to curb even more of our freedoms of movement, of assembly, of commerce. Ultimately we shall turn into a garrison state and still not be safe. Britain enacted all kinds of laws limiting rights to protect itself from Irish terrorists, and they shot a missile at their White House and planted a bomb next to their CIA headquarters. Israelis fear going to malls, bus stops, and movies despite all the measures they have taken. Most importantly, if we succeed in effectively blocking one form of attack—by putting armed marshals on airlines, for example—we shall shift
the terrorists’ efforts to other avenues of attack. (This is what happened when we made it more difficult to place car bombs; they took to the air.) The only way to cut off all the heads of the terrorism Hydra is to strike at its heart.

The way to greatly curtail international terrorism is to do for more countries what we did for Japan after 1945 and Serbia most recently: foster freedom. In the process we may have to enter these countries and remove their tyrants (and disable their most dangerous facilities for weapons of mass destruction). We would, of course, in the process serve not merely our safety but also do well by the oppressed people of these countries.

It is argued that if we remove a Saddam, or Qaddafi, or the Taliban junta, they are merely going to be replaced by another terrorist-harboring tyrant. This may well be true. We will then need to replace these, until the new group that reflects the people of these nations, and is willing to open up these countries, arises, maybe only after two or three rounds. I do not mean that we should occupy these countries and hold them until they democratize, but that we ought to change our policy of not attacking their heads and their facilities. To put it more bluntly, taking out tyrants is a hell of a lot more ethical than killing hordes of civilians, even if only as “collateral” damage. And it is true that we cannot make them into full-blown democracies. However, if they could be merely opened up to a free flow of ideas, people, and commerce, conditions under which democracy may evolve—and international terrorism minimized—would have been achieved. We must combine prevention overseas with stronger protection of our homeland or we shall lose both some of our rights and much of our safety.
CHAPTER TWENTY

Confusing Freedom with License—Licenses Terrorism, Not Freedom

Douglas W. Kmiec

The events of September 11 remain ever-present in the minds of American citizens. For thousands of families, a husband or wife or child will never return home because of what happened that day. The diabolical events of that morning will be forever etched in our consciousness. And yet, along with those mental pictures, it is important to grasp fully what happened: it wasn’t a political rally; it wasn’t a nonviolent speech protest; it wasn’t an example of urban street crime; and it wasn’t even an attack by another sovereign state or nation. It was the deliberate murder of innocent men and women, not for high political purpose or cause—or even a base one—but simply the random manifestation of hate intended to spread panic and fracture the civil order and continuation of American society.

But as grievously wounded as we may be, American society and its principled understanding of freedom with responsibility does not fracture or panic that easily, but it does expect that justice will be done. It earnestly desires, along with our President, to see those who so mercilessly took sacred human life to be held to account—not in a local criminal court, but by the able men and women of the military and our law enforcement communities, working together, either to eliminate on a field of battle these “enemies of mankind,” as Blackstone called them, or to apprehend and punish them—presumably before the bar of a properly convened military tribunal like those employed against Nazi saboteurs in World War II.

In considering this legislation it is useful to remember that our founders’ conception of freedom was not a freedom to do anything or associate for any purpose, but to do those things which do not harm others and which, it was
hoped, would advance the common good. Freedom separated from this truth is not freedom at all, but license. Congress can no longer afford, if it ever could, to confuse freedom and license because doing so licenses terrorism, not freedom. Those opposing the Anti-Terrorism Act of 2001 seem to have either a more extreme view of freedom or a less sober view of the threats we face, or both.

With due respect, such unrefined autonomy or complacency hides a basic confusion or under-appreciation for the war against terrorism that now must be fought. The objectors think of the mass destruction of the World Trade Center and the Pentagon as the equivalent of “[m]urder, kidnapping or bank robbery.” They think the point is a criminal trial; it is not—it is the elimination of terrorism.

The primary authority for dealing with terrorist threat resides in both the President, as commander in chief, and Congress, as the architect of various specific legal authorities, under the Constitution, to meet that threat. The President has courageously told the nations of the world that all are either for the United States in this or with the terrorists. There is no middle ground. Similarly, the Congress by joint resolution has given President Bush authority not only to act against those wealthy and bloody hands that orchestrated the events of September 11 but all cooperators in those cowardly actions or “any future act” of international terrorism.

The President has not been rash in the use of our military might, even as he has made unmistakably plain that the “hour is coming when America will act.” However, for that hour to come, for the proportionate application of our military might to become successfully manifest, this Congress must equip our law enforcement and intelligence communities with adequate and constitutional legal authority to address a war crime on a scale that previously was not seen in this generation, or seen ever, in peace time.

With some minor refinement, the Anti-Terrorism Act of 2001 is just such a piece of legislation. The proposal gives due regard to the necessary balance between the civil liberties enjoyed by our citizens under the Constitution and the law enforcement authority needed. It advances two fundamental purposes: to subject terrorism to at least the same rigorous treatment as organized crime and prosecution of the drug trade and to supply up-to-date law enforcement capabilities that address the technology of the day which no longer observes some of the lines previously drawn in existing statute. Terrorists don’t stay in one place using only land-line telephones and postcards, and it is folly to have a legal investigation authority that still assumes that.

While the provisions are a bit arcane and complex, they incorporate the recommendations of virtually every commission in the last decade to study terrorism. Specifically, with respect to conducting intelligence gathering
against a foreign power or their agents, the proposed legislation ensures that the insights of the specialized foreign intelligence court are available to superintend the investigative process. There is no reason to deny the Justice Department this authority even if a given investigation has a significant criminal purpose as well. So too, information gathered on the criminal justice side of an investigation or through a grand jury should, as it would under the proposal, be made available to those with the difficult worldwide man-hunt. Such things follow prudent legal requirement and plain common sense.

**Widening the Net**

Turning to the immigration proposals, it is evident that a broadened definition of “terrorist” is needed. Under current law, an alien is inadmissible and deportable for engaging in terrorist activity only when the alien has used explosives or firearms. Opponents of the Attorney General’s proposal claim the new definition of terrorism is too broad. For example, Professor David Cole specifically objects to adding the words “or other weapon or dangerous device” to section 201(a)(1)(B) (ii), which—as noted—presently prohibits only the use or threat to use any “explosive or firearm.” Professor Cole asserts that expanding the term to include a residual category of other weapons trivializes terrorism. This is not constitutional law, it is opinion.

And I dare say it is not the opinion of the families of the innocent men and women who had their commercial airliner turned into a “weapon and dangerous device,” or whose family members were killed with a “box cutter” en route. It is not likely the opinion of the families who lost loved ones in the World Trade Center or the Pentagon or in rural Pennsylvania. Perhaps, prior to September 11, we could be lulled into the notion that not even terrorists would conceive of using innocent human beings as a weapon against other innocent human beings on our own soil, but sadly that is no longer our reality. Hypotheticals that the statute might be contorted to apply to a barroom brawl or a domestic dispute overlook the reason we have been called here, demean the judgment of federal officers, and are quite simply too facetious to be credited as a legal objection.

Similarly, opponents of this legislation are concerned that aliens who associate with terrorist organizations may be deported when their purported association has somehow been confined to the nonterrorist functions of the organization. Terrorists unfortunately gain financial and other support hiding behind the facade of charity. Those opposing this new immigration authority seem undisturbed by this. That is again a policy choice; it is not a constitutional one. A statute, like proposed section 201, aimed at supplying a general prohibition
against an alien contributing funds or other material support to a terrorist organization (as designated under current law by the Secretary of State) or to any nondesignated organization that the alien "knows or reasonably should know" furthers terrorist activity, does not violate the Constitution. Loosely citing cases that prohibit assigning guilt by association are inapposite. The cases cited by opponents of this legislation deal with domestic civil rights and the like pertain to the nonviolent association of American citizens, not the fanatical planning of noncitizens.

**Considering Intent**

Eliminating terrorism requires not just excluding terrorists as individuals but individuals who engage in terrorist activity either in an individual capacity or as a member of an organization. There is nothing unconstitutional about this. The Constitution does not require that associations of terrorists be ignored. Yes, the government must prove specific intent in a criminal trial that the individual had made the association to advance unlawful purposes. Section 201 envisions just that. "Engaging in terrorist activity" means committing a terrorist act or otherwise committing acts that "the actor knows, or reasonably should know, affords material support...to any organization that the actor knows, or reasonably should know, is a terrorist organization, or to any individual whom the actor knows, or reasonably should know, has committed or plans to commit any terrorist activity." The specific intent requirements are not only explicit but multiple. It is thus a blatant fabrication on the part of the objectors that the proposal severs "any tie between the support provided and terrorist activity." This is not, as the objectors claim, "guilt by association," but guilt for associating with terrorists for terrorism purposes.

The proposed legislation likewise does not punish those who innocently may support a front organization or even may support an individual who had previously committed a terrorist activity if the alien establishes "by clear and convincing evidence that such support was afforded only after that individual had permanently and publicly renounced and rejected the use of, and had cease to commit or support, any terrorist activity."

The witnesses against the Attorney General's well-conceived proposal also mislead by mis-citation. They would have the committee believe, as one witness said in opposition before the Intelligence Committee, that "[t]he First and Fifth amendments apply equally to citizens and aliens residing in the United States." However, this cannot be said without qualification. With regard to exclusion of immigrants, U.S. authority is plenary. And the Court has long held: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."
Terrorists or those seeking association with them clearly can be excluded from our nation without offending the First Amendment or any other provision of the Constitution. While additional rights attend an immigrant granted admission, they are not on par with citizens. In *U.S. v. Verdugo-Urquidez*, for example, the Court opined that "[o]ur cases, however, establish only that aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."

This leads to the question of whether those posing a terrorist threat can be detained by the Attorney General. The detention provision has been the subject of much debate and as of this writing was still in flux. The Senate version of section 203 provides for this insofar as "[t]he Attorney General may certify [for detention] an alien to be an alien he has reason to believe may commit, further, or facilitate [terrorist] acts . . . or engage in any other activity that endangers the national security of the United States." The objectors to the legislation recite, erroneously, that the proposal mandates indefinite detention. As the quoted language above indicates, the Attorney General's certification is permissive (may, not shall), even as following certification, the detention naturally follows. It would be illogical if it did not.

Is this detention based on certification unconstitutional? Not even the opponents claim this; instead, they opine it raises "constitutional concerns." They especially say this would be true if it were used to detain those giving "peace training to the IRA." Any statute can be made to raise constitutional concerns if it is manipulated to apply against something other than its constitutional object. The Congress is not tasked with drafting against the absurd. It is tasked with addressing the very real dangers of those who wish to kill us for no reason other than we are American. The Attorney General can be given authority to address such hatred. He can also be given the authority to address the risks posed by enemy aliens who may flee or who may seek to thwart our security by exchanging information or launching an additional attack.

But, claim the objectors, the Attorney General cannot be given authority to detain persons he cannot deport. Perhaps, but that is not the question that needs to be answered. The Attorney General has not asked for that authority. He seeks to detain those who have been found to be removable, but for various reasons (mostly related to international obligations to avoid repatriation to a country where torture is inevitable), cannot be removed immediately. Existing law allows aliens to be removed not only when they were originally inadmissible or convicted of a crime or for violation of immigration status but also for national security or foreign relations reasons, or as implied under the existing post-removal statute, when the alien is "determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." This post-removal detention period authority was recently construed by the Supreme
Court in *Zadvydas v. Davis*. This case of statutory interpretation does not rule out indefinite detention where dangerousness is accompanied by special circumstance. The Court explicitly noted that in establishing a presumptive six-month period for detention nothing prevents the government from continuing detention with evidence of likely removal. Most relevantly, the Court did not even apply the presumptive six-month detention limit to cases of detention for terrorist activity or its support. Wrote Justice Breyer for the Court: "Neither do we consider terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security."

The detention by Attorney General certification thus raises none of the constitutional problems suggested by the legislation's detractors. Moreover, even the opponents of this carefully drawn legislation must and do concede that it adequately provides for judicial review of the Attorney General's determination.

It should be noted that the House version of Section 203 is a bit different, providing, in addition to detention following a removal decision, for short-term detention of a suspected terrorist for up to seven days before charging an alien with a crime or a basis for removal. If no charges are filed, the alien is released. The House version provides for habeas review in the U.S. District Court of the District of Columbia of any decision to charge an alien. Under current regulation, INS may detain an alien for 48 hours before charging a crime or removable offense. Extending this time of detention without charge may raise more legal questions than the Senate version, which as explained by its proponents did not apply to an alien who was not already determined to be subject to removal. Whether a constitutional problem is presented by the House version likely depends upon the extent of due process protection afforded an individual alien in light of the degree of his or her substantial connection with this country.

Raising civil libertarian objections to new law enforcement provisions is a healthy sign of a vibrant democracy committed to human rights. America should be justly proud of its temperate actions in response to September 11, including this debate of civil liberties. Congress should proceed to enactment since no significant constitutional objection has been raised. Should Congress nevertheless fear that the power asked for might be abused, the prudent course would not be to deny the needed authority, but to draft a cause of action for damages to rectify possible misapplication, or to provide for a sunset of the authority after a period of time sufficient to meet the present exigency. The possibility of abuse should not obscure the present need and the supposition of trust that one must have if our democratic order is to be safeguarded from those outside our borders who wish to subvert it.
CHAPTER TWENTY-ONE

We Can Strike a Balance on Civil Liberties

Laurence H. Tribe

The monstrous attack on America that took the lives of thousands on September 11, 2001, sent waves of anguish through the nation, setting in motion a response whose outlines we are just beginning to sketch. The way we complete that sketch will determine whether the terrorists will destroy, more than lives and towering structures, the very foundations of our freedom.

To watch Congress take up a complex set of anti-terrorism measures with lightning speed, with the usually lumbering Senate passing the whole legislative package in under 30 minutes, is a refreshing change. But institutional checks against intemperate action are there for a reason. David Hume, in his "Enquiries," said justice must be suspended in times of war. Our Constitution's approach is different, specifying the few limited areas—like the quartering of soldiers in private homes—where a wartime exception is made, and treating constitutional principles as otherwise universally applicable. The Constitution is written mostly in measured rather than absolute terms. Witness the ban on "unreasonable" searches and seizures. As Chief Justice William Rehnquist wrote, "The laws will . . . not be silent in time of war, but they will speak with a somewhat different voice." Given the Constitution's flexibility, there can be no excuse for not subjecting all our wartime practices to its scrutiny.

That said, some proposals, being overdue and entirely constitutional responses to technological change, must be enacted promptly. Existing provisions dealing with biological threats have not kept pace with bioterrorism and should be broadened. Cell phones have made wiretap warrants limited
to particular phone lines obsolete; wiretap authority applying to a suspect personally, and regardless of the phone he uses, is sensible and constitutional. So, too, if search warrants suffice to seize non-voicemail messages, they should suffice to seize stored voicemail.

New legislation need not be limited to measures that catch up with technology. Asset forfeiture and other provisions of our anti-racketeering laws should be extended to terrorist groups. Terrorist offenses should be subjected to enhanced penalties and denied the shield of statutes of limitations. Congress should add preventive steps providing greater security, including federalizing airport check-ins, more armed federal marshals on airplanes and trains, tightening federal controls on crop dusters and other private aircraft, and enlarging the budget for hiring and training counterterrorism infiltrators fluent in the suspects’ languages.

Other proposals should be enacted only after tightening safeguards against abuse. For instance, measures to increase sharing of wiretap and other surveillance information within the intelligence community need controls to prevent a recurrence of the FBI’s infamous leaks about Martin Luther King’s personal life.

But when asked to confer open-ended powers of a sort that governments crave, Congress should put on the brakes. The Anti-Terrorism Act of 2001 would, for example, give government sweeping authority to detain without bail, and for an indefinite time, any alien—even one whom there is no basis to deport—citing only “reason to believe the alien may endanger national security.” That language is so vague that the existence of judicial review would seem to provide no meaningful safeguard against abuse.

In the same spirit, the act renders deportable any permanent resident alien who ever contributed to a domestic group, including one not then designated a terrorist organization, any sub-group of which ever threatened to use a weapon against person or property. That would make resident aliens deportable if they contributed to any of several pro-life organizations, for example. Those provisions endanger freedom of political association and must be narrowed.

In at least one crucial respect, the response to the terrorist attack shows a regard for human rights lacking in our response to Pearl Harbor, when we interned Americans of Japanese descent, none of whom had been accused of wrongdoing. How different was the sight of New York Mayor Rudolph Giuliani, soon followed by President Bush, appealing eloquently to Americans not to seek revenge on their fellow citizens who happen to be Muslims.

Grassroots reactions in this instance have lagged behind our political leaders, as vigilante attacks mount and increasing numbers call for ethnic profiling of Arabs and Arab Americans. But there is no sound law enforcement ra-
tionale for detention by visual association, for there exists face-recognition software for picking individuals out of crowds far more efficiently and accurately than by the crude use of racial characteristics. Such face-recognition software can and should be deployed—and improved.

There is, of course, a built-in political check when stringent security measures affect us all equally. When Congress weighs the virtues of proposals that would enable the authorities to seize a suspect’s voicemail messages or eavesdrop on e-mail communications, we can be reasonably confident the scales aren’t unfairly tipped against individual privacy. But there is danger, far from trivial, that the laws we enact today, in response to yesterday’s terrorist attack, will move the baseline of privacy expectations against which the tools proposed to deal with tomorrow’s terrorist attack are assessed.

When the Supreme Court held in June that using infrared technology to measure heat emanating from a home to discover what is inside constitutes a search—and is thus in violation of the Fourth Amendment absent a valid warrant—it circumscribed the “power of technology to shrink the realm of guaranteed privacy.” But it also cautioned that, once any technology is “in general public use,” its employment by law enforcement agencies to pierce personal privacy might no longer count as a “search” at all. In fact, the public’s tolerance for just a bit more government surveillance will grow as authority previously ceded sets an ever-moving precedent. Preventing this phenomenon altogether would be a tall order. At least, we should limit the momentum of measures adopted in an emergency by making all the powers we grant temporary, and designed to lapse unless reenacted by Congress.

It’s possible, of course, that what Congress fails to cut back the Supreme Court will strike down. But even if we could count on the Rehnquist Court’s misguided belief that it has all the answers, we should act on a theory of “better safe than sorry,” and resist the temptation to trust the judiciary to trim the excess. In any event, passing the buck to judges nurtures the undemocratic myth that courts are the sole custodians of constitutional truth.

It is “We the People” in whose name the Constitution was ordained and established; it is we who bear the responsibility to live by it even when the temptation to set it aside seems irresistible. It might be nice if there were a mast to which we could tie ourselves—as Ulysses did to steel himself against the call of the Sirens—to assure the survival of liberty and equality, but there is none. With or without a Supreme Court steadfastly dedicated to civil rights and liberties, each of us must follow an inner compass that points to the Constitution’s true north.
CHAPTER TWENTY-TWO

Liberal Sectarianism? Social Capital, Religious Communities, and Public Funds

Stephen Macedo

What is the proper relationship between public and faith-based institutions? It has become increasingly clear that the real question is not whether public funds will flow to and through religious and faith-based schools and social service agencies, but rather, on what terms and under what regulations and conditions? I am prepared to accept that these organizations can help to provide quality social services and that it is unfair to exclude them from competing for a share of public dollars along with other nonpublic organizations in civil society. However, if religious institutions want to be treated like other organizations in civil society and allowed to serve as conduits for the delivery of social welfare services including public education, they should expect to be treated like other institutions in civil society and to be subject to regulations that insure accountability to the public and compliance with a range of public values. Doing this will, of course, likely lead to complaints from some religious groups and organizations that their religious freedom is being constrained and that public policies are favoring some and disfavoring others. How should we respond to such complaints?

Religious organizations are vitally important parts of civil society, but the ideal of civil society is far from neutral with respect to various forms of community and contending religious visions. Insofar as we look to civil society institutions to partner with public agencies to advance important public purposes—with tax dollars—we should not be surprised if some communities (religious and otherwise) are not altogether happy with the conditions that come attached to public funds. Robert Putnam’s work on how intermediate
associations and social networks help make democracy work can help us understand one important basis for policies that have the effect of favoring some communities over others.

The Moral Distinctiveness of Social Capital

Putnam's conception of social capital will be well known to most readers. Societies are high in social capital when trusting attitudes prevail and cooperative activities abound among citizens. The phrase "social capital" is meant to identify a central feature of good citizenship: virtuous citizens are active in cooperative groups, associations, and social networks. As Putnam argues in his book Bowling Alone: The Collapse and Revival of American Community, "civic virtue is most powerful when embedded in a dense network of reciprocal social relations." Just as physical capital is required to produce material goods, social capital is required to produce active citizens.

What is not widely noted is that Putnam's ideal of civil society is morally substantive and distinctive; it is tied to an account of liberal democratic flourishing. Many associations, groups, and social networks will not qualify as contributors to civil society on Putnam's account.

Putnam distinguishes between "bonding" and "bridging" associations. Bonding associations are "inward looking and tend to reinforce exclusive identities and homogeneous groups." Examples include "ethnic fraternal organizations, church-based women's reading groups, and fashionable country clubs." Bonding associations tend to heighten distinctions between insiders and outsiders. Bridging associations are more specifically attuned to the values and virtues required by a liberal democratic social order: they are "outward looking and encompass people across diverse social cleavages." Examples include "the civil rights movement, many youth service groups, and ecumenical religious organizations."

Bonding associations have their uses. The intensity of the bonds they sustain can provide "crucial social and psychological support for less fortunate members of the community." Bonding associations cannot be altogether left behind, but their exclusivity makes them intrinsically problematic in a liberal democratic context. Bonding social capital is not always to be welcomed. It is sometimes harmful because it "bolsters our narrower selves," and "by creating strong in-group loyalty, [it] may also create strong out-group antagonism." Bridging social capital, on the other hand, is always to be welcomed. It is an unambiguous good because it generates all the benefits of social cooperation as well as "broader identities and reciprocity." The crucial point for
Putnam is that bridging social capital promotes concern for the broader society and a willingness to cooperate with all of one's fellow citizens, and these qualities are needed by a large and diverse liberal democracy.

Putnam does not make much of the fact but he is obviously sorting and ranking basic human goods. He clearly favors values such as equal respect for all persons, friendship, and cooperation among all citizens across social boundaries. Particular religious and moral worldviews that prioritize their own distinctive values may come into conflict with Putnam's ideal of civil society. Equality of respect among all citizens may be seen as at odds with the judgmentalism needed to sustain a commitment to severe forms of self-control. There are communities that do what they can to maintain strong community boundaries in order to support ethical visions at odds with mainstream values; they will not place a high value on broad social cooperation and reciprocity. Moreover, the shared and fluid cultural milieu promoted by bridging social capital may have the effect of undermining the strong bonds necessary to uphold demanding traditional sexual and moral codes that proclaim the permanence of marriage, the wrongness of premarital sex, wives’ proper subordination to their husbands, or other convictions counter to the cultural mainstream. To elevate the values of bridging groups at the expense of bonding groups is not ethically neutral.

**Religion and Social Capital**

Religious communities, like any others, can tend in the direction of either bonding or bridging. In his study of Italy, Putnam found that the uncivic regions tend to be traditionally Catholic. Where church attendance is high, divorce is rejected, and religious marriages are strongly favored over civil ones, rates of civic participation are low. The civic regions are characterized by greater evidence of secularism, but also by stronger lay involvement in religious affairs. Traditional Catholicism and clericalism promote hierarchical patterns of authority and dampen civic activity, whereas in the civic regions authority tends to flow horizontally across congregations and citizens.

Putnam argues that, in America, the important cleavage runs through the Protestant denominations. Mainline Protestant and Catholic churches seem to help mobilize civic engagement. They have the qualities of bridging associations: they don't monopolize their congregants' attention or discourage wider social involvements; indeed, members of these communities often help to lead secular civic groups. Mainline churches are schools of liberal democratic civic engagement. Evangelical churches, on the other hand, tend to be more exclusive bonding associations: they invest their social capital "at home more than in the wider community," and their members do not tend to become active leaders in wider civic associations. They are more concerned with
reaffirming their faith and less concerned with bettering the larger society. Fundamentalist and evangelical churches offer more intense forms of communal commitment, but this inward-looking intensity seems positively to discourage participation in efforts to improve the wider society. Conservative congregations offer fewer “social outreach services or programs” than liberal or moderate ones. Strikingly, while black church involvement has always been regarded as essential to the mobilization for civil rights, the story is not so simple: “Black civic engagement was positively correlated with involvement in mainline black churches, but negatively associated with involvement in black fundamentalist denominations.” In sum, two trends in church attendance in America bode ill for social engagement and civic virtue: the decline of (“more worldly”) mainline denominations, and the revitalization of evangelical religion, which Putnam describes as “an insurgent, more disciplined, more sectlike, less ‘secularized’ religious movement.”

**Discouraging Sectarianism**

The appearance of the word “sect” in Putnam’s account and its association with bonding rather than bridging associations is important. In his book, *The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies*, Charles L. Glenn complains that when political actors, including the Supreme Court, have branded religious communities as “sectarian,” it has typically been no more than a way to discriminate arbitrarily against religious communities.

Glenn believes that there is no reason for the government not to fund faith-based social services and schools alongside secular ones. He argues that even when receiving public funds, faith-based organizations should not, for the most part, be subject to regulations that would make it difficult for them to maintain their distinctive character and mission. From his perspective, “It is not enough that faith-based organizations be eligible for funding unless they are also protected from interference with how they approach the work for which they are funded.” Glenn believes many American policies unfairly discriminate against religious groups.

Glenn cites Richard A. Baer’s article, “The Supreme Court’s Discriminatory Use of the Term ‘Sectarian,’” in support of his claims. According to Baer, the Supreme Court’s use of “sectarian” to describe religious groups indicates its bias against religion, because

Throughout American history, “sectarian” has been used to exclude and to ostracize. It is a term that is used to disparage and marginalize particular groups of Americans and particular kinds of thinking. . . .

[It] always implies that there exists a contrasting mainstream, a right way of thinking, a common position that deserves to be accepted by everyone.
Glenn sums up the essential point of Baer's analysis: "Baer argues that the Supreme Court's use of sectarian is by no means neutral" (italics in original). As Baer elaborates,

the Court refers to "sectarian exclusivity," "narrower sectarian purpose," "sectarian division," "sectarian controversies," "political fragmentation on sectarian lines," and "sectarian bickering and strife." Terms such as "bitter controversies," "proselytizing function," and "bias" are closely conjoined with the term "sectarian."

Conversely, the Court uses more neutral or even positive language in conjunction with the terms "secular" and "nonsectarian."

Glenn joins Baer in complaining of the arbitrariness and unfairness of the pejorative label "sectarian," which is used to cast a negative light on religious groups. Is sorting communities (and not only religious communities) according to their degree of sectarianism totally arbitrary, or does it have a legitimate, civic basis?

I do not want to survey and assess the accuracy of this account of the Supreme Court's use of the category of sectarianism. In addition, the Court may or may not be right to label specific groups or institutions "sectarian," and perhaps Glenn is correct that the Court is inconsistent in its use of the term. However, insofar as groups do have the traits that the Court associates with the term "sectarian," they may be especially prone to object to legitimate regulations designed to promote liberal civic values, and such groups have no presumptive right to be accommodated.

The qualities of "sectarian" organizations in Glenn and Baer's account are strikingly similar to the worrisome qualities that Putnam ascribes to "bonding" associations. Both encourage inward-looking concern with traits and values particular to the group at the expense of wider forms of social cooperation and engagement with social problems. I want to reiterate that there are both bridging and bonding religious organizations, just as there are both bridging and bonding secular organizations. I certainly do not advocate discriminating against groups for religious reasons; I am arguing that a wariness of "sectarian" or "bonding" qualities results from the legitimate, civic purpose of promoting the goods that Putnam prioritizes in his ideal of civil society and does not reflect a bias against religion.

Many regulations and policies have non-neutral impacts on different faiths and religious communities and organizations, but these policies are often not simply arbitrary and unfair. Liberal democratic values such as inclusion, equality, and individual freedom will often support regulations and con-
ditions on public funding schemes that have the effect of promoting bridging associations and discouraging the qualities of bonding associations. (This is not to say that courts and policymakers have been consciously and principally motivated by the desire to promote this vision of civil society, though no doubt many at least have something like Putnam's vision of pluralism in the back of their minds.)

Programs such as school vouchers and faith-based initiatives show how regulations based on liberal democratic values can disfavor some religious groups even though these regulations are intended to accomplish civic, not religious, goals. With respect to school voucher experiments in Cleveland and Milwaukee, it is notable that in response to concerns expressed by courts and in legislative hearings, the receipt of publicly funded vouchers by religious schools has been attended by the following sorts of conditions: religious schools may decide how many students with vouchers they wish to take, but if they are oversubscribed they cannot pick and choose among children with vouchers on religious grounds (they may be allowed to prefer students with siblings already enrolled, as well as children who live in the school's neighborhood). In addition (in at least one of these cities) the schools may not impose mandatory religious exercises on children attending with vouchers. The primary justification for these conditions is no doubt equity: if vouchers are being publicly funded because religious schools provide a better education than public schools, all of the community's children should have a fair and equal chance of securing admission to those better schools. In addition, the prohibition of mandatory religious exercises helps protect the freedom of children with vouchers.

The effect of these conditions is to make religious schools that would otherwise be sect-like, bonding associations open only to the children of a particular religious community more like inclusive bridging associations that are open to educating all of the children in the larger community. This would seem to be exactly the sort of thing Glenn would object to. Indeed, evangelical schools in Milwaukee and Cleveland that view their curriculum in pervasively religious terms have refused to accept children with vouchers because they believe that the conditions that come attached to vouchers would require them to dampen their religious identity. On the other hand, Catholic schools have had no difficulty accepting children under these voucher programs. The regulatory provisions of some voucher experiments are, thus, weighted against "sect-like" communities. When the U.S. Supreme Court recently upheld the constitutionality of vouchers in Zelman v. Simmons-Harris, it left these regulations in place.

Other public programs have other conditions that tilt against the qualities of bonding associations and in favor of bridging associations. The extension
of antidiscrimination requirements to publicly funded nonprofits has the effect of undermining the ability of religious organizations to maintain their distinctiveness: it requires these organizations to be open to hiring otherwise qualified staff people who are not church members.

Even President Bush's faith-based initiative, which is designed to make it easier for religiously based social service agencies to apply for and receive public funds, retains some of the limiting features described above. Under Bush's proposals, agencies may not discriminate on religious grounds in deciding which clients to serve, and they may not require clients to participate in religious exercises as a condition of service. The faith-based initiatives coming out of Washington still insist that public policy should tilt in the direction of equality and inclusion, so even though they are intended to give faith-based organizations a fairer shake, they reflect a partiality toward bridging organizations.

If we accept that government should promote liberal civic values, it is very likely that groups that do not uphold these values will find themselves running afoul of government regulations and requirements when they seek access to public funds. Governments should make sure that public programs serve legitimate and important public purposes, but they cannot guarantee that public programs will treat religious or other groups neutrally. As I argued in my book, *Diversity and Distrust: Civic Education in a Multicultural Democracy*, this sort of neutrality is neither possible nor desirable. The health of liberal democracy depends on citizens possessing certain values and virtues, such as tolerance and a willingness to cooperate in civic life with citizens of other faiths. A liberal democratic society cannot and should not be indifferent to the values of its citizens. Despite Glenn's objections to the term "sectarian," it may describe certain religious and secular groups. As Putnam's work on bridging and bonding social capital reveals, fostering good citizenship depends on promoting bridging associations that embody liberal democratic values. Some may claim that this liberal vision is itself a kind of sectarianism. But unlike truly sectarian groups, liberalism provides reasonable terms for peaceful cooperation across social boundaries. If religious groups wish to receive public funds, they should not expect and have no right to claim a blanket entitlement to noninterference.

**What Role for Sect-Like Communities?**

Sect-like communities may sometimes have their public uses. Consider Teen Challenge, a drug rehabilitation program that its proponents claim enjoys rates of success that far surpass those of secular agencies. According to
Glenn, those secular agencies are typically staffed by therapeutic and medical professionals who treat “chemical dependency” as a medical problem. Teen Challenge regards drug addiction as rooted in sin, and its religious orientation is expressed “in every detail of its work.” The key to breaking drug dependence, for Teen Challenge, is to develop a personal relationship with Jesus Christ, with the support of an intensely committed group of peers. Teen Challenge provides “a community within which recovery is strongly valued and indeed insisted upon as the condition of continued participation.” Teen Challenge creates close Christian communities “in the intensive setting of a rural retreat.” Through “the relatively high level of continuing participation in a church,” the program helps insure that reform becomes “a habitual mode of life.” Teen Challenge in this way helps addicts find “a substitute purpose in life” that brings with it, in the words of a Teen Challenge document, “a whole new way of living.”

Glenn argues that government bureaucrats have unfairly ignored the success rates of Teen Challenge and have sought to deny the program government funding. They have done this in spite of the fact that, according to a study Glenn cites, nearly 70 percent of Teen Challenge graduates remained free of drugs, alcohol, and even nicotine seven years after completing the program. Glenn may be right that, when confronting horrible and life-destroying forms of addiction, we may need to appreciate and accommodate the virtues of communities and institutions that have some of the characteristics of sects, or bonding associations. It may be, in other words, that Teen Challenge deserves government funding if—and it is a big “if”—the sorts of empirical studies cited by Glenn in support of it are sound. This does not mean, however, that the public policy of a liberal democratic constitutional order will or should be indifferent to the values and methods of institutions that seek public funding. The public policy of this constitutional order should still aim to prepare citizens to be liberal democratic citizens. That means promoting an overall political order in which the virtues of bridging associations predominate. Within this political order there may sometimes be a role for groups and institutions that have some of the characteristics of bonding associations.

Persons who struggle with debilitating dependencies on drugs or alcohol may need the support of membership in a tight-knit community that is intensely committed to sobriety and self-control. If the groups that successfully undertake the interventions required to address long-term addictions mainly have intensely spiritual motivations and methods—if rehabilitation is linked to conversion, for example—then we may face some difficult tradeoffs. The presumption that groups that are publicly funded ought to comply with important public
values including freedom and equality should only be relaxed in cases in which particular bonding groups are unusually successful in dealing with intractable social or personal problems.

Some groups embody values that are simply unacceptable and should be prohibited from receiving public funding no matter how effectively they provide particular services. It is one thing to build prayer into a drug treatment program, it would be another if this prayer contained a message of white supremacy. Decisions at the policy level about what groups to fund and what requirements to place on them should depend on both practical considerations and on the particular characters of the groups.

What Religious Freedom Does and Does Not Guarantee

Any secular or religiously based nonprofit that finds reasonable regulations accompanying public funds to be too intrusive or too burdensome such that they interfere with the organization's moral or spiritual mission is entirely free not to take the money. That is the principal and most deeply principled guarantee of religious freedom in this area of church-state partnerships. Churches and other associations may guard their autonomy and integrity by not participating in public programs. These acts of disassociation are not costless, but no sensible view of liberty should guarantee that the cost of exercising a broad right such as religious or associative freedom will be the same for all groups. A liberal society should respect freedom of association, including religious association, but it makes no sense to try to provide a level playing field for the different groups that compete for members in society. The right to religious liberty does not entail a right to public funds. Some forms of group life will be more consistent with the values of liberal democracy than others.

As a matter of principle it is important that the strings that come attached to public dollars flowing to religious nonprofits are voluntarily accepted and justified in terms of valid and important public purposes (such as equity, fairness, and the promotion of broad forms of social cooperation among citizens). Public regulations should not impose huge burdens on nonprofit institutions for the sake of trivial public benefits. It would be foolish to scare off religious and other nonprofits from accepting public funds or to undermine their effectiveness gratuitously by imposing needless and meddlesome regulations (some of which may be supported by self-interested public bureaucrats who would rather not compete with nonpublic agencies).

I am generally in favor of the trend toward taking greater advantage of intermediate associations and nonprofit institutions in the delivery of social
services. The recent preoccupation with civil society institutions is a healthy and timely one. But we should not mistake what we are up to. If it is true that we can advance public purposes and spend tax dollars more effectively by relying on faith-based and other private agencies to deliver social services such as drug rehabilitation, nursing and health care, education, and other social services, then they should be utilized. However, regulation and institutional design should insure that our public purposes are served. To put it otherwise, I sympathize with the view that the well-working of the formal institutions of a liberal constitutional order depends on the health of informal social institutions and associations, yet this seems to me to point toward a complex public project. This project will be deeply non-neutral with respect to normative diversity. In promoting the public values associated with liberal democratic forms of social capital, we often in effect make it easier to live some ways of life and harder to live others. Liberal democratic patterns of social life represent a definite ranking of competing human goods that will be consistent with some versions of religious truth and not others. In this sense, the project of promoting a healthy liberal democratic civil society will inevitably favor some groups over others.
CHAPTER TWENTY-THREE

The Benefits of Surveillance?

Eugene Volokh

Automated cameras are the hot new law enforcement tool. Cities use them to catch red light runners and speeders (I was caught by one myself earlier this year). Washington is setting up hundreds of cameras to monitor streets, federal buildings, Metro stations, and other locations. Police used cameras with face-recognition technology at last year’s Super Bowl to catch known fugitives.

Many of my libertarian friends are outraged by these cameras—creeping Big Brotherism, they say. But the analysis can’t be as simple as “surveillance bad, privacy good”; and at least in some situations, camera systems can promote both security and liberty.

To start, the problem with cameras can’t be privacy. These cameras are in public places, where people’s faces and cars are visible to everyone. They catch only what any passerby, and any police officer who might be present, can lawfully see. For the same reason, cameras don’t involve “unreasonable searches and seizures,” in the words of the Fourth Amendment: the Supreme Court has recognized that observing things in plain public view isn’t a “search” at all, much less an unreasonable one.

In fact, while we should be concerned with protecting our liberty and dignity from intrusive government actions, the red light cameras are actually less intrusive than traditional traffic policing. The law recognizes that even a brief police stop is a “seizure,” a temporary deprivation of liberty. When I was caught on a red light camera, I avoided that.

I avoided coming even briefly within a police officer’s physical power, a power that unfortunately is sometimes abused. I avoided the usual demean-
ing pressure to be especially submissive to the police officer in the hope that he might let me off the hook. I avoided any possibility of being pulled out and frisked, or of my car being searched. I didn’t have to wonder if I had been stopped because of my sex, race, or age.

And while cameras aren’t perfectly reliable, I suspect that they can be made more reliable than fallibly human officers — so I may even have avoided a higher risk of being wrongly ticketed. (It helps that the photos mailed with the ticket showed me in the driver’s seat, my car’s license plate, and the precise place my car supposedly was when the light turned red.)

The question shouldn’t be “Is the camera perfectly reliable?” but “Which is more reliable — the camera, with no observation by the police and little recollection by the motorist, or the observation and memory of the police officer and the motorist, without the camera?” People are notoriously bad at observing and remembering exactly what happened. Just how fast was I driving? Exactly where was I the moment the light turned red? Few motorists can know this with any accuracy even a minute or two after the fact. Even police officers are probably not very good at observing this. So I think the camera evidence is generally more reliable than the police officer’s and the motorist’s observations — assuming, of course, that the camera is properly calibrated, but it’s easier to verify the camera’s calibration than the police officer’s observational acuity.

Some people object that such automatically gathered evidence violates traditional fair trial guarantees, such as the right to confront witnesses, the freedom from self-incrimination, and the presumption of innocence. These objections are, I think, unsound. The law has long recognized that people’s guilt can be proven using physical evidence, whether it’s fingerprints, DNA, or a traffic photograph. The burden of proof in such cases remains on the government, and the defendant remains free to cross-examine the human witnesses against him and to introduce testimony about the supposed unreliability of the physical evidence against him. True, the physical evidence can be powerful, and, like other powerful evidence, it can put the defendant in a position where he faces conviction unless he comes up with some persuasive explanation for his actions. That, however, simply shows that the government has met its burden of proof, not that the burden has somehow been improperly shifted.

Automated traffic cameras can indeed change traditional legal rules in one important way. A camera can’t always identify the driver, and drivers can exploit this by wearing sunglasses, caps, and other relatively unobtrusive disguises. The public will be understandably reluctant to let these drivers get off scot-free just because the camera didn’t get a positive identification — and
there will therefore be pressure simply to impose liability on the registered owner, regardless of who was driving.

But this is precisely what is done for parking tickets, where law enforcement likewise can’t identify who the driver is. We generally accept this sort of owner liability, partly because the penalty is only money, not jail time, and partly because we recognize that owners can rightly be held responsible for the actions of those to whom they entrust their cars. We might conclude that such owner-liability tickets shouldn’t count toward the loss of a driver’s license, but imposing a fine on the owner shouldn’t be a problem.

**Expanding Government Power**

Cameras are not cause for concern, then, when it comes to individual privacy, fairness, or accuracy; the real issue is government power. Cameras are a tool that can be used for good—to enforce good laws—or for ill: to enforce bad laws, to track the government’s political enemies, to gather ammunition for blackmail, and so on.

In this respect, cameras are like other policing tools, such as the guns that police officers carry, wiretaps, the ability of police departments throughout the nation to share data, and even police forces themselves. Each of these tools can be abused and has been abused. We accept this risk because the tools are valuable, and because we’ve set up control systems that can help diminish the risk.

So we have to consider each camera proposal on its own terms and ask what I call the Five Surveillance Questions:

1. What concrete security benefits will the proposal likely provide?
2. Exactly how might it be abused?
3. Might it decrease the risk of police abuse rather than increase it?
4. What robust control mechanisms can realistically be set up and maintained to help diminish the risk of abuse?
5. And, most difficult, what other surveillance proposals is this proposal likely to lead to?

Answering these questions for traffic cameras suggests that they are a good idea, at least as an experiment. They seem likely to help deter traffic violations. They can’t easily be misused for gathering other sorts of information or for suppressing dissent. They decrease the discretionary and sometimes oppressive power of police over motorists.

There is a danger that local governments, which make money from traffic tickets, will use this cheap law enforcement device primarily to raise
revenue without regard to whether it improves safety. Governments could, for instance, be tempted to make yellow lights shorter (perhaps unsafely short) or to set speed limits too low. This sort of moral hazard is always present whenever the government can financially profit from law enforcement.

But the solution to this, I think, is not to reject the useful technology, but to set up administrative control mechanisms to prevent its misuse; and precisely because cameras are evenhanded and catch the rich and powerful alongside everyone else, there are bound to be strong political forces pushing for such control mechanisms. Yes, bureaucrats do like getting the money from the traffic fines, but their bosses like to get reelected. When enforcement is widely spread and not focused on just a few people, the political reaction to any possible abuses is likely to be quite strong.

One friend of mine suggested that traffic tickets are a form of tax and that making the tax easier to collect will mean that this tax rate will effectively become too high. That might initially be true, but which sort of tax is fairer and likelier to be set at the proper level, a tax that is applied indiscriminately to thousands of people or a tax that is borne by whomever a police officer chooses to pull over?

The one big unknown is the answer to the fifth Surveillance Question. Once the cameras are set up, might the data eventually be used not just to catch red light runners but to photograph and identify all drivers? More about that shortly.

Other types of cameras, such as cameras at stadiums that look for known fugitives or cameras mounted on government buildings and streetlamps that monitor the surrounding area for crime, are also probably worth experimenting with. They can at least theoretically help catch some street criminals and deter others (though we should always realize that crime control proposals that sound worthwhile may end up not working in practice). I'm not sure how much the cameras would help fight terrorism, as some people have suggested, but if they just catch street criminals, that's not chopped liver.

These cameras pose some risk of government abuse, from petty indignities, such as security guards using cameras to ogle women, to more serious misuse, such as officials trying to find possibly embarrassing behavior by their enemies. But they can also reduce the risk of government abuse: the camera that might videotape a mugging can also videotape police stops of citizens, providing evidence of possible police misconduct and maybe even to some extent deterring such misconduct. And videotape evidence can decrease the risk that the wrong person will be arrested.
What about the Slippery Slope?

The modest proposals that we hear today are not, by themselves, particularly troubling. I must acknowledge, though, that they do carry the potential for future danger. Once voters get used to surveillance, they might become more tolerant of the government using the data in ways that do pose more risk of abuse.

Proposals to let the government connect cameras to face recognition software, keep the recordings indefinitely rather than just recycling them after a few days, and merge the data in a centralized database—measures that could indeed be abused by some officials—might become more politically viable once cameras in public places are a part of our daily lives. Slippery slope arguments are often overstated, but in a legal and political system that relies heavily on precedent and analogy, the slippery slope is a real risk. Moreover, once the government invests money in cameras, voters might want to get the most bang for their buck by having the police store, merge, and analyze the gathered data. This slippage isn't inevitable, but it's not implausible.

But even if there is slippage, it's important that the potential for abuse is limited and limitable. The danger isn't the government looking into homes, or tapping private telephone conversations. Rather, it's that cameras in public places will be abused by officials who want to harass or blackmail their political enemies.

There are such rotten apples in government. If you think that there are very many and that law enforcement is fundamentally corrupt, you should oppose any extra tools for the police, because in your perspective the tools would more likely be used for ill than for good, but I don't take so dim a view. I think that for all its faults, law enforcement is filled mostly with decent people. And more importantly, good law enforcement is vitally necessary to the safety of citizens of all classes and races.

Instead of denying potentially useful tools to the police, we should think about what control mechanisms we can set up to make abuse less likely, and we should recognize that some surveillance tools can themselves decrease the risk of government abuse rather than increase it.
On June 26, 1993, the U.S. Navy launched twenty-three Tomahawk cruise missiles at Iraq’s military intelligence headquarters in Al Mansour, an affluent suburb of Baghdad, to retaliate for Saddam Hussein’s alleged plot to kill former President George Bush during the latter’s visit to Kuwait. That afternoon the then Secretary of Defense Les Aspin joined President Clinton, National Security Advisor Anthony Lake, and others in the Oval Office. They hoped to get early confirmation that the missiles had struck the intended target. As might have been expected, television sets were tuned to CNN, but this time with an even greater sense of urgency because U.S. reconnaissance satellites were not favorably positioned to monitor the results of the attack.

When the intended time for the strike passed with no news reports of unusual activity, Secretary Aspin called General Colin Powell at the Pentagon command center. “Could the Tomahawks possibly have missed?” asked the worried Secretary.

“Not all of them,” replied Powell.

In “desperation,” presidential assistant David Gergen called Tom Johnson, president of CNN News. Gergen informed Johnson about the launch and asked him to check with his man in Baghdad in case the reporter had slept through the attack.

The inquiry did not come at the most fortuitous moment for Johnson. His reporters had apprised him only a day or two earlier that a military reprisal against Iraq was likely. However, CNN had not been able to get its own satellite up-link closer than Amman, Jordan and was relying solely on its radio
stringer in the Iraqi capital. In addition, Johnson had a policy against providing the government with information not reported on the air. Like countless other Western journalists and news executives operating in nations with no tradition of political freedom, he knew officials in such nations tend to "mirror image" the relationship between the press and the government. They assume the former to be an adjunct of the latter as active intelligence services when operating abroad. While working in such countries, Johnson took extra care not to reinforce such perceptions.

Johnson had just received reports that missiles were striking the outskirts of Baghdad, some hitting the intelligence facility and others missing. With the information about to go on the air, Johnson bent his policy to the extent of apprising the White House what CNN was "reporting." Moments later, a relieved White House watched as CNN confirmed the story.

The incident, related to me by Secretary Aspin some months later and recently confirmed by Johnson, reflects one small part of one small piece of a complex mosaic. The relationship between the national security apparatus, including the military, and the press is at times symbiotic, at times antagonistic. It is sometimes described as an "adversarial relationship," but the description would only be accurate if the media and the military were aligned on opposite sides. This, of course, has never been the case. Rather, each has its own role to play, and while each is ultimately a guardian of national freedom and democratic values, their separate missions sometimes put them at cross purposes.

But we are not talking about a zero-sum game. The press seeks to acquire and disseminate as much relevant information as possible. The military regards information as one among many variables to use and control. Too often the issue is described simplistically as a conflict between First Amendment rights and national security. Both history and experience teach the error of this formulation. While it is certainly possible for a careless dispatch to jeopardize legitimate national security interests, military operations, and the lives of service personnel, the documented instances of such reporting are exceedingly few. In dozens of wars and military operations in the past century, representatives of the press have been privy to highly classified operational details or learned or observed things which could compromise legitimate security needs. In nearly all instances, they acted with restraint and responsibility.

Points of Conflict

Documented incidents of reporting that actually harmed the United States military or security interests are nonexistent, although there are a handful of
instances where irresponsible press conduct could have produced serious harm. During World War II in the Pacific, for example, the Chicago Tribune published a report from one of its Pacific correspondents, Stanley Johnson, listing the names of the Japanese warships involved in the Battle of Midway. This information could only have come from coded Japanese communications intercepted and "cracked" by U.S. intelligence. Fortuitously, the Japanese failed to read the Chicago Tribune and did not alter their encryption regime.

During the Vietnam War, the Baltimore Sun ignored an embargo when it published information about a planned operation in what appears to have been an act of carelessness rather than malice. In any event, the timing of the mission was altered to avoid potential compromise.

Past efforts to control press coverage of military operations and related matters is a history of inconsistency often rooted more in the whims of individual commanders than logic. Prior to the Civil War, the press faced few, if any, restrictions on its coverage of military operations. The relatively few journalists covering combat and the primitive transportation and communications technologies were decisive checks on the potential to compromise operational details. The development of the telegraph during the 1850s changed that. During the Civil War, Union generals Ambrose Burnside and William T. Sherman either denied access completely to journalists or kept them at a considerable distance from the story. Meanwhile, an ad hoc censorship regime proved powerful enough to shut down the Chicago Times for its incessant attacks on President Lincoln.

When the United States entered World War I in April 1917, the State, Navy, and War Departments established the Committee on Public Information to provide information and enforce censorship regulations. Voluntarily accepted by the press, the regulations forbade publication of such information as "troop movements within the United States, ship sailings, and the identification of units dispatched overseas." In addition, Congress passed the Espionage Act of 1917, which prohibited publication of information useful to the enemy or any interference with military operations or war production, and the Sedition Act of 1918, which banned critical remarks about the conduct of operations, the United States Government, or its military forces, including the flag. In each case penalties could include imprisonment for up to twenty years and fines up to $10,000. Press dispatches from the war zone were initially subjected to censorship by a single "former New York Herald reporter and Associated Press (AP) correspondent," Frederick Palmer, and later by a committee of former journalists commissioned as reserve Army officers. The process functioned chaotically. The committee ultimately revoked the credentials of five of the sixty journalists assigned to cover the war. None of this prevented a United Press
International reporter from prematurely breaking a story that the Armistice had been signed, a breach of security that resulted in the Committee temporarily blocking communication between the reporter and his New York headquarters.

Immediately after Pearl Harbor, Congress enacted the War Powers Act, which included the creation of an Office of Censorship. The new office quickly promulgated guidelines, later codified into the Code of Wartime Practices, which took effect January 15, 1942. This Code implemented essentially the same types of security restrictions applied during World War I, but without the Espionage and Sedition Acts. Throughout the war the Code governed journalists in most combat zones, including the European and North African theaters. In the Pacific, General Douglas MacArthur and the U.S. Navy’s Chief of Operations, Admiral Ernest J. King, imposed additional restraints on the press. In fact, the Media at War report explained that:

MacArthur required each correspondent’s copy to go through a multiple censorship review before being released, and pressured journalists to produce stories that burnished the image of the troops and their supreme commander. The Navy, for its part, delayed the release of news, frequently waiting until a story of combat success could be paired with one describing a setback.

**Turning Points: Vietnam**

Vietnam marked a turning point in relations between the military and the press. It was the first military conflict subject to daily television coverage. Only a few hardy reporters initially covered the conflict, but by 1968 over 2,000 accredited reporters were involved. During the conflict, the press routinely applied the term “credibility gap” to military claims of progress. Many in the military blamed the press for loss of public support for the conflict and the resultant political restrictions on its conduct.

Throughout Vietnam, accredited journalists came and went as they pleased. They “hitch-hiked” on military transports and helicopters when available and made their own arrangements where necessary. There was virtually no censorship. Instead, the Military Assistance Command, Vietnam (MACV), headquarters for the U.S. effort, asked journalists to refrain from reporting items like planned offensives, troop movements, and the participation of allied forces in particular operations.

In a technical sense, the rules worked well. Of the thousands of correspondents covering the war, only a handful committed military guideline violations severe enough to result in the revocation of credentials, and only two violations seriously jeopardized operations or safety.
The problem in Vietnam was the deteriorating political relationship between the press and the military. This was partly a reflection and partly a cause of the mounting opposition to the war in the United States. For members of the press, the daily briefings at the Joint U.S. Public Affairs Office (JUSPAO), the office established by MACV to dispense information on the overall effort and supervise coverage by in-country members of the American and foreign media, became known as the “Five O’clock Follies.” This was because briefers often exaggerated political progress and manufactured military victories and enemy casualties. Facetiously, Western newsman often said, “If it’s Vietnamese and it’s dead, JUSPAO calls it a Vietcong.” As the war continued, reports on the “tactical evacuation” of Vietnamese civilians from their villages, the widespread use of napalm, “Agent Orange” and other defoliants or herbicides, the occasional allied atrocity, the ability of the enemy to mount major operations like the 1968 Tet offensive, and the horrendous U.S. casualties undoubtedly had a profound impact on public opinion in the United States.

**Grenada**

In October 1983, Ronald Reagan was President and the United States invaded Grenada. Platoon leaders and company commanders of Vietnam were now the bird colonels. The media’s standing had fallen precipitately. For example, a survey found that in 1966, 29 percent of respondents had “a great deal of confidence” in people running the media. That figure fell to 19 percent in 1983, the year of the Grenada invasion, and to 11 percent in 1995. The military took advantage of the fortuitous political circumstances virtually to bar press coverage of the operation, which, contrary to the first accounts of the Pentagon’s instant myth-makers, was characterized by spotty intelligence, logistical foul-ups, and bungled execution. As Major General Winant Sidle, U.S. Army (Ret.), who headed a committee that developed procedures governing press activities for military conflicts after Grenada, candidly acknowledged: “Although never admitted, the military’s distrust of the media at the time of the Grenada operation in 1983 had to be part of the reason the media were not permitted on Grenada for the first two days, and only a pool was allowed on the third day.”

In response, Chairman of the Joint Chiefs of Staff General John W. Vessey appointed the Sidle Commission, formally known as the “Chairman of the Joint Chiefs of Staff Media Military Relations Panel.” The commission reviewed the Grenada experience and recommended a more appropriate way for dealing with future operations. Comments from the press were solicited.
In his letter to General Sidle dated January 3, 1984, Roone Arledge, president of ABC News, noted:

On the day our troops landed on Grenada, I wrote to Secretary of Defense Weinberger, saying the practice of journalists accompanying American troops into action was as old as our republic. Now, for the first time in our history, the press was unreasonably excluded from going with American troops into action. In my opinion, no convincing or compelling reason has yet been cited for this unprecedented departure from our tradition of independent press reporting.

On August 23, 1984, General Sidle’s panel unanimously concluded that “it is essential that the U.S. news media cover U.S. military operations to the maximum degree possible consistent with mission security and the safety of U.S. forces.” The panel emphasized that the preferred method of coverage is open access for all journalists assigned to cover the story. The panel also recognized that the pool is necessary to handle atypical situations, as when operations are in remote or otherwise inaccessible areas.

The panel concluded that an adversary relationship between the press and the military “is healthy,” but “mutual antagonism and distrust are not in the best interests of the media, the military, or the American people.” Michael Burch, Assistant Secretary of Defense for Public Affairs, responded to the Sidle recommendations by saying, “We agree with them all.” Secretary of Defense Caspar Weinberger and General Vessey formed a “public affairs cell” in the Office of the Chairman of the Joint Chiefs of Staff to put the recommendations into practice.

Panama

The only test of the Pentagon’s good faith in implementing the Sidle recommendations came during the Panama invasion of December 1989. By any reasonable standard, the military clearly flunked. The Pentagon operated the pool out of Washington and notified the media only a few hours before the commencement of the operation. About four hours before the Pentagon pool landed in Panama, U.S. forces started their attacks against priority targets.

Once the pool landed, its members were effectively kept from the action for at least thirty-six hours, longer than Grenada. The delay left little of the story remaining except the search for the hiding Noriega. The military could have used helicopters to transport the press, but helicopters were appropriated for higher priority operations. This clearly indicated that plans to accommodate the pool and other journalists received inadequate attention
prior to commencement of the operation. Sniper fire prevented ground transportation. The military failed to provide pool reporters timely briefings on the operation's status. Instead, they were subjected to political backgrounders by U.S. Embassy officials. The military also prevented photographers from shooting pictures of closed caskets bearing the remains of U.S. servicemen killed in action as they were prepared for shipment home.

Interestingly, all the secrecy did not prevent the press from reporting a flurry of activity at U.S. bases prior to the start of the operation. And it did not prevent at least one CNN report that the operation may be underway. Years earlier, the Supreme Court had admonished in Near v. Minnesota, "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops."

Here, however, two observations are in order. First, with the exception of communications involved in activating the Pentagon pool, the government did not make any efforts, either in Panama or other recent operations, to alert publishers, executive producers, or senior press officials about imminent operations and to request editorial restraint. Although informal working-level communications were present, the kind of high-level effort needed to ensure operational secrecy was never undertaken. Second, despite the breach in operational security, which in wars past would have been grounds for profound concern, no recent broadcasts or reports appear to have benefited any U. S. enemy on the battlefield. Today's troop departures, whether by plane or ship, are so widely publicized, the very notion that "publication of the sailing dates of [troop] transports or the number and location of troops" might provide some advantage to any enemy sounds almost quaint.

The reason is that the United States today does not have enemies capable of interfering with its mastery of the high seas or, for that matter, the skies. Tactical operations today are accompanied by efforts to suppress enemy air defenses, blind the enemy to advancing troops, impede its communications, and intercept its own troop movements. Coupled with the ability of the United States to strike from beyond the range of enemy interference, the likelihood of press leaks actually causing damage are, in the most likely contingencies, remote.

The Gulf War

Coverage of the Persian Gulf War involved efforts by at least 1,400 reporters trying to gain access to military personnel in the field. Some journalists were
stationed in Baghdad, while others, the regular core of Pentagon, State Department, White House, and Washington journalists, remained in Washington and hoped to gain information or insight from there. Before the start of Desert Storm, Louis A. "Pete" Williams, the Department of Defense's Assistant Secretary for Public Affairs, issued guidelines for coverage with restrictions that fell into familiar and acceptable categories. The press could not provide coverage regarding: specific numbers of troops, aircraft, weapons systems; details of future plans, operations or strikes; information on the specific location of military forces or security arrangements in effect; rules of engagement; intelligence collection activities; troop movements; identification of aircraft origin; effectiveness or ineffectiveness of enemy camouflage, cover, deception, targeting, etc; specific information on downed aircraft or damaged ships while search-and-rescue missions were planned or underway; and information on operational or support vulnerabilities of U.S. and allied forces.

The media tried to get as much of the story as possible. Those who could assigned reporters to Baghdad. Many print reporters braved military resistance and operated unilaterally, as did such network correspondents as Forest Sawyer of ABC News, who finally linked up with advancing Egyptian units, and Bob McKeown of CBS, who became the first television correspondent to report live from liberated Kuwait City. Both Sawyer's and McKeown's work provided a hint of how difficult it will be for the military to exert a similar degree of control over the press in future wars given the instant capabilities of satellite communications. However, throughout this war most reporters on the scene were reduced to sitting through press briefings in Riyadh asking questions which reflected the silliness and hostility of the situation.

Post-Gulf War

It is interesting to compare the highly restricted coverage of Operation Desert Shield and Operation Desert Storm with the work of the press in reporting on the Shiite and Kurdish rebellions after the war. With no pools, no escorts, no "restricted" areas, and no "Saudi sensibilities" to worry about, journalists, in the full exercise of their First Amendment rights, documented the horrors being perpetrated by Saddam Hussein and countenanced by the Bush administration. The result was a prompt and substantial change in U.S. policy. For more than a year following the cessation of hostilities in the Gulf, Pentagon officials and a committee consisting mainly of the same individuals who had published the Independent Reporting document, reviewed the experience. They sought to reach an accord on new and more satisfactory procedures to
govern future conflicts. Eventually, they agreed on nine principles—including the stipulations that “journalists will have access to all major military units” and “military public affairs officers should act as liaisons but should not interfere with the reporting process”—and “agreed to disagree” over the question of “prior security review,” or censorship.

A Minimal Threat

While conflicts between First Amendment values and national security needs are a long-running source of legal analysis and intellectual fascination, during the past generation it has become clear that such conflicts are truly aberrational. The press rarely poses any kind of danger to national security. The goal of defense officials, military or civilian, who seek to keep the press on a short leash is, in most instances, to control the editorial slant of what is reported rather than to protect tactical, strategic, or national security from the unauthorized disclosure of sensitive material.

As exhibited in operations as varied as Grenada, Panama, and the Persian Gulf, the method most often chosen by the military to control the press is to limit timely access to bases or combat operations. This practice is, as reemphasized by the post-Gulf War lawsuits, difficult to oppose through the mechanism of First Amendment litigation. By the time they reach the courts such First Amendment complaints may be held moot. Courts, moreover, are hesitant to substitute their judgment on matters of asserted security for that of base or field commanders. While media access to military bases and operations may be a First Amendment value, it has yet to be held a First Amendment right. Further, since both the Pentagon’s military and civilian leadership and the most powerful representatives of the media tend to form part of the Washington Establishment, it is my sense that they dislike potentially damaging political or legal confrontations as well as other zero-sum games. Thus, they generally choose to resolve their differences through such amicable mechanisms as panels and joint committees pointed toward the next conflict rather than seeking to redress grievances over the last one. Such was certainly the case following Grenada, the Persian Gulf War, and arguably after Panama.

One must recognize that most of the problems within the past dozen years trace back to the period of mutual contempt and suspicion that grew out of the Vietnam era. That legacy seems to be finally fading. While no specific post-Vietnam plan for coverage of combat operations has worked well to date, the hard work and spirit of mutual respect that characterized the adoption of the “nine principles” offers some hope for the future.
CHAPTER TWENTY-FIVE

Diversity within Unity: A New Approach to Immigrants and Minorities

The following platform is the product of a meeting of scholars and elected officials from eleven countries. The meeting was held in Brussels in November of 2001 and was organized by the Communitarian Network. The platform has been endorsed by over 150 scholars, elected officials, and other public leaders from over 20 countries.

We, the endorsers of this statement, have come together from many different social backgrounds, countries, and viewpoints to address our fellow citizens about the place of immigrants, and more generally minorities, in our diversifying societies.

Our Basic Orientation

We note with growing concern that very large segments of the people of free societies sense that they are threatened by massive immigration and by the growing minorities within their borders that hail from different cultures, follow different practices, and have separate institutions and loyalties. We are troubled by street violence, verbal outbursts of hate, and growing support for various extremist parties. These are unwholesome reactions to threats people feel to their sense of identity, self-determination, and culture, which come on top of concerns evoked by globalization, new communications technologies, and a gradual loss of national sovereignty. To throw the feelings of many millions of people in their faces, calling them "discriminatory," "exclusionary," "hypocritical," and worse, is an easy poli-
tics, but not one truly committed to resolution. People's anxieties and concerns should not be dismissed out of hand, nor can they be effectively treated by labeling them racist or xenophobic. Furthermore, telling people that they "need" immigrants because of economic reasons or demographic shortfalls makes a valid and useful argument, but does not address their profoundest misgivings. The challenge before us is to find legitimate and empirically sound ways to constructively address these concerns. At the same time, we should ensure that these sentiments do not find antisocial, hateful, let alone violent expressions.

Two approaches are to be avoided: promoting assimilation and unbounded multiculturalism. Assimilation—which entails requiring minorities to abandon all of their distinct institutions, cultures, values, habits, and connections to other societies in order to fully mesh into the prevailing culture—is sociologically difficult to achieve and unnecessary for dealing with the issues at hand, as we shall see. It is morally unjustified because of our respect for some normative differences, such as to which gods we pray.

Unbounded multiculturalism—which entails giving up the concept of shared values, loyalties, and identity in order to privilege ethnic and religious differences, presuming that nations can be replaced by a large number of diverse minorities—is also unnecessary. It is likely to evoke undemocratic backlashes, ranging from support for extremist, right-wing parties and populist leaders to anti-minority policies. It is normatively unjustified because it fails to recognize the values and institutions undergirded by the society at large, such as those that protect women's and gay rights.

The basic approach we favor is diversity within unity. It presumes that all members of a given society will fully respect and adhere to those basic values and institutions that are considered part of the basic shared framework of the society. At the same time, every group in society is free to maintain its distinct subculture—those policies, habits, and institutions that do not conflict with the shared core—and a strong measure of loyalty to its country of origin, as long as this does not trump loyalty to the society in which it lives if these loyalties come into conflict. Respect for the whole and respect for all is at the essence of our position.

We observe that such diversity within unity enriches rather than threatens the society at large and its culture, as is evident in matters ranging from music to cuisine, and most notably it greatly enhances the realm of ideas to which we are exposed and expands our understanding of the diverse world around us. We further note that, in each society, the basic shared core of identity and culture has changed over time and will continue to do so in the future. Hence minorities that hold that this core does not reflect values dear
to them are free to act to seek to change it—via the democratic and social processes available for this purpose in all free societies.

The unity of which we speak is not one imposed by government orders or regulations, not to mention by police agents, but one that grows out of civic education, commitment to the common good, the nation's history, shared values, common experiences, robust public institutions, and dialogues about the commonalities and requirements of a people living together and facing the same challenges in the same corner of the earth.

Such diversity within unity allows one to fully respect basic rights, the democratic way of life, and core values, as well as those minority values that do not conflict with it.

Which elements belong in which category—the realm of unity or of diversity—is a matter that can be readily decided about many key items. Basic rights must be respected by one and all. For instance, discrimination against women cannot be tolerated, whatever a group's cultural or religious values. Respect for law and order is essential. Democratic institutions are not one option among several. No one who seeks citizenship in a given country, and membership in a given society, can buy out of the collective responsibilities that society has for its past actions and toward other societies, assumed by treaty or otherwise.

At the same time, little deliberation is required to recognize that there is no reason to object if minorities are keen to maintain their language as a second one, close ties with another country (as long as they do not trump loyalty to the current country, as already indicated), and special knowledge and practice of their culture. All of this is not to deny that much deliberation and public dialogue are called for on contested issues such as how "law and order" is to be interpreted and how strong and how deep down liberal-democratic approval should go. Deliberation and public dialogue are also crucial before one can conclude whether certain other items belong in the realm of unity or diversity, as is explored below.

In short, we ought not to sacrifice unity or diversity to the other part of the equation, but ought to recognize that we can learn both to live with more diversity and to protect well legitimate unity.

Issues and Policies

The Law: Variances, Basic Rights, and Compelling Public Interest

Assimilationist models favor maintaining universal laws—those that apply to all citizens and other people within a given jurisdiction. They tolerate some variations and exemptions, but those are to be based on individual
needs (e.g., mental illness) or demographic categories (e.g., minors), not on
ethnic or racial groupings. Group rights are not recognized.

Unbounded diversity favors allowing each community to follow its tradi-
tions, even if they conflict with prevailing laws (for instance, allowing for
forced marriages and female circumcision), although most pro-diversity ap-
proaches recognize that some universal laws must be observed. According
to this approach, ethnic and racial groups should be granted a great measure of
autonomy to set and enforce their own laws, either by being accorded con-
siderable territorial autonomy or community-based autonomy—for instance
by religious authorities such as imams or rabbis. Also, by this approach, peo-
ple are viewed as imbued with strong rights just by being members of a pro-
tected group, such as native Canadians or Americans.

The diversity-within-unity (DWU) model favors a bifocal approach: it
sharply distinguishes between those laws that all must abide by and those for
which various group-based variances and exemptions are to be provided. Al-
though there is room for disagreement on what falls within these two cate-
gories, several criteria suggest themselves as principled guides to which laws
and policies must be universal, and which can be group-particular.

Leading the universal category are basic human rights, as defined by the
country's constitution, basic laws, the laws of regional communities such as
the European Union, and the United Nations Universal Declaration of Hu-
man Rights. Thus no one can be legally bought and sold, detained without
due process, refused the right to vote, and so on, by any member group of any
society. Leading feminists are correctly opposed to several group variances
because they fear that these would entail "losing whatever we gained in terms
of gender equality."

Compelling public interest provides another universal criterion. If carrying
guns is considered a major safety hazard, no group should be exempted from
this rule. The same holds for violations of public health, such as a refusal to
immunize children. (Many states in the United States, and other countries
such as the Netherlands, exempt parents who claim religious objections from
this requirement, a policy that deeply troubles public health officials.)

Whatever is not encompassed in such policies should be considered legit-
imate subjects for variation. These might well include variances regarding
laws, such as those concerning closing days (e.g., laws might require shops to
be closed one day a week, but not necessarily Sunday) and those concerning
animal rights (to allow ritual slaughter); variances on zoning regulations
(e.g., to allow building Mosques); exemptions to allow the use of controlled
substances during religious services; and some limited exemptions from vari-
ous occupational safety, food preparation, and related regulations to help
newly established ethnic businesses. (Some of these variances might be limited to a transition period and combined with helping immigrants and minorities in general to adapt to the prevailing laws.)

Arguments that territorial groups or the home-born have a higher level of rights than immigrants are incompatible with the DWU model. Indeed, groups that are territorially concentrated are more inclined than others to push diversity to the point that it may endanger unity, as we witness with groups that are concentrated in one given area, which are much more likely to secede than dispersed groups. Some minority groups may have legitimate reasons to seek to secede, but this constitutes the death knell of unity. While in the past struggles for self-determination were usually involved in the break-up of empires and hence as a rule enhanced democratic representation, regions that now break away from democratic societies are unlikely to enhance self-government and may well weaken it.

Our focus is on practices, not on speech. Thus, it is acceptable for a given group to advocate illiberal practices, but until the laws or constitution are changed, the group should not be allowed to practice them, and surely not impose them on others. Extreme followers of one religion or another may argue that banning some of their practices undermines their whole distinct culture; however, being a member of a free society entails avoiding practices that treat any members in ways that violate their basic rights.

There are no reasons to oppose compromises—if they meet the criteria just articulated. Thus, if Sikhs are willing to wear their daggers but modify them so they cannot be unsheathed, that might bridge the difference between subculture and basic laws.

Whatever position one holds regarding economic equality and social rights, we assume that everyone has the same moral worth bestowed upon them just by being human, whether or not they are citizens, and that discrimination based on race, ethnicity, religion, or gender is illegal. (Whether this applies to private organizations, such as social clubs that receive no public support or tax exemptions, is an open question.)

Rights carry with them corollary responsibilities. This principle can be fully applied to member groups. Thus if a nation is engaged in war with another nation, minority members who have historical and cultural ties to that other nation must serve in the army of the new homeland, like other citizens. If fight we must, no one is exempt on the basis of being a member of a specific racial or ethnic group. (People who are conscientious objectors on religious or secular ethical grounds, assuming their commitments are verified and they are willing to engage in alternative national service, may well be exempt.) The same holds for attending to one's children, paying taxes, Good Samaritan acts, and so on.
State and Religion

Most of the states here under discussion have historically had (or still have) one religion they formally recognize as their only one—Christianity in many of them (including a specific version of it, such as Lutheranism in Sweden). In addition, these states provide extensive financial support directly and indirectly to the institutions of the official state religion, mainly for clergy and places of worship. (France and the United States are the exceptions in this regard as, in the commonly used phrase, they have no established religion.) Almost all of these nations now face massive immigration and growing numbers of minorities that believe in different religions, especially Islam.

Where might one go from here? One option is to maintain the official church. Although often the official religions have placed relatively few demands on people (whether members of minorities or the majority), supporters of assimilation in effect expect considerable stripping of the beliefs held by minorities, who often have strong religious commitments. Importantly, under this approach, minority children are expected to attend public schools in which the values of the governing religion are taught; minority residents and citizens are required to participate in public events in which the prayers are those of another religion; and public life is studded with symbols of the governing religion and laws reflecting it. This is a maximal challenge to diversity.

A second option is to lift all religions to the same status as the official one. This would entail not only fully supporting the clergy and places of worship (and social services) provided by all religions, but also opening official events with multiple prayers, displaying in public buildings and schools religious symbols of all groups on an egalitarian basis, and so on and on. Such a move would likely be perceived as a direct assault on the historical and cultural identity of a nation, and would be apt to lead to a high level of contention. It would undermine unity considerably.

A third option is for the official standing of the prevailing religion to gradually lapse (as it did in Sweden). Under this model, no new religion would be recognized as the official religion of the state, but financial support for the clergy and places of worship of all religions would be provided. The amount would be determined by the number of people who indicate, annually, that a given religion is theirs. (This would get the state out of the business of determining who is entitled to get support.) This is especially an issue for countries that rely heavily on voluntary associations and social groups to administer social services paid for by the public, as is common in parts of Europe. If religious groups are not included, this amounts to discrimination against
those whose primary social affiliation is religious. At the same time, no such support should be available to groups that promote values, whether religious or secular, that are illiberal.

This third model is most compatible with the DWU approach because removing formal recognition of any state religion puts all religions on more equal footing (at least in legal terms and financially) without directly challenging history and identity. Although such a move constitutes a step away from tradition, it does not replace it with any new official requirements. It allows the majority to retain a sense of the centrality of its values (which is not fully satisfactory to minorities). At the same time, it allows the minorities to recognize that the majority has accommodated them in a major way (which leaves some of those who hail from the majority less than fully content). This model allows for diversity without explicitly undermining unity. (It finds a precedent in the way shops were once required to be closed on Sundays, for religious purposes, but are now allowed to have a closing day suiting any religion—say, Friday or Saturday—without officially demoting Sunday.) The sensibilities of the majority are also to be respected.

**DWU Schooling**

Schooling should neither be used to suppress all cultural differences and distinctions nor to reinforce the segregation and ghettoization of minorities.

The assimilationist model assumes that immigrants and minority members of society will be taught in public schools, that they will be taught basically the same material as other members of the society and more or less the same material as was previously provided. An unbounded diversity model calls for setting up separate schools—publicly supported—and distinct curricula for various ethnic groups from kindergarten to grade 12, such as, for instance, separate Muslim or Jewish schools, not merely as "Sunday" schools but as full-time schools.

A DWU approach, based on the concept of neighborhood schools, suggests that:

(a) a major proportion of the curriculum—say, 85 percent or more—should remain universal (i.e., part of the processes that foster unity). The commonalities of sharing 85 percent or so of the curriculum are intended not merely to ensure that all members of the next generation are exposed to a considerable measure of the same teaching materials, narratives, and normative content, but also that they will mix socially. Hence, teaching the same material but in ethnically
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segregated schools is incompatible with our approach. (Granted that the segregating effects of such schooling can largely be mitigated if they teach a considerable amount of the "universal" material and endeavor to provide for social mixing, if not in their own confines, elsewhere.) Although teachers of all backgrounds should be welcomed, insisting that children must be taught by teachers who are members of their ethnic group is not compatible with the DWU model.

(b) Minorities should have major input concerning 15 percent or so of the curriculum; this could be in the form of electives or alternative classes in which students particularly interested in one subject or history or tradition could gain enriched education in that area.

(c) The universal, unity-related content of the curriculum should be recast to some extent to include, for instance, more learning about minority cultures and histories. Bilingual education might be used, but only during a transition phase before mainstreaming begins and not as a continuous mode of teaching that is, in effect, segregated along ethnic lines. (Reference is to education that is conducted in the languages of immigrants and not to educational policies in a country that has historically embraced two or more languages.)

Of particular concern is the teaching of values. This issue is highlighted by the fact that many of the most contentious issues in schools, ranging from displacing crucifixes to requiring Muslim girls to wear swimsuits to banning Sikhs’ traditional turbans, relate to religion.

One may start with the observation that schools must help develop character and teach basic values rather than merely being institutions for learning “academics.” One may also assume that the classes that all pupils will be required to attend (the unity sector of 85 percent-plus) will include classes in which basic civic values will be taught, such as respect for the constitution or basic laws, human rights, the merit of democracy, and the value of mutual respect among different subcultures. (These are to include civic practicums, such as playacting as parliament or civil court or doing community service.) But such education may well not suffice to provide the needed character education and is unlikely by itself to provide a sufficient substitute for the substantive values taught in the past by religions. Given that schools are in the character education “business,” the question must be faced, what substantive values are they to instill beyond narrowly crafted civic virtues?

Providing public school classes for each religion (in line with the notion of equal official recognition of all religions) and allowing students to choose
which to attend (including classes in secular, humanist ethics) helps diversity, but does little for unity. One way to improve on this approach is for public schools to work with the various religious groups to ensure that the teachers selected for religious teaching (and the teaching materials they use) refrain from advocating or implementing illiberal religious practices. (Although we previously stated that we do not object to illiberal advocacy as distinct from practices, children, whose hearts and minds have not yet been formed, require extra protection.) It might be said that a democracy should tolerate the teaching of anti-democratic values so long as those who hold them are not seriously challenging the democratic system. However, not all the societies at issue have long-established and well-grounded democratic polities, and hence straining them is not called for. Above all, without leaving fundamentalism out of classrooms, no sufficient sharing of values may be found.

Many of us hold that only public schools can provide an environment in which children are exposed to a rich core of shared values, are protected from fundamentalism, and mix socially with children from different social and religious backgrounds. Some hold that the same may be achieved in private schools, even if controlled by one ethnic or religious group or another, as long as the state ensures that all schools teach a strong core of shared values. In either case, the same essential criteria must be met if schools are to provide effective opportunities to move toward a DWU model in contrast to a homogenous, assimilationist model or a segregated, unbounded multiculturalist one: a core of shared values and social mixing.

Citizenship for Qualifying, Legal Immigrants

Debates over immigration and citizenship policy have often been characterized by wild swings between emotionally fraught, divisive positions and radical proposals for assimilation or unbounded diversity: either we end all immigration or we open our borders to virtually anyone; either immigrants are a burden on taxpayers and responsibility for integration rests solely with newcomers or all newcomers should be given substantial public assistance and helped to maintain their cultures, languages, and identities; either all illegal immigrants should be deported immediately or there should be no distinction between legal and illegal immigrants.

A diversity within unity approach emphasizes that societies are best served if those who are legal immigrants, and have met educational requirements, are allowed to become full citizens rather than treated as guest workers, which is often a term that conceals their true status as permanent, but
second class, residents. The key to a democratically defensible and economically viable approach to immigration is to make decisions up front about the scope and nature of immigration that the nation favors. Then the government can provide permanent status for those admitted and facilitate their access to citizenship. This approach offers a more sensible way to staff the labor market, unite families, and allow citizens to assess the way immigration is shaping the national economy and culture.

Cultural preferences—for example, for Spain to prefer immigrants from Spanish-speaking countries—are acceptable because they help sustain unity, so long as they do not prevent immigration for family reunification or refugee purposes and are based on culture rather than race or blood. Public support for immigration also requires that enforcement policies are carried out. Hence, better border control, employer sanctions, perhaps even a national identity card for all legal residents, are best included in any approach that aims to create an effective, publicly defensible system. (These measures do not apply to true political asylum seekers.) More serious efforts to enforce immigration laws that are coupled with sound and transparent criteria for admission will also provide a way of dealing with the ongoing reality of illegal immigration in ways that are consistent with core democratic values. As such a system is introduced, a society can reorient its citizenship away from representing only a bundle of rights and toward an emphasis on civic participation and responsibility.

For legal immigrants, democratic nation-states must provide fair and objective procedures for admission, including reasonable application costs. Linguistic and educational requirements may well be set higher than the current ones, to ensure that citizens-to-be have acquired familiarity not only with the workings of democratic government but also with the unifying elements of the given society. Consideration may be given that immigrants who have not yet completed their citizenship processes could nevertheless be accorded the right to vote in local elections and to serve in civil service as ways to help them acquire the civic practice that makes for good citizens and to help create a civil service that is better equipped to deal with minorities.

Dual citizenship could be allowed or even encouraged so long as appropriate principles and practices for reconciling conflicts among loyalties can be established—notably the principle that the nation of permanent residence takes priority.

All in all: citizenship constitutes a critical way a person becomes a responsible and accepted member of a community. Hence it should not be awarded without proper preparation nor denied to those who have completed the required measure of acculturation.
Throughout this section we assume that citizenship is not based on bloodlines or racial membership but is based on becoming a part of a historical community with its own culture and identity. To join this community is to come to share in that history, culture, and identity—up to a point, as characterized by the difference between elements of unity and diversity previously discussed. To reiterate, history does not stop, and culture and identity continue to be recast, in part under the influence of the new members.

Citizenship should not be a free good, but a communal undertaking, a status and identity that constitutes both rights and social responsibilities. This holds for those who seek to become citizens as it does for those who are already so endowed.

**Language: An Inescapable Element of Unity?**

The assimilationist model tends to stress that all must acquire the prevailing language (sometimes, as in Belgium, at least one of them), that it should be considered the official language, and that the use of other languages should be banned in official business, courts, ballots, and street signs. Unbounded diversity opposes the recognition of any one language as the official one and seeks to provide a coequal status in courts, documents, etc., to several languages, sometimes a rather large number.

A DWU approach recognizes the strong advantages of having one shared language (two if necessary) and teaching it to all immigrants, minority members, and people whose education is lagging for other reasons. However, the state should provide ample translators and translated documents for those who have not yet acquired the shared language, even if this results in some lowering of the motivation for immigrants to learn the prevailing language.

Neighborhoods should be free to add signs in any language, but not to replace those in one (or two) of the shared ones. The state may well also encourage keeping the languages of immigrants as second languages and the teaching of second languages in general.

**Core Substance, Symbols, National History, Holidays, and Rituals**

In numerous situations, differences arise concerning matters that are relatively limited in importance in their own right but acquire great symbolic meaning regarding the rejection, or partial or full acceptance, of people of diverse cultures. These include dress codes (e.g., regarding girls wearing headscarves), boys and girls swimming together, the display of ethnic versus na-
tional flags, areas in which ethnic celebrations can take place, noise levels tolerated, and so on. In effect, practically any issue can be turned into a highly charged symbolic one, although some issues (such as flags) tend more readily to become such.

It is important to recognize that trying to deal with these issues one by one, or by focusing on the surface arguments, will often not lead to consensual resolution, as the matters at hand typically stand for deeper issues. The contested symbols serve as hooks on which people hang their resentment of those of different cultures (including the dominant one) and of the need to adapt to a different world. These symbols serve as expressions of people’s sense that their culture, identity, national unity, and self-determination are all being challenged. Only as these deeper issues are addressed might societies be able to work out satisfactory resolutions of the symbolic issues.

Attacking deeply felt and deeply ingrained sentiments, denying that immigrants or minorities are different, and so on—especially labeling all such sentiments as “racist” or “xenophobic” prejudices and demanding that people drop them or be subject to reeducation if not rehabilitation—is as unfair as it is counterproductive.

A DWU position indicates that we understand why people feel the way they do, but also assures them that the cultural changes that they must learn to cope with will not violate their basic values, will not destroy their identity, nor end their ability to control their lives. Indeed, it is the prime merit of the DWU approach that it allows such a framing of the issue, not as a public relations posture or a political formula, but as a worked-out model of laws, policies, and normative concepts that gives substance to such assurances.

Once this basic position is established, we note that adhering to old patriotism, which demands an unquestioning embrace of a nation’s past, is just as inappropriate as calling for the dismantling of national identity in order to accommodate diversity. Thus, to expect immigrants from previously colonized countries to see great glory in the imperial past is not compatible with the DWU model any more than is calling on a nation to give up its shared values, symbols, and meanings and to become merely a thin and formal affiliation. Arguments to “rethink what it means to be British” (or French, etc.) are welcome if they mean to redefine commonalities and to point to legitimate differences, but not if they are code words for abandoning shared substantive meanings and values. Nor should one assume that even in a full-fledged European federation national identities and cultures will vanish in the foreseeable future, thus dissolving the deeper issues at hand.

The assimilationist model favors stressing the nation’s shared fate and glorious achievements in textbooks (especially those concerning history), national
holidays, and rituals. Some champions of unbounded diversity call for redefin-
ing history as long periods of lessons in national disgrace (for example, one
scholar suggested that American history be taught as a series of abuses of mi-
norities, beginning with Native Americans, turning to slaves, then to Japanese
Americans during World War II, and so on). Others favor separate ethnic and
religious holidays, such as Christmas, Hanukkah, and Kwanza, to replace rather
than supplement shared national holidays.

The DWU position on these issues remains to be worked out. As far as the
teaching of history is concerned, surely many would agree that to the extent
that textbooks and other teaching materials contain statements that are truly
offensive to minorities, they should be removed or corrected, and that recog-
nition of minorities' contributions to the society should be added. In addi-
tion, history of parts of the world other than one's own should occupy an im-
portant part in any curriculum. Still, the teaching of history is a major way
that shared meanings and values are transmitted and it should neither be
“particularized” nor become a source of attack on the realm of unity.

As far as holidays are concerned, a combination of shared holidays (such
as Unification Day in Germany) with separate ethnic and religious ones may
be quite compatible with a DWU model. In effect, the existence of some eth-
nic holidays (such as Cinco de Mayo) enriches rather than diminishes the
shared culture.

We focus here on shared and divergent values in a society that is a com-
munity of communities rather than a mindless, over-homogenized blend.
This focus is in no way meant to distract attention from the need to be con-
cerned with economic interests and their articulation and matters dealing
with the distribution of power. However, given that these issues have been
often explored, our focus has been on values (and related institutions), a core
part of any society that is able to sustain itself and change peacefully at the
same time.

The most challenging issue of them all is to consider, beyond changes in
symbolic expressions and even in laws and policies, what would be encom-
passed in a modified but unified core of shared substantive values? Commit-
ment to a bill of rights, the democratic way of life, respect for basic laws (or,
more broadly, a constitutional faith or civic religion), and mutual tolerance
come (at least relatively) easily. So do the communitarian concepts that rights
entail responsibilities, that working differences out is to be preferred to con-
flict, and that society is to be considered a community of communities (rather
than merely a state that contains millions of individuals). However, as impor-
tant as these are and as much as they move us forward, these relatively thin
conceptions of unity (and those limited to points of commonality—overlapping
areas of consensus—among diverse cultures) constitute an insufficient core of shared values to sustain unity among diversity.

The challenge for the DWU model is to ask how the realm of unity, however restated, can be thick enough without violating the legitimate place of diversity. The answer may be found in part in secular humanist values and ethics (including respect for individual dignity and autonomy) and thicker communitarian values that spell out our obligations to one another. It may encompass a commitment to building still more encompassing communities (such as the European Union), to assisting those in need in the “have-not” countries, and to upholding the United Nations Universal Declaration of Human Rights. Still, the question stands as to what will provide a source of shared commitments to define and promote what is right versus wrong, and what will provide an answer to transcendental questions of life, as far as they concern public life, if it will not be based on religious doctrines, nor be sheeuly relativistic or based on the beliefs of particularistic groups.

The DWU approach is a work in progress. It does not claim to have all or even most of the answers needed to bridge the schisms that have opened up between many immigrants and the majorities in the free societies in which they live. It does offer, we state, a basic orientation that respects both the history, culture, and identity of a society and the rights of members of the society to differ on those issues that do not involve the core of basic values and universally established rights and obligations.

Endorsers are of one mind on the broad thrust of this platform and the necessity of this intervention into the current dialogue, without necessarily agreeing with every single, specific statement. We look forward to future discussions of how this platform applies to other problems that arise and to various different societies.

Note

To allow for productive deliberations, we limit this initial examination to well-established nations and those with democratic governments, including those in Western Europe, North America, Japan, and Australia. We do not deal with immigration and identity issues in countries that are in the nation-building stage (and hence might need to first build a shared identity and shared institutions before they face the question of how these might be protected or changed) or in those that rely on a non-democratic government to deal with the issues at hand. The discussion covers both immigrant and minority groups of citizens within a country.

For a history and overview of the Diversity Within Unity project and a list of endorsers, plus German, Italian, and Spanish translations, please visit www.communitariannetwork.org.
PART FIVE

DIALOGUES
CHAPTER TWENTY-SIX

Virtue and the State: A Dialogue between a Communitarian and a Social Conservative

Amitai Etzioni and Robert P. George

ROBERT GEORGE: In your article, “The Good Society” [published in the Journal of Political Philosophy], and in your book The New Golden Rule, you argue that both communitarians and social conservatives recognize the need for and the legitimacy of social formulations of the good—unlike liberals—and appreciate the cardinal role of the substantive values a society seeks to uphold. You then point to two major differences between communitarians and social conservatives and conclude that communitarian thinking is a third way of thinking. I suspect that you are right that communitarianism is a distinct approach, but the ways you characterize communitarianism actually define to a significant extent the social conservative position. Let’s explore some points of similarity and difference.

Perhaps I could begin by clarifying one point. As part of your argument that social conservatives favor a strong government, you quote George Will in favor of a strong national government. It is important not to misunderstand what Will and other social conservatives mean here. We favor government that is strong, but small. We are particularly skeptical of large government bureaucracies that are charged to provide domestic social services. This is especially true when it comes to the central (or national) government in a federal system. Even at the state and local levels, however, social conservatives are concerned about the encroachment of government on the functions and prerogatives of families, churches, and other institutions of civil society. Now, critics of social conservatism from the libertarian side deny that we can have government at any level that is strong, yet willing to remain small.
Strong government, they say, inevitably means big government. However that may be, I suspect that communitarians would line up with social conservatives on this point against the libertarians.

AMITAI ETZIONI: We seem to agree about my main observation that social conservatives favor strong government. While it is true that many social conservatives favor states’ rights, William Kristol and David Brooks also have written about the glory of the nation, as a kind of antidote to the lack of concern with virtue. The British Tories have strenuously opposed devolution to Scotland, Wales, and the City of London, and have argued for a strong unitary government, speaking about the glory of Britain. Indeed, many continental social conservatives throughout recent history have been “Lincolonian,” calling for sacrifices for national unity. They have been the champions of nationalism, union, fatherland (and mother church). All this is not to deny that the American social conservatives have been strong and consistent champions of states’ rights, but often they have been nationalist at the same time.

RG: The point is that there is no incompatibility between nationalism (and national patriotism) and federalism for people who believe it possible to have government that is both strong and small. Of course, social conservatives disagree among themselves when it comes to a host of issues that are implicated here, at least at the margins. So, for example, those on the side of William Kristol sharply oppose those on the side of Patrick Buchanan regarding questions of isolationism as opposed to engagement in foreign policy. These sides divided bitterly over the Gulf War. They divide over free trade and protectionism. And if you really want to get a ferocious debate going among social conservatives, just mention Lincoln and his legacy—Lincoln’s strongest supporters (e.g., Harry Jaffa) and his most uncompromising critics (e.g., M. E. Bradford) are social conservatives.

Turning now to the main point, you write that communitarians “advocate state restraint because they believe that society should be the agent responsible for promoting moral behavior.” And you suggest that this distinguishes them from social conservatives who would rely on the coercive power of the state. Here, I think, you exaggerate the differences between communitarians and social conservatives. It is true that social conservatives allow a role—sometimes an important one—for law in upholding public morality, but the primary responsibility for the inculcation and promotion of virtue, as social conservatives see it, lies with families, religious communities, and other institutions of civil society. My own work makes this clear, I think, as does the work of Hadley Arkes, Gerard Bradley, John Finnis, and other leading social conservative intellectuals. My book [Making Men Moral: Civil Liberties and
Public Morality] opens with the following sentences: "Laws cannot make men moral. Only men can do that; and they can do it only by freely choosing to do the morally right thing for the right reason. Laws can command outward conformity to moral rules, but cannot compel the internal acts of reason and will which make an act of conformity to the requirements of morality a moral act."

What, then, you may ask, is the role of law, as social conservatives see it? Its role, as I say in my book, is "subsidiary" (i.e., helpful). Law is to help people make themselves moral by, among other things, helping to secure or maintain a moral ecology that is conducive to virtue and more or less hospitable to certain potentially powerfully corrupting and socially damaging forms of vice. In this way, law and the state support families, churches and synagogues, and the other institutions that have the primary role in transmitting virtue. And, indeed, according to the social conservative tradition, it is important that law and the state restrain themselves lest they usurp the authority of these critically important institutions. (We call this the principle of "subsidiarity.") An important part of the social conservative critique of socialist and other "big government" approaches flows from this concern.

Let us take a look at some of the specific examples you have mentioned as areas where social conservatives would rely on state power, while communitarians would look to society. You write that social conservatives would ban abortion, divorce, pornography, and homosexual activities, and would mandate prayers in public schools. Actually, social conservatives would ban outright only abortion (in most cases) and certain kinds of pornography; we would make divorce more difficult to obtain, discourage homosexual acts and heterosexual adultery and fornication, and permit, rather than mandate, prayers in public schools.

AE: Additional examination of the list is a good way to test my thesis that social conservatives are systematically more inclined than communitarians to rely on the state to promote virtue. You agree that social conservatives would ban most abortions and much pornography. You say that they would not ban divorce, but only make it more difficult to obtain. I would accept the use of this language if the state were to rely on its moral voice, exhort people to stay married, send them information about the harm of divorce, and public leaders would remain married. However, the policy proposals that are actively being considered by twenty states and promoted by social conservatives would ban divorces under many conditions, including when the state believes the causes are inappropriate; if the waiting period has not been long enough (draft legislation calls for waiting periods of from two to upwards of five years); and if no counseling has taken place. (And of course in other
countries, Italy for instance, divorce is still banned and the ban is hailed by social conservatives.)

Communitarians have a different approach, one relying mainly on voluntary means, for example, voluntary premarital counseling, marriage counseling, "encounter" retreats (all provided by the various religious organizations, especially the Catholic Church, and to some extent by therapists), and a culture that appreciates marriages. Social conservatives are more willing to use the power of the state and the law to limit divorce, albeit not to ban it under all conditions.

Regarding prayers in schools, I suggest that the phrase "permitting" prayers in schools does not fully capture what many social conservatives are fighting for. Voluntary prayer in public schools is now permitted, indeed there is no way of stopping it. (Wits point out that there is a rush of prayers before math exams.) What social conservatives often fight for is institution-alized prayers, conducted by the staff of public schools in their official capacity as teachers, principals, or officially imported ministers, and in the classroom or assembly framework. While children may be allowed to opt out, prayers conducted as part of the institutional framework give them the im-primatur of the state.

You suggest that social conservatives would "discourage" rather than ban homosexual activities, but you seem to favor closing "bath houses" and "sexual establishments."

Most important is the public policy debate about how to deal with criminals, including people who abuse controlled substances. Welfare liberals tend to blame society for these offenses and suggest that if people were given jobs (better yet, well-paying, meaningful jobs), education, and rehabilitation, and if racism were overcome—then criminal behavior would be minimized. The same liberals tend to oppose increases in punishment dished out by law. So-cial conservatives take the opposite position. They have favored longer punishment, less parole, more death sentences, and so forth. As millions of people are involved, this is a major case in point of a social conservative tendency to rely on the state to keep society good.

The communitarian position on these issues is not fully developed. How-ever, it seems to point to a greater reliance on the involvement of the community in fostering social norms ("it takes a village to prevent a crime"); on crime watches; on restorative justice; and on graduated responses that start with strong elements of rehabilitation and minimal penalties (for, say, first-time drug abusers), and change the mix of rehabilitation and punishment for repeat offenders.

RG: Let's go back through the issues. First, I'm sure that not all commu-nitarians favor "no-fault" divorce. It was an idea that swept through the
states a generation ago, but the evidence that it was a bad idea is mounting. Many people who initially favored it now view it as a mistake. It has, they believe, undermined the institution of marriage in a variety of ways, above all by teaching people that the true purpose of marriage is the promotion of individual satisfaction. This, in the end, has many bad consequences, including, ironically, the tendency to impede spousal satisfaction in marriage. And its consequences for children have been truly tragic. In any event, you are right to say that social conservatives (and others!) are looking for alternatives to the "no-fault" policy. One idea is a "covenant marriage" option that would enable people to choose to enter marriages that could not be dissolved according to "no-fault" procedures. ACLU liberals who like to present themselves as proponents of "choice" typically oppose providing this option, but there is no reason in principle why communitarians cannot join social conservatives in supporting it.

As for prayer in school, I do not doubt that some social conservatives would like to return to official, state-composed and staff-led prayers as part of the regular class day. I assure you, however, that this is a distinct minority position within the social conservative camp. Social conservatives are well aware that they would not approve of the prayers that would be chosen in many places in the country. Indeed, the largest social conservative religious denomination, the Southern Baptists, is strictly opposed to such prayers. They favor, as do most social conservatives, opportunities for student-initiated school prayer for those who wish to participate. At the same time, social conservatives do believe that schools and other public institutions should be able to acknowledge God as the ultimate source of basic rights and duties (in line with the Declaration of Independence) and that the philosophy of ethical monotheism should be preferred to that of atheistic materialism.

Social conservatives are vehemently opposed, as well they should be, to the imposition of secularist liberalism in the name of religious neutrality. There is now ample evidence that religiously observant students frequently are denied their right to the free exercise of religion in public schools. Religious beliefs and their expression often suffer discrimination. Sometimes this is the result of ignorance on the part of school teachers or administrators; other times it is the fruit of animus. Either way, it is wrong, and social conservatives (joined by old-fashioned liberals such as Nat Hentoff) oppose it. Again, there is no reason why communitarians cannot join them. The key thing here is to accommodate the free exercise of religion in ways that are compatible with the religious freedom of others and respectful of the religious pluralism that exists in many communities.
I do indeed support closing commercial establishments whose purpose is
to facilitate illicit sex. This includes legislating against houses of prostitution,
"bath houses," and the like. Most social conservatives agree. I also think, as
do most social conservatives, that the astonishing spread (and increasingly
very public display) of pornography over the past two decades has badly dam-
aged public morality. It encourages men, in particular, to think of women as
sexual objects and themselves as "consumers" of the objects of desire. This
undermines the capacity of men to love women (and the children they bear)
in a mature and unselfish way, thus damaging marriages, families, and society
as a whole. To be sure, it is important to avoid fanaticism in regulating ma-
terial pertaining to sexuality, lest we restrict work of important aesthetic, sci-
entific, or other value; but we are certainly at no risk of doing that at the mo-
ment. An eight billion dollar pornography industry loudly testifies to the fact
that we are massively erring in the opposite direction.

It is true that social conservatives favor tough policies against crime and
criminals. As an antidote to the liberal criminology of the 1950s and 1960s, this
is a good thing. Perhaps we have moved too quickly, however, to embrace in-
flexible procedures such as mandatory minimum sentences, "three strikes you're
out," etc. Here, subject to the proviso that punishment must be truly retributive,
there is no reason in principle for social conservatives not to consider some of
the ideas that communitarians are trying to develop. By the same token, com-
munitarians should warmly approve of the efforts of evangelical social conserva-
vatives—led by Chuck Colson, Pat Nolan, and others who have themselves
served time in prison—to secure basic justice and humane treatment for pris-
oners. Unlike secular "prison reform advocates," the evangelicals make moral
demands on the prisoners as well as on prison officials and guards. They are also
proving that the rehabilitation of criminals is possible after all, especially where
prison administrators are willing to cooperate with those who are prepared to
meet the spiritual needs of inmates. When liberal rehabilitation policies failed
to work, many social conservatives gave up on the idea of rehabilitation. Col-
son and others are showing that "where there is faith, there is hope."

On the death penalty, there is a division in the social conservative camp
that is often overlooked: many social conservatives, especially though not ex-
clusively Catholics, oppose the death penalty. (Pope John Paul II, a figure
revered by Protestant and Catholic social conservatives alike, has personally
spoken out strongly against the death penalty.) And, of course, many liberals
strongly favor the death penalty—start the list with President Clinton, who
ostentatiously returned to Arkansas during his first presidential campaign to
sign an order for the execution of a young (and allegedly mentally impaired)
man who had been sentenced to death.
A final point on criminal justice: while social conservatives favor strong laws, they also support constitutional guarantees of procedural fairness. Of course, they do not accept the ACLU liberal reading of these guarantees, but that does not mean that they countenance abusive actions by police, prison guards, or other officials.

AE: Responding to your first point, not only do communitarians support the “covenant marriage” option, we seem to have originated the idea. Back in 1993 we called them “supervows.” Different name, same concept. But note the nature of covenant marriage: it allows for choice. This is not a case of a strong (but small) government seeking to promote a virtuous citizenry by use of the strong arm of the law; nor is it a case of government neutrality in the face of any question concerning virtue. Rather, covenant marriage involves the government helping to create the conditions for people to choose an option it considers virtuous. I call this “opportuning virtue” and it would seem to entail a new approach to government action in the moral realm: neither coercive nor neutral.

As for the social conservative support for constitutional guarantees of procedural fairness, I very much agree, and this is one of the major differences between social conservatives, who are constitutionalists, and authoritarians, whose use of coercion is often discriminatory by ethnic origin, class, or other irrelevant, if not outright arbitrary, criteria. But I also note that social conservatives—I refer here not necessarily to scholars like yourself but to more public intellectuals and politically active champions (John Dilulio and Richard Neuhaus, for example), and think tanks such as the Heritage Foundation—have strongly favored not violating procedures but changing them in ways that make the state more powerful. This can be seen in friend-of-the-court briefs that have argued for reversing the Miranda decision or watering it down, for repealing the exclusionary rule, for sharply curtailing appeals of death sentences, and other such changes.

I am not suggesting that reformulating some of these procedures is not called for. Indeed, I have argued for some of them myself. However, it seems that most who engage in a systematic and extensive revision of procedures to increase the power of the state are social conservatives.

RG: On the matter of covenant marriage (or “supervows”), I congratulate communitarians for coming up with the idea. (I first encountered it in 1994 in an article by the social conservative writer Christopher Wolfe.) You are correct to note that covenant marriage has been introduced to provide an alternative to marriages that can legally be dissolved by no-fault divorces. In this sense, as you say, it allows for choice. And I sense from your comment that communitarians perceive some value precisely in people’s having a
choice between covenant and non-covenant marriages. We may have here a case in which communitarianism truly differs, at the level of moral and political principle, from social conservatism and liberalism. Social conservatives, though supporters of covenant marriage, accept the policy of two tracts of marriage as a compromise, not an ideal. Individuals, couples, and the common good of society as a whole would, we believe, be best served by the simple abolition of no-fault divorce. Social conservatives perceive no value in the availability of a choice of types of marriage as such. So while we have common ground with communitarians in supporting covenant marriage, our reasons for supporting it may differ in an important respect. The orthodox liberal position, on the other hand, is simply to oppose covenant marriage.

Turning now to criminal law enforcement, there is certainly a legitimate debate about the balance between procedural protections and police power. Often trade-offs have to be made, and there is no single uniquely just answer as to how the balance should be struck. Different jurisdictions reasonably and justly strike the balance differently. Britain, for example, has no equivalent of our exclusionary rule, yet freedom survives.

The key thing, I think, is to be as fair as possible in allocating the benefits and burdens of striking the balance one way rather than another. Do social conservatives consistently wish to strike the balance in a way that increases state power? It is no doubt true that social conservatives are leading critics of major Warren Court criminal procedure decisions, including Miranda. At the same time, social conservatives have been outspoken critics of law enforcement officials’ misbehavior at Waco, Ruby Ridge, and elsewhere. (Richard Neuhaus published in his magazine First Things the single most important critique of federal law enforcement abuses at Waco.) Moreover, social conservative journalists—not liberals—have courageously exposed prosecutorial misconduct in connection with a series of apparently false child-sex-abuse allegations. And John Dilulio’s writings on law enforcement and prison policy are arguably the most rigorous and nuanced in the vast literatures of these subjects. In some areas his prescriptions would increase state power, in others they would reduce it. In any event, even if it is true that social conservatives tend, overall, to favor an increase in state power when it comes to law enforcement, I doubt that this is a difference of principle with communitarians. Indeed, I suspect that most communitarians would share the view that Warren Court criminal procedure strikes the balance too far in the direction of hampering ordinary law enforcement powers.

AE: Perhaps the key difference between social conservatives and communitarians lies in judgments of what behaviors are considered morally bad, and how bad these behaviors are deemed to be. Of course, social conservatives
and communitarians would agree on the immorality of many things, and
would further agree that they cause grave social harm. Drug abuse is certainly
one example. But perhaps when it comes to issues such as abortion, pornog-
raphy, adultery, prostitution, etc., there is only limited consensus among
communitarians that all of these things are bad, and even less of a consensus
that they are socially harmful enough to warrant the policies of legal restric-
tion that social conservatives favor.

RG: I am inclined to agree. Social conservatives are united on the propo-
sition that these are morally bad (and, in the case of abortion, gravely unjust)
behaviors that require action on the legal as well as cultural front. My im-
pression is that communitarians tend to be more ambivalent. In any event,
there is nothing like a consensus among them. To be sure, communitarians
generally do not view these matters as morally innocent, nor do they suggest
that they are not worth worrying about. Many doubt, however, that their so-
cial effects are damaging enough to warrant the limitations on personal free-
dom that social conservatives are prepared to countenance. Moreover, many
worry that a preoccupation with these subjects creates a tone of prudishness
or even intolerance that is itself damaging to the moral health of society.
They buy at least this much of the liberal argument.

AE: It seems to me that the moral agenda of social conservatives (espe-
cially the religious ones) is more encompassing while the communitarian one
is more focused on a limited set of core values. Focusing the discussion on the
substance of the virtues involved is particularly helpful as neither social con-
servatives nor communitarians consider it appropriate to limit oneself only
to procedural considerations. In this context, I would suggest that social con-
servatives have accorded sex much too much corrosive power and greatly un-
derestimate, for example, the role of impersonal and intergroup violence, es-
specially guns.

I realize that you hold that a society that is decomposing, due to a loss of
integrity, driven by sexual promiscuity, is one that is predisposed to violence,
i.e., that violence is a derivative rather than a primary cause of social disor-
der. In part this is an empirical matter. For instance, Scandinavia, which has
long been sexually permissive, is much less violent than the United States.
And over the last years, as sexual self-indulgence was modeled in the high-
est office of the land, violent crime has significantly dropped. I am sure you
can produce some other examples that lend support to your thesis. But would
you submit here to social science evidence? Would a social conservative
agree to ban guns if they turn out to be a primary cause of violence? And
even if violence is found to be a mere derivative cause, a symptom of another
malaise, does this mean it should therefore not be treated in its own right?
RG: I deplore the increasingly common glorification of violence in films, music, and other aspects of contemporary popular culture. It should be clear that most social conservatives share my view. William Bennett, for example, has repeatedly called on the companies who profit from this shameful business to cease and desist. I am not very interested in the question of whether the glorification of illicit sex is worse than the glorification of violence. They are both morally iniquitous and socially damaging. And, as many others have noted, they are connected in various ways: it is no accident, as the Communists used to say, that the purveyors of violence and pornography are very often the same people and companies; nor is it surprising that so much pornography today is violent pornography.

As for whether social conservatives are too concerned about sexual immorality, you are right to suspect that I can produce plenty of social science evidence to support my view that we ought to be very concerned about the social consequences of anarchic sexuality. It is probably enough, however, to rely on common sense and personal observation. Maintaining the integrity of families is crucial to the well-being of children. Yet family integrity is jeopardized by an ideology of "recreational" sexuality that divorces sex from marital unity and treats marital infidelity as a relatively unimportant matter. The spread of such an ideology plainly plays a major role in the family breakdown we have experienced in the United States and which is common in Scandinavian and other European nations as well. It is true that these nations are less violent than the United States (though no one, I hope, is foolish enough to think that sexual permissiveness has the effect of decreasing violence); but it remains to be seen whether they will be resistant to violence and other social pathologies if challenged by stresses from economic or other forms of adversity. If I and other social conservatives are right to believe that irresponsibility and self-indulgence in the area of sexuality, as in other areas, weakens character generally, then that will manifest itself in the life of any sexually permissive people when the strains of adversity come—as surely they will.

I would certainly submit to social science evidence on the question of guns. So far, though, that evidence, as I understand it, shows that gun control, even where it can be rendered workable, is of little effect. Indeed, some social scientists have concluded that gun ownership, and even the right to carry concealed weapons, decreases crime. In any case, it seems to me that this is an area where the law may quite legitimately differ from state to state and even within states. Where I grew up in West Virginia gun ownership is prevalent, people use their weapons responsibly for hunting and target shooting, and there is little gun crime. The same is true in nearby rural counties of western Maryland and southwestern Pennsylvania. I can see little justifica-
tion for taking weapons away from these people, even if it turns out to be a good idea to prohibit gun ownership (or some forms of gun ownership) in large cities such as Baltimore, Washington, D.C., Pittsburgh, and Philadelphia.

AE: All said and done the discussion seems to suggest that moderate social conservatives and strong communitarians are relatively close to one another. But I continue to believe, though subject to some of the caveats you have presented, that strong social conservatives seem to rely more on the state than do communitarians, and that their moral agenda is more encompassing, and thus more restrictive—it provides do's and don'ts about more aspects of human life.

RG: I am grateful for this opportunity to explore the points of commonality and divergence between social conservatives and communitarians. I, too, believe that we have much in common and a great deal to learn from each other. There is obviously much more to say, and many other topics to address, so I hope that we can keep the conversation going and that other social conservatives and communitarians will join us.
CHAPTER TWENTY-SEVEN

Virtue, Self-Interest, and the Good: A Dialogue on Communitarianism and Classical Liberalism

Amitai Etzioni and Jonathan Marks

The following dialogue between Jonathan Marks, a historian of political thought, and Amitai Etzioni, the editor of The Responsive Community, was conducted by e-mail over the course of several months.

AMITAI ETZIONI: Professor Marks, you have written in the past that responsive or new communitarianism, which stresses the importance of values over laws and of dialogues over coercion, is quite compatible with liberalism. But liberals, while they mainly oppose the imposition of shared moral formulations of the good by the state, also fear socially shared moral understandings. They fear that such shared moral values will spill over into legislation and hence coercion, and believe that social pressure can itself be coercive. Hence they tend to hold that it is best for each person to formulate his own conception of the good.

JONATHAN MARKS: It is true that certain contemporary liberals, like John Rawls and Ronald Dworkin, sometimes write as if liberal societies must not side with any one conception of the good life. The liberal tradition, however, is another matter. John Locke knew well that citizens of liberal commercial societies have to understand peace, prosperity, and freedom as, at least in part, common goods to be secured through a common undertaking. He knew the importance of values and devoted his works not only to describing new liberal institutions but also to persuading his audience to adopt the new values that would support and ease the work of such institutions. John Stuart Mill, who was acutely aware of the power of majority opinion, nonetheless did not attempt to do away with shared moral understandings. Instead, he
championed a new moral understanding that celebrated not only philosophers and scientists but human beings altogether as thinkers mutually engaged in the pursuit of the truth and of the best ways of life. Mill consequently praised both theoretical and practical innovators, and he ridiculed traditionalists. Anticipating the communitarian emphasis on moral dialogue, he imagined nothing less than an intellectually active people. Although Locke and Mill wrote a long time ago, their formulations of liberalism, unlike those of Rawls and Dworkin, have made lasting and deep impressions on liberal thought and discourse. It therefore seems to me that communitarians ought to turn their attention more than they have thus far to the liberal tradition and consider whether or not it really shares the deficiencies of contemporary liberal theory.

AE: Let's assume for the moment that the views you quote represent "true" or real liberalism, at least in its classical form, as distinct from either Dworkin or Rawls. Still, the values Locke does champion do not concern the moral fabric of society, its moral culture, and they tend to be rather individualistic. Peace is, of course, the core value for Locke, but he prioritizes it out of concern for the individual's well-being and not as some kind of common good. The same holds for prosperity. Liberty is liberalism's core value, often the one that justifies all others. Liberalism focuses on the rights individuals have and preventing the state from infringing upon them rather than on duties or responsibilities they have to the common good.

Mill explicitly refuses to accord any standing to values that refer to the community rather than to individuals. Mocking traditionalists and cheering innovators may still make you a sterling liberal as long as you're cheering liberty and rights, and paying no attention to the common good. Communitarians are not against liberty, but they seek to balance it with concern for other shared goods.

JM: I don't want to deny that liberalism is profoundly individualistic. But I think liberal values nonetheless concern the moral fabric of society and the common good. The new moral understanding Mill champions is guided by a new moral standard: the permanent interests of man as a progressive being. The pursuit of the truth and of the best ways of life is a collective undertaking, not only of individuals but also of generations. Each generation is responsible for increasing humanity's stock of uncontested truths and for exposing falsehoods. Closed-mindedness is, for Mill, both a moral failing and an intellectual one, as well as a disservice to oneself and to others. Similarly, there is a moral dimension to Locke's praise of the rational and industrious and his condemnation of the quarrelsome and contentious. The rational and industrious are praiseworthy not merely because they are efficient maximizers of profit but also because their work draws human beings out of a state of
relative poverty and brutishness and into a state of relative prosperity and civilization. The quarrelsome and contentious are blameworthy not because they never prosper—they frequently do—but because they are troublemakers who stand in the way of prosperity and civilization. They stand, in other words, in the way of the common good.

Also, I think it is important not to equate liberalism’s emphasis on rights with indifference to responsibility or virtue. Liberal citizenship requires vigilance to detect threats to freedom and courage to fight them off. It requires moderation because we will often be tempted to disregard the rule of law, the rights of others, and the importance of peace in order to advance our own interests or partisan convictions. Such virtues may be less dazzling than Spartan virtues, but they are not unimpressive. I find Steven Kautz’s portrayal of the liberal person in Liberalism and Community entirely persuasive on that point.

AE: Your last comment moves us even closer to what is needed—distinguishing between personal and social virtues, between liberal and communitarian ones. To define them first, what some liberals call virtues are personal attributes associated with being a good citizen (e.g., voting, keeping up with public affairs, serving on a jury) and with enabling a society whose bonds are based on a very thin, if any, shared moral culture to function (tolerance, self-restraint, open-mindedness). Or virtues are attributes that help each individual to prosper (e.g., industriousness). (Social conservatives and communitarians might well be reluctant to call these virtues in the first place.)

In any case, what is lacking here is the moral foundation for other-regard and for the common good, for caring and sharing, for making sacrifices for our friends and other members of the community. How can a liberal justify the obligation to take care of our aging parents or to protect the environment for future generations? How can a liberal justify a relatively high and rising minimum wage, not as something that benefits the economy and hence oneself, but as necessary for a minimal amount of social justice? (You may say Rawls does, but aside from the fact that he greatly differs here from all the liberals that preceded him, his “basis” is again the individual’s interest—what if I find myself in this position?—not a moral one.) How can a liberal justify giving foreign aid even if it does not serve us a bit—not because it is the “rational” thing to do but because it is a good act?

You mention Spartan virtues to contrast them with liberal values, which to reiterate are thin and citizen-centered (rather than being centered on being a member of a good society) and you seem to suggest that communitarians do hold Spartan values—that is, highly austere, authoritarian, and aggressive ones. Reference to Spartan values helps clarify that once one
recognizes the category of shared moral understanding and social virtues, one
must make other distinctions, because not all shared values are communitarian.
Two characteristics separate communitarian shared values from social
conservative and authoritarian ones (including theocratic ones such as those
of fundamentalists). First, communitarianism advocates a core of shared val-
ues, rather than a broad and inclusive body of religious or ideological tenets
that delineate what one ought to eat and ought not to drink, the direction in
which to bow to God, when one can have sex, and so on, which makes them
oppressive and leaves little room for individual freedom. Second, authoritar-
ian values tend to be coercive while communitarianism emphasizes the role
of persuasion. It is not an accident that communitarian values are thicker
than liberal ones but much less encompassing than social conservative (not
to mention fundamentalist) ones and that they rely on persuasion. This re-
fection that responsive communitarians favor a balance between autonomy
and social order, and do not merely value order.

JM: It is true that liberalism derives duties from rights. Nonetheless, liber-
alism does not promote indifference to others. The quintessential liberal
premise is the natural equality and freedom of human beings, which the rev-
olutionaries of 1776 affirmed when they declared that all men are created
equal and endowed by their Creator with certain unalienable rights. That
declaration within the Declaration applies not just to members of our family
or tribe, but to everyone. When Americans reflect on it, they extend their
moral horizon to encompass the whole of humanity and the dignity of all
human beings. When they embrace this declaration, they embrace a moral
and political principle that extends beyond their own borders and lifetimes.
This universalism of the Declaration, which responsive communitarians
share but many communitarians reject, is the basis of the sentiment and the
virtue of humanity. If humanity does not make liberals as charitable as good
Christians, it does, at least, restrain them from being unjust, cruel, and in-
different to others. I should add that liberals, impressed as they are with the
capacity of reason to relieve political, economic, and physical ills, are dis-
posed to act energetically on their humane sentiments and their interests to
relieve such ills. I cannot say what the liberal virtue of humanity dictates
about wages, the environment, or foreign aid, but it does not leave liberals
unconcerned about workers, future generations, or poor nations.

That said, you are right that liberalism teaches rational self-interest more
than anything else. The liberal abhors cruelty, for example, not only because
he is humane, but to a great extent because of the threat the cruel pose to
him and to the community, which he values insofar as his happiness depends
on it. The liberal worries about the poor not only because of his humanity,
but to a great extent because of the threat that the conflict between the rich and the poor poses to the community and thus to him. Liberal morality never breaks free of a prudent regard for one's own good or security, but it seems to me that one cannot ask more of human nature. Besides, even the virtue of humanity must be restrained if it is not to eventuate in utopian and dangerous policies.

I am describing liberalism in the best case. I agree with critics from Tocqueville on who argue that liberalism, left to its own devices, can foster narrow and ignoble selfishness. I even agree that liberals sometimes need to take counsel from other philosophic and political traditions to remedy liberalism's deficiencies; you may well be right, for example, that liberalism is bad at accounting for friendship. But I also think that we must not deny liberalism's revolutionary and fragile achievement, an achievement of both principle and practice. One surely denies this achievement when one claims that liberalism is morally empty and even corrosive, as communitarians, in my view, too often imply. I know from your essay "The Monochrome Society" that you think the moral framework that holds together American society is the American creed, which includes the Constitution and Bill of Rights, as well as tolerance. I think it is hard to deny that the American creed owes much to liberalism, even if J. G. A. Pocock and company are right to argue that previous historians overstated liberalism's influence, and understated republicanism's influence, on the Founders. But if this is so, how can one maintain that liberalism is thin?

AE: You are very eloquent regarding liberals' regard for others, including all human beings. But isn't there a difference between acknowledging that all human beings have certain rights and suggesting that we have some obligations toward them, responsibilities for them? One may say that respecting rights is an obligation, but this merely takes two terms and pretends that there is no difference between them. From the claim that, say, everyone has a right to free speech, it follows that I should not act to curb it, but do I have an obligation to promote a world in which free speech can flourish? I should not violate anyone's right to vote, but do I have a duty to promote democracy? Moreover, the rights about which we are speaking are legal and political, not social and economic. Hence they do not encompass any duties to poor people, the sick, and other vulnerable members of humanity. You say liberals are not "as charitable as good Christians"; are there any liberal reasons for one to be charitable at all? You speak about the rights of specific individuals, not concern for the common good, not a commitment to protect, for example, the environment. Hence, as you in effect acknowledge in the second part of your comment, there is a great need for a major communitarian wing to be added to the liberal construction.
I find your comment about human nature particularly helpful. If people were indeed selfish by nature, made self-centered by their Creator, communitarian philosophy would be naive whistling in the dark, if not delusional. However, human beings are actually social creatures by nature; they are bound to one another profoundly. They are more content and flourish better when they are members in good standing of families and communities. Therefore, other-regarding acts are neither altruistic nor a way of serving one’s own interests, but a form of mutuality in which both sides—or better, all sides—gain simultaneously. Loving our children, spouses, parents, and, in less profound ways, our friends and other community members—and discharging our moral duties—makes us better. A liberal may say (as some economists do) that loving and acting in line with one’s moral commitments is self-interested because such acts yield psychic benefits for the actor. But if one equates other-regarding acts—staying up nights to help a sick child, spouse, or friend, sitting with someone during chemotherapy, sharing grief, and so on—with selling people Tupperware, then we are flattening all important distinctions in human life and reducing them to one simplistic notion. Other-regarding acts (including not only those performed for specific persons but also those performed for the common good and general respect for moral values) feel very different from self-regarding acts (as we know from introspection), entail clearly distinguishable forms of behavior, and have radically different consequences.

So far my comments have been generic. Let me put them in the context of American history. While the Constitution provides the basic framework that holds together American society, it is not enough. It is true that the American creed owes much to liberalism, but as Tocqueville and others have pointed out, a successful American democratic system needs the support of an underlying civic morality. Even amidst the religious and economic diversity of eighteenth-century America, the Framers could count on a largely homogeneous moral culture to cultivate a shared set of goods. The liberalism embodied in our political system was designed to adjudicate among the competing but fewer and stronger influences on moral life than we have today.

In the absence of a strong sense of the common good, liberalism itself has transformed into an ideology with its own understanding of the good—a point you admit when you state that it teaches rational self-interest. As such, a philosophy that originally presumed a neutral stance with regard to questions of the good has increasingly come to embrace liberty and rational self-interest as goods in and of themselves. Liberalism as a system cultivates the virtues appropriate to the successful negotiation of that system, and the result has been an overemphasis on individual liberty and self-interest. As
those virtues become entrenched and institutionalized in organizations such as the ACLU, any attempt to shore up the shared moral foundation of a society is interpreted as a threat to individual liberty.

You presume that we cannot expect more of people than rational self-interest, but I would argue that in the past we did just that. Both political and religious systems have asked adherents to sacrifice self-interest for the greater good, often without even a long-term, tangible reward for the one sacrificing. While responsive communitarians emphatically do not want a return to the old religious hegemony or any kind of political authoritarianism, we do believe that shared understanding of the good is possible across society and that human nature can be cultivated to recognize—and even make sacrifices for—that good. Human nature, then, is malleable, but in the moral cacophony encouraged by liberalism’s dominant approach to rational self-interest, it is difficult to find and then cultivate an understanding of the common good. You mention, for instance, that liberalism would need to turn to other traditions to account for friendship. This is an important deficiency, for when liberalism oversteps its bounds and operates as not just a political but a moral system, the conditions for civil society recognized as early as Aristotle—namely, friendship and broader affect-laden relationships—begin to erode. That erosion has progressed to a crisis point today.

JM: I appreciate your willingness to discuss human nature. One of the many things that distinguishes your thinking from, say, Benjamin Barber’s or Michael Sandel’s, is your insistence that the argument for community must be founded on a definite understanding of human nature and even on self-evident truths. It seems to me that responsive communitarians and liberals in the tradition I have described can and should make common cause against relativism, which denies that one can have a serious debate about human nature and self-evident truths.

Let me point out one other matter I think we agree about. The well-being of liberal societies requires contributions from other traditions. Tocqueville is a model for me as he appears to be for you. He saw clearly and early on that modern democracy, what we call liberal democracy, has, like any political order, characteristic vices, and that a tendency toward radical individualism is among the most important of these. He saw that liberal democracies are in need of outside help, from religion for example, to temper their individualism and strengthen the moral bonds their health requires. As the example of religion suggests, there are different kinds of outside help, and you have engaged in spirited debates with social conservatives about what kind is most likely to preserve a balance between autonomy and order.
I think our most important disagreement concerns your claim that liberalism was originally intended to be neutral about the good life. Let me give you one more example from Locke, which also places liberalism in a historical context. Locke wrote “A Letter Concerning Toleration” in an England and Europe in which religious differences provoked wars within and between states. To attempt to soften those differences, Locke could not appeal to self-interest alone. The duty to convert unbelievers could hardly be abandoned for consideration of worldly self-interest. Locke therefore insisted, in effect, that God himself decrees that each individual should investigate and decide for himself what true religion is, that every individual is his own supreme and absolute authority in religious matters, and that the care for an individual’s salvation finally belongs to the individual alone. To place such extraordinary weight on the side of individuals rationally investigating and judging the truth for themselves, and deciding what to believe and do accordingly, is hardly to be neutral on the question of the good life. While Locke leaves it to individuals to decide what religion to choose, he insures that all religious believers, if they are persuaded by him, will share a common moral understanding according to which human dignity depends upon accepting only that authority to which one freely consents. Lockean liberalism, while it does not outlaw the belief that one is not capable of judging the truth and that submitting to the authority of others is the only route to salvation, is plainly not neutral with respect to this belief or the way of life it implies. This failure of neutrality is not, in my view, accidental, but quite deliberate. Locke thought his understanding of human dignity was both better at securing peace and simply better than rival views. Madison and Jefferson, by the way, followed Locke in their own writing about religion in the American context.

But does the moral understanding liberalism promotes entail obligations to others? I think that it does. If I am right that liberals believe not only in peace and prosperity but also in the dignity of all human beings, then only a hypocritical liberal would insist that he has only negative duties. Only a hypocritical liberal would insist that, to use your example, he can be concerned only with not violating others’ right to free speech and need not promote a world in which free speech can flourish, or that he can be concerned only with not violating rights and need not promote a world in which people can exercise their rights. It is true that liberals emphasize rights and rational self-interest over duties, regarding this emphasis as the surest direct safeguard of dignity and the surest route to the peaceful, prosperous, industrious, and intellectually active society in which human beings can lead civilized lives. It is also true that liberals will consequently, as I mentioned, be less charitable than good Christians and less well-disposed toward an ethic of sharing and
caring than good communitarians. But this stance does not lead liberals to suppose that refraining from violating rights is the sum total of human virtue or that refraining from violating rights suffices for securing human dignity.

I agree with you that the conditions for civil society have eroded and that this erosion must be addressed. However, if the deficiencies of liberalism must take some of the blame for this lamentable state of affairs, I think that neglect of the liberal tradition, even among people who today call themselves liberals, deserves some of the blame, too. That is why, even though I share your opposition to Rawls and Dworkin and resist, just as you do, the reductionism of the economists you mentioned, I am so eager to distinguish the liberal tradition as a whole from these relatively recent and impoverished manifestations of it. Classical liberals and responsive communitarians, however much they disagree about the desired content of a shared moral understanding in the United States, are mutually concerned with reviving serious thinking about such a moral understanding.

AE: This is a good place to close. You are right that we have relatively little reason to quarrel with classical liberals. Our main differences, at least concerning shared formulations of the good, are with contemporary liberals. Some liberals hold out for complete state neutrality and are so fearful that socially shared understandings will lead to state-imposed ones that they oppose the former in addition to the latter. Indeed, there is a very regrettable tendency to treat state and society as if they were one and the same thing, as if citizenship and membership in society were synonymous. Finally, there are a fair number of liberals who advocate a thin shared conception of the good; they see the merit of some virtues but either tie them to the liberal agenda and not to the common good (e.g., tying them to following public affairs and thinking critically) or connect them to a rather limited list of values (e.g., security). In any case, what is wrong with having two schools that differ and thus help highlight the core issues we face?
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