It is no accident that the issue of gun sweeps in Chicago’s public housing recently caught the attention of the president of the United States and the national press. The question of the legitimacy of those sweeps has profound implications for the future of civility in American society.

We have become so inured to violence that the 15 shootings and eight fatalities during one weekend in the Robert Taylor Homes’ neighborhood do not faze us. We tend to forget that in civil societies children can play outside, one and all walk the streets with impunity, and gunfire is the exception not the rule. Indeed, if anything resembling such conditions as are now common in inner-cities developed in one of our fancy suburbs, SWAT teams, if not the National Guard, would be called out.

The poor and largely black people of the Robert Taylor Homes are treated as “second-class” citizens, not because of the gun sweeps, as Congressman Henry Gonzalez (D-Texas) put it, but because they are denied the most elementary protection any state owes to its citizens: protection of life and limb.

But, argue civil libertarians, the Chicago Housing Authority violated the individual rights of residents with warrantless sweeps.

It is here that the national importance of the CHA’s situation arises. We are now engaged in a nationwide debate about the nature of measures public authorities may use to enhance public safety.

The issues, even in the Robert Taylor Homes, encompass more than apartment searches; the same civil libertarians also try to block the use of photo Ids for residents and screening gates at public housing entrances, two other measures essential for the protection of residents from gangs and drug lords. Elsewhere, the ACLU and its ilk oppose schools that search lockers, neighborhoods that set up drug checkpoints, and so on.

In all these cases the underlying issue is a recognition that a civil society requires a balance between carefully observing individual rights and attending to the common good. Rights are not absolute; even the right to free speech, which many consider the most absolute, is clearly curbed by the notion that one may not shout fire in a crowded theater - because such shouts would endanger the public.

Someone could argue that this ruling violates the right of the shouter to express herself, but this limitation of free speech is a major component of America’s constitutional tradition.

Indeed, while we fear frequent references to the Bill of Rights, much attention should also be given to the statement with which the founding fathers opened the Constitution” “We the People of the United States, in order to form a more perfect Union . . . promote the general welfare . . . do ordain and establish this Constitution for the United States of America.”

This dual attention to both individual rights and the common good is at the foundation of the American legal tradition.

Precisely for this reason the 4th Amendment reads, “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search and seizures, shall
not be violated,: of course implying that there are searches that are acceptable. The courts
have long upheld warrantless searches that show themselves to be in the public interest.

In effect, every time you fly (and often when you enter court buildings and legislative
chambers) you pass through screening gates, backed by armed guards, that search you and
your effects without warrants. This is exactly what the Robert Taylor Homes need.

In other cases, judges have allowed the use of warrantless searches of persons, school
lockers and homes, under a "special needs" doctrine, defining the special needs as a
compelling public interest. Steven Yarosh reviewed these cases for the Northwestern
University Law Review and concluded in 1992 that “The CHA’s warrantless housing sweeps
do not appear to violate the 4th Amendment.”

True, Judge Wayne Andersen recently ruled otherwise. But he objected to searches that
take place 48 hours or later after the shootings. Forty-eight hours leaves police plenty of time
to get warrants. Even this ruling, which might well be reversed, might be different next time if
the searches would follow the shootings more closely. Hot pursuit is another legitimate
reason for warrantless searches.

Let’s leave these details to the lawyers. The big picture we must keep in sight is that civil
liberties are endangered most directly when sweeps are not allowed to take place, when
gangs are free to terrorize neighborhoods, and when public authorities stand by helplessly.

This is not to declare an open season on the Bill of Rights or suggest that anything goes for
law enforcement, but under clearly established limitations we must give more leeway to
provide disadvantaged citizens with what affluent Americans always insist on and still largely
have on their neighborhoods: elementary public safety.