

The Responsive Community

Volume 10, Issue 2, Spring 2000

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The Responsive Community (ISSN 1053-0754) is published quarterly by the Center for Policy Research, Inc., a nonprofit corporation. The journal is listed in the following indexing/abstracting services: PAIS, IBZ, IBR, and Sociological Abstracts. Microform copies are available through Microfilms, Inc. Distributed by EBSCO: (205) 991-6600; and by Ubiquity Distributors, Inc.: (718) 875-5491. Visit our web site at <http://www.gwu.edu/~ccps>.

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Subscriptions: Rates for individuals are: \$27 per year; \$48 for two years; \$17 per year for full-time students. Libraries and institutions: \$70 per year. Subscribers outside the U.S. should add \$7 per year for additional mailing costs. Send subscriptions and changes of address to: Circulation Manager, *The Responsive Community*, 2020 Pennsylvania Ave., NW, Suite 282, Washington, DC 20006-1846. Tel: (800) 245-7460. FAX: (202) 994-1606.

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UP FRONT

Inequality in America: The Recent Evidence

Robert Z. Lawrence

For the period from 1979 through the early 1990s, the story is a very familiar one. Whether the data are arrayed by household, by earnings decile, or by indicators of skill and education, they all suggest two fundamental results. First, growing inequality: the more advantaged in the U.S. did particularly well while those at the bottom did poorly. Second, on average, workers fared poorly. Real wage growth was extremely sluggish and by some measures—such as average hourly earnings—actually declined over the period. These results were particularly striking in the face of two developments: the inequality trends had persisted despite (a) the long expansion of the eighties and (b) the relatively rapid increase in the supply of educated workers.

The literature advanced three lines of explanation for these developments: *First, the force of globalization.* The U.S. economy ran large trade deficits in the 1980s. In addition, there was a rise in the participation of developing countries in U.S. trade, partly occasioned by the shift in developing countries such as China to more outwardly oriented policies. It has been argued that these developments had particularly adverse effects on the demand for less-skilled U.S. workers, who were increasingly forced to compete with low-wage workers. In addition, the threats of outsourcing and increased international com-

Presented initially at a conference on "The Macro-dynamics of Inequality in Advanced and Developing Countries" at the Levy Institute, October 28th, 1999.

petition were said to reduce labor's bargaining power—a factor which was also held responsible for the slow rise in average wages. Immigration also contributed a larger number of less skilled workers.

Second, the force of technological change. It was also argued that there had been an acceleration in “skill biased” technical change. Computers and/or new management approaches emphasizing lean production skewed demand towards skilled workers and away from the less skilled.

Third, the force of institutional and structural changes. In the 1980s, de-unionization and deregulation weakened the power of workers. In addition, the declining share of employment in manufacturing reduced high-wage opportunities for blue-collar workers.

To be sure, these explanations are not mutually exclusive. Indeed they may be interrelated. International competition may have stimulated technological change. International competition has also been invoked to help explain the weakening of union bargaining power and the declining share of manufacturing employment. While economists differ on the relative importance of these forces—a majority arguing that technological change was dominant—most assign at least some role to all three. I'd like to examine what has happened in the U.S. economy since the mid-1990s. Let's ask first what has happened to these forces. Next let's look at the recent evidence on what has happened to various indicators of inequality, and then I'd like to reflect on what lessons we might draw.

The Forces at Work over the Past Five Years

First, what has happened on the globalization front? New trade agreements have been implemented—in particular NAFTA and the Uruguay Round. Trade has continued to rise as a share of the U.S. economy. In the aftermath of the Asian crisis, the U.S. trade deficit in goods and services increased dramatically. In addition, particularly since 1997, the prices of imported goods have fallen relative to the Consumer Price Index, and the prices of manufactured goods from developing countries, which are typically labor-intensive, have fallen even more rapidly than those from developed countries. By any measure therefore—trade agreements, trade volumes, trade prices, and trade deficits—globalization's forces were more powerful in the nineties.

Second, what has happened to technological change? One very powerful feature of the strength of this expansion has been investment in plants and equipment, particularly computers and information technology. This can be seen in the dramatic rise in the share of real investment in GDP and the share of high-tech investment in total investment, and, of course, the diffusion and development of the Internet. A second feature has been the heartening acceleration in productivity growth over the past three years. While productivity growth had been slow in the early part of this expansion, we've seen business sector productivity up 1.5 percent in 1997, 2.4 in 1998, and 3.0 in the year prior to mid-1999. Productivity levels are now well above the trend rate since 1973. By most measures of both inputs and outputs, therefore, the pace of technological change driven by the information revolution and other factors appears to have accelerated.

Third, what has happened on the institutional and sectoral front? Union membership has continued to decline in 1990s. Membership in the private sector has fallen by over 400,000 since 1994. The share of employment in manufacturing has declined steadily and, after rising through 1997, the number employed has fallen. In addition, welfare reform has added new workers, many with limited work experience, to the labor force.

In the light of these earlier explanations, most would surely have predicted even greater inequality in the 1990s, and a particularly tough experience for those at the bottom end of the income distribution. Yet that has not happened. Indeed, by numerous measures there has been no increase, and by some, inequality has actually been reduced.

The Recent Experience

Real wages and labor's share. Since 1995 we have seen significant increases in real wages. In addition, the share of output received by workers in the form of compensation has been rising since 1996. It shows almost no change over the longer run, suggesting that there has been no significant change in the shares of the pie going to labor and capital. There does not seem to be strong recent evidence that international competition has weakened labor's ability to bargain in this recent period. The most recent wage agreements concluded in the aerospace and automobile industries have been particularly strong.

College premiums. There has been no acceleration in the premium over the past five years for either men or women. The ratio of average weekly wages of college graduates to those of high school graduates had increased from 38 percent in 1979 to 74.3 percent in 1994, but between 1994 and 1998 it actually declined to 71.3 percent. A similar story emerges in data for average hourly earnings, although the hourly premiums are somewhat lower.

Earnings by decile. Over the past few years, the spread between the hourly earnings at the 90th percentile and those earning at the 10th percentile has stopped rising. The same story is evident in weekly earnings. Between 1979 and 1996 the ratio increased to 4.45. Between 1996 and 1998, however, it declined to 4.36. In the weekly data, likewise, the 90/50 spread also rose from 1.86 to 2.12 in 1996 and then subsided. An even more dramatic picture emerges in the hourly data in which we array the changes between 1994 and the first half of 1999. Here, when men and women are grouped together, we see increases that are highest at the bottom and lowest at the top. (They're up 8.6 percent since 94 in the lowest decile, up 4.7 at the top.) Similar images of faster growth at the bottom than at the top emerge for both men and women when the data are separated by gender. Thus the hourly earnings data actually indicate that there has been an increase in wage equality over this period.

More comprehensive indicators of inequality—income gains by quintile and an aggregate measure of inequality (the “Gini coefficient” for household income)—support the view that inequality has not increased. Since 1993, incomes have grown by between 9.9 and 11.7 percent for every quintile of the income distribution. After two decades of rising inequality the Gini coefficient measure showed no statistically significant change between 1993 and 1998. Here too, it appears as if the Gini is back in the bottle.

The least fortunate. The poverty data show excellent progress since 1994. The 1998 poverty numbers suggest poverty is lower than at any time since 1979. The poverty rate has fallen from 15.1 percent in 1993 to 12.7 percent in 1998. Over the last five years typical families have seen their incomes rise by 12.1 percent and African American families by 21.0 percent. Likewise, unemployment gains at the bottom are particularly impressive. Since 1993, African American unemployment has declined from 14.3 percent to 7.8 percent—the lowest on

record—while Hispanic unemployment has fallen from 11.5 to 6.5 percent—also the lowest on record.

The overwhelming impression, therefore, is that the inequality has stopped rising. It is certainly incorrect to claim that we have actually reversed the drift towards inequality of the 1980s, and hard to make the claim that inequality is now on a downward trend—and some see trouble in that. But this is convincing evidence that inequality has not continued to worsen. And that is highly significant. It is important, therefore, that this new evidence be introduced into the discussion.

Searching for Explanations

How can we explain what has happened? Why is it that despite the apparent strength of these forces—globalization, technological change, and institutional and structural changes—the inequality outcome is not what might have been expected? There are both macroeconomic and microeconomic possibilities.

One obvious candidate is the role of the high-pressure economy and the associated low rates of unemployment. There is certainly compelling evidence that a high-pressure economy tends to increase opportunities for workers, particularly at the lower end of the scale. It may set in motion a positive virtuous circle in which new opportunities lead to new skills, higher productivity, and improved competitiveness, which in turn may allow for labor markets to be run at higher levels without upward pressure on wages. As the labor market tightens, there will be more opportunities and higher pay for those with fewer qualifications.

Ironically in this regard, forces which were seen as working towards increased inequality may well have contributed to allowing us to have a high-pressure economy. First, globalization and increased competition can lead to a onetime reduction in prices and margins which improves the short run inflation/output trade-off. Similarly price pressures may reduce profits and raise the relative share of labor. And lower import prices help contain inflation in the short run. In addition, when there is excess capacity in the rest of the world, we can draw on imports rather than strain domestic capacity

utilization, again resulting in fewer price pressures. Second, as Alan Greenspan has emphasized, when we get positive shocks to productivity due to technological change, there is a powerful positive macroeconomic influence allowing firms to pay higher wages without them passing through into inflation.

A second possibility is that the trends themselves have been brought to a halt by offsetting *microeconomic* forces. Perhaps “technology” is responsive to relative wage costs. Skill bias does not come down from heaven but eventually shifts in response to incentives. Firms may increasingly find ways to employ relatively less well educated workers more effectively because these workers have become relatively cheaper. Or maybe the downward pressures from “trade” or globalization have run their course. In particular, the issue of substitutability between domestic and international production is relevant. It could be that eventually U.S. firms either are driven out of low-wage activities, or they figure out how to compete using competitive strategies which offset cheaper foreign labor costs. This means they no longer compete head to head with low-wage countries and thus are less affected by competitive pressures. Similarly, vulnerable unions may be forced to reduce members so that those who remain are actually the more powerful ones.

While the macroeconomic explanation implies that inequality could reverse in the face of higher unemployment, the microeconomic considerations suggest that we may have a more resilient economy. We may finally be reaping the benefits of having adjusted to some major structural challenges.

But it is also possible that our explanations were defective in the first place, that we actually have never had a very firm grasp on what was shifting the trends originally. There were always problems with the story assigning a large role for trade. The numbers simply didn’t seem to add up to anything big enough to explain a large share, and the other implications of the theories didn’t seem to be corroborated.

There was also a problem with the skill-biased technology story. Why so much change and so little progress? Why in the eighties did we have changes in technology that were large enough to wrench the

labor market and yet too small to boost productivity? Ironically, over the past five years we are getting the “progress,” i.e., faster productivity growth, without the relative wage changes.

Finally, credit for the differences in behavior should also be given to policy—on the macroeconomic front to both fiscal and monetary policy. The monetary authorities have been vigilant in avoiding inflation and yet willing and able to provide sufficient liquidity to finance non-inflationary growth and deal with financial crisis. Fiscal policy has been prudent with a long-run trend towards surplus, while at the same time resources devoted to education, training, and civilian technological development have been increased. As National Economic Council chief Gene Sperling has recently pointed out, strong deficit reduction has not hurt poverty reduction. Increased funding for the earned-income tax credit and for other education, training, and research has played a role. Important, too, have been increases in the minimum wage. Certainly this has raised wages at the bottom and it does not appear to have had a noticeably negative impact on the employment of the least well paid workers.

To conclude: We should not be complacent. We have not reversed the previous shifts towards greater inequality. Ideally we would like to see sustained gains for all and particularly large gains at the bottom. But we have made progress in arresting trends that were disturbing; overall these data suggest we have been doing the right things. In addition, it provides an optimistic message. We remain masters of our fate and are not, as some suggest, condemned to be buffeted by negative global or technological forces in the face of which we are helpless.

A New American Race?

Amitai Etzioni

The 2000 census serves as a reminder that the time has come to drop the idea that Americans can be neatly divided into racial categories. In 1990 there were already nearly 10 million Americans who considered their racial identity as neither white nor black nor brown

nor yellow, but as “other.” The number of interracial children has quadrupled since 1970, reaching the two million mark. Given that the number of intermarriages is six times higher than it was in 1960, the number of interracial Americans is sure to rise sharply in the future. Indeed, sociologists predict that America will look more and more like Hawaii’s blended racial mix within a generation. A major step towards recognizing this development, and towards allowing its full sociological importance to unfold, requires that the U.S. census allow Americans to classify themselves as “multiracial.”

“Doctoring” the Count

The ways this matter has been mishandled so far deserve some attention. In the 1990 census, the government required Americans to box themselves into one of 16 racial categories. The main groupings were white and black, which accounted in 1990 for 92 percent of all Americans. (The remaining racially defined categories were Native American, Aleut or Eskimo, and several variations of Asian or Pacific Islanders.) The census did recognize in 1990 that a growing number of Americans are of mixed racial backgrounds, and that millions of other Americans who might be viewed as members of one race wish to be categorized as members of another—or even change their minds over the course of their life as to which race they belong. (There are very considerable differences in color and all other racial features within all racial groups, which makes the question of who is in versus who is not much more open-ended than is often assumed. For instance, many Hispanics who have dark skin do not see themselves as black, and many light-skinned African Americans do not wish to pass as white.)

The 1990 census allowed all these Americans, or for that matter anyone who wished, to use the label of “other.” It is hardly an attractive label; it suggests that those who do classify themselves in this manner are outsiders, people who do not belong. Despite the unattractiveness of this label, about 9.8 million Americans, 4 percent of the total population, chose this designation rather than be defined according to the established mono-racial categories. When the Census Bureau released the data for use by the government, it modified—some say cooked—the figures. It did so by eliminating the “other” category and reclassifying its members according to the mono-racial categories, as if the Census Bureau were saying what some rather

racist regimes have said: We will tell you what your race is. The motives for this troubling move are unclear. The Census Bureau argues that the modification allows for better comparisons with past data, when the category of “other” did not exist. But this does not explain why government agencies that deal with current distributions of funds by racial categories use the modified data. More about this soon.

Enter Politics

The question that we face now is if future censuses should prevent people from buying out of all racial categories and, if the answer is in the affirmative, what they may be called. Suggestions to include the multiracial category makes some African-American leaders furious. Abraham K. Sundiata, chairman of the Afro-American studies department at Brandeis University, sees here a drive to undermine black solidarity. He fears that in cities where blacks now hold majorities the new category will divide them and undermine their dominance. All of this will happen, he implies, because some African-Americans will somehow be forced into the new multiracial category. He disregards the fact that people will still be free to check the box of their choice, even if the new category is added.

Another reason several African-American leaders object to a multiracial category is that race data is used for the enforcement of civil rights legislation in employment, voting rights, housing and mortgage lending, health care services, and educational opportunities. They fear that the category could decrease the number of blacks in the nation’s official statistics, and thus undermine the efforts to enforce these antidiscrimination statutes, as well as undercut numerous social programs based on racial quotas. Indeed, if many members of various minorities choose to classify themselves out of these specially “protected” groups, the flow of public funds, set-asides in federal contracts, and affirmative action jobs would all diminish.

This fear was rather explicitly stated by Representative Carrie Meek during 1997 congressional hearings:

I understand how Tiger Woods and the rest of them feel. But no matter how they feel from a personal standpoint, we’re thinking about the census and reporting accuracy. . . . The multiracial category would cloud the count of [the] discrete minorities who are assigned to a lower track in public schools,

. . . kept out of certain occupations, and whose progress toward seniority or promotion has been skewered. . . . Lastly, Mr. Chairman, multiracial categories will reduce the level of political representation for minorities.

Meek is probably correct in predicting that if numerous Americans remove themselves from the black category, that some loss of funds will follow. But the social costs of the political gimmick of assigning people to a racial category that they seek to avoid are considerable.

Less Divisive

Even if the most far-reaching arguments against affirmative action and for a “color-blind” society carry the day, the option of dropping the whole social construction of race is simply not at issue now. However, there are strong sociological reasons to favor the inclusion of a multiracial category in the census (perhaps simply “multiracial,” or better yet, “non-racial”). We should also abandon the practice of “modifying” the racial numbers, and keep Americans in the categories they themselves choose.

Introducing a multiracial category has the potential to soften the racial lines that now divide America by rendering them more like economic differences and less like harsh, almost immutable, caste lines of racial categories. Sociologists have long observed that a major reason America experiences relatively few confrontations along lines of class is that people in this country believe they can move from one economic strata to another. (For instance, workers become foremen, and foremen become small businessmen.) Moreover, there are no sharp class demarcation lines as there are in Britain, where you often can tell a person’s class by the way they speak. In America many workers consider themselves middle class, dress up to go to work, and hide their tools and lunches in briefcases, while middle-class super-liberal professors join labor unions. That is, people “pass” class lines relatively easily. A major reason confrontations in America occur much more often along racial than class lines is that color lines currently seem rigidly unchangeable.

If the new category is adopted and if more and more Americans choose this category in future decades—as there is every reason to expect, given the high rates of interracial marriage and a desire by millions of Americans to avoid being racially boxed in—the new

census category may go a long way towards softening the sharply delineated lines among the races (especially black and white), and bring about a society in which differences are blurred. It will make it much more likely that the United States by the census of, say, 2030 will be more like Hawaii, where races mix rather freely, and less like India, with its castes. Racial lines will start to blur, and societal cohesion will be the beneficiary.

Skeptics may suggest that how one marks a tiny box on the census form is between one's self and the keepers of statistics. But, as this sociologist sees it, if the multiracial concept is allowed into national statistics, it will break out and enter the social vocabulary. It will make American society less stratified along racial lines, less rigidly divided, and thus more like one community.

The best indication that changes in the census may lead to much more encompassing changes in our social categories and social thinking is supported by the fact that these processes have already begun to unfold. In California, where our future is often previewed, there is already an Association for Multi-Ethnic Americans, and in several states legislation has been introduced to allow the multiracial category on school forms. At least two states, Georgia and Indiana, have required the multiracial category to be used by all their government agencies.

Unfortunately, the 2000 Census may be moving us in the opposite direction. It has abolished the category of "other" and instead offers Americans the opportunity to mark as many races as they wish. If the Bureau were to release the information referring to blended Americans as "multiracial" or "non-racial," it would encourage the nation to view itself as less divided. But if it rules in favor of those groups that seek to box people back into mono-racial categories, the Bureau will harden the social divisions that trouble America.

The Ultimate Question

At stake is the question of what kind of America we envision for the long run. Some see a complete blur of racial lines with Americans constituting some kind of new hybrid race. *Time* magazine ran a cover story on the subject, led by a computer composite of a future American with some features of each race—almond shaped eyes, straight but dark hair, milk chocolate skin. This new rather handsome breed

would take much more than a change in racial nomenclature, but such a change could serve as a step in that direction. Others are keen to maintain strict racial lines and oppose intermarriage; these same people often seek to maintain the races as separate “nations.” (The term nation is significant because it indicates a high degree of tribalism.) In a world full of interracial strife, this attitude—however understandable its defensive nature in response to racial prejudice and discrimination—leaves at least this communitarian greatly troubled. The more communitarian view seems to me to be one in which those who seek to uphold their separate group identities will do so (hopefully viewing themselves and being viewed as subgroups of a more encompassing community rather than as separate nations), but those who seek to redefine themselves will be enabled to do so, leading to an ever larger group that is free from racial categorization.

If a multiracial category is included in the next census, further down the road we may wish to add one more category, that of “multiethnic,” one which most Americans might wish to check. Then we would live to recognize the full importance of my favorite African-American saying: We came in many ships, but we now ride in the same boat.

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ESSAYS

The Hidden Foundations of Liberal Society: "Thick" and "Thin" Versions of Liberalism

Ronald Beiner

The publication of Stephen Macedo's important new book, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Harvard University Press, 2000), offers an opportune moment to take stock of some of the major debates that have unfolded in political theory in the last decade or two. Several months ago I heard a talk given in Toronto by a leading American political theorist (Nancy Fraser) in which, in response to a question from the audience, she offered her view that the debate between communitarians and liberals had ended in a decisive outcome: the trouncing by liberals of their communitarian adversaries. (She said this with evident glee.) This judgment is highly debatable. At the very least, Macedo's book demonstrates the extent to which the best in contemporary liberal theory incorporates communitarian insights and, more than this, that the preoccupations that animate liberal theorizing have actually been reshaped by communitarian themes.

Reflection on Macedo's book gives us the opportunity to pose once again one of the crucial questions that arose from the communitarian challenge to liberalism: How can liberal political philosophy offer a sufficiently rich account of the civic virtues necessary to a good society if the dominant version of liberalism sidelines the weighing of ultimate human ends and the philosophical adjudication between alternative visions of a good human life? Can political philosophy do

justice to the experience of full-bodied citizenship without engaging “comprehensive doctrines” about the good for human beings?

Opposing Challenges to Liberalism

During the last 10 to 15 years there have been two kinds of critics of liberalism, more or less. On the one hand, there have been communitarians of different descriptions complaining that liberalism is morally anemic and not concerned enough with defining and pursuing a shared civic good, thereby attenuating the moral resources upon which a good society must draw. On the other hand, there are postmodernists and proponents of the politics of difference who reject the adequacy of liberalism as a political philosophy. These critics agree with communitarians that the neutralist aspirations professed by liberals are a sham: even if liberals are genuinely sincere in their desire for neutrality, the liberal social order instantiates a ranking of social priorities that is distinctly non-neutral (in fact, the difference theorists claim, they represent the interests and point of view of a male/white/middle-class hegemony). The postmodern critic of liberalism differs from the communitarian, however, in thinking that what is needed is not a more robust shared civic good that unites the community of citizens, but rather a much more ambitious embrace of diversity that regards even liberal social norms as homogenizing and exclusionary. *Liberal* claims to fair-mindedness may be a sham (because insufficient power and voice are given within its public space to those who don't belong to whatever race, ethnicity, class, culture, gender or sexual orientation happens to be hegemonic); but a *non-liberal* or *anti-liberal* regime of difference or diversity is both possible and desirable.

Confronted with this dual challenge, liberals, of course, must decide which of these two sets of critics to try to satisfy. Clearly one won't be able to satisfy both, for the more one beefs up the civic core of liberalism, the more the postmodern critics will scream, “Marginalization of difference!”; and the more one waters down the civic definition of liberalism to appease the difference theorists, the more communitarian critics will repeat their original complaint.

As Macedo notes in his book, a liberal like Richard Flathman sides with the postmodern critics: the worst sin that liberalism can commit is suppression of difference, and therefore the thinner and more void

of substance liberalism can be made, the better. Macedo, on the other hand, sides with the communitarians. Communitarian and civic-republican critics of liberalism, according to Macedo, “have been on to something, [although] not quite what they think.” Communitarian depictions of the neutralist aspirations of liberalism, he concedes, are “not entirely unearned.” Macedo basically accepts the communitarian thesis that in any intergenerationally viable society there will be a shared “civic project,” requiring that citizens be educated to this project and motivated to participate in it (although the liberal project is considerably more modest than the civic project postulated by communitarians and civic republicans). The problem is that liberalism, at least in certain lucky societies, has come to be sufficiently successful that its civic project—building tolerance, abating religious and ethnic hatreds, fighting racism, and so on—has been largely forgotten and taken for granted. The main purpose of Macedo’s historical narrative in the middle chapters of *Diversity and Distrust* is to remind us of the mammoth cultural struggle involved (and not yet completed) in making public schools an important site of this liberalizing project, which Macedo calls the “transformative ambitions” of a liberal constitutional order. Macedo presents the public school system as a “transformational project” intended to serve “specifically civic ends”—that is, to promote a trans-sectarian *civic agenda*. The purpose of public schools: “forging a public life.”

The mistake made by difference theorists, and their liberal fellow-travellers (like Flathman), is that they too presuppose a civic project, requiring the assimilation of a set of liberal virtues, but this is so much taken for granted that they can focus on the slogan of difference without any attention to the problem of fostering the kind of civic community that could sustain their (tacit) social ideal. There is a nice demonstration by Macedo of how, for instance in Iris Young’s work, one encounters another version of the sham neutrality in liberal neutralism, albeit a more ambitious one. Young suggests that unlike the limited openness and constrained diversity present in liberal society, in her own preferred social order there would be openness to *all* difference, leaving *no one* voiceless, excluded, or marginalized. But Macedo shows that this cannot be so (nor would we want it to be so). “A politics that does not, as Young puts it, ‘devalue or exclude any particular culture or way of life’ is neither plausible nor attractive.” Difference theorists, no less than liberals, are committed to a civic

regime where freedom, equality, and diversity (but not indiscriminate diversity) are promoted; therefore, writes Macedo, “racists, nativists, sexists, homophobes, the corrupt, the violent, and no doubt many others, will be marginalized in their [Young and Flathman’s] favored regime. We must all hope that certain groups become and remain marginalized . . . There are groups that thrive on ignorance and the demonization of outsiders. Surely, a world in which such groups are marginalized is exactly what we want.”

Rawls’s Thin Liberalism

One of the key issues at stake in Macedo’s “civic-ized” version of liberalism is the old question of whether a stance of philosophical neutrality in regard to fundamental conceptions of human good defines contemporary liberalism, a question which was at the heart of the liberal-communitarian quarrels of the 1980s and 1990s. And if one looks at the crucial discussion of liberal neutrality in John Rawls’s *Political Liberalism*, one sees that a claim about philosophical neutrality continues to be central to the Rawlsian idea of liberalism.

Macedo presents himself as a Rawlsian liberal. Yet Macedo’s version of liberalism involves more of a departure from Rawls’s political philosophy than Macedo wishes to concede. (I say this as a friend of Macedo’s liberalism and a critic of Rawls’s.) In fact, Macedo lists Rawls among those recent liberals, along with himself and William Galston, who have repudiated the neutralist ambitions of liberalism. But Rawls’s quite dubious distinction between neutrality of aim and neutrality of effect, developed not in his early work but in *Political Liberalism*, shows that this is not the case.

Rawls concedes that neutrality of effect is impractical because any state policies will, willy-nilly, end up affecting the choice of different conceptions of the good on the part of members of the political community. Rawls also renounces a notion of neutrality that gives equal encouragement to “any conception of the good” freely affirmed by citizens, since political liberalism enables the pursuit “only [of] permissible conceptions,” namely “those that respect the principles of justice.” The meaning of liberal neutrality is accurately captured in the notion that “the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another,” and it is precisely this idea of liberal neutrality that the neutrality of

aim/neutrality of effect distinction leaves intact (or safeguards). It is true enough that Rawls, in the same section of *Political Liberalism*, insists, Macedo-like, that “political liberalism . . . may still [viz., without running afoul of neutrality of aim] affirm the superiority of certain forms of moral character and encourage certain moral virtues,” namely, “the virtues of fair social cooperation such as the virtues of civility and tolerance, of reasonableness and the sense of fairness.” The crucial point is that—so, at least, Rawls claims—these virtues are intended to sustain liberalism as a *political conception*, and thus don’t draw one into perfectionism, which is located in the realm of comprehensive doctrines.

In fact, one readily suspects that Rawls constructs this whole distinction between political conceptions and comprehensive doctrines just so that he can allow space for the civic virtues that liberalism needs without upsetting the neutrality of aim that, for him no less than for Ronald Dworkin, continues to define a liberal regime. The idea of neutrality of aim depends entirely on the notion of segregating political conceptions from comprehensive doctrines, so that virtues that are manifestly non-neutral politically can be asserted to be somehow neutral in relation to comprehensive doctrines (“the political virtues [which can be embraced without violating neutrality of aim – R.B.] must be distinguished from the virtues that characterize ways of life belonging to comprehensive religious and philosophical doctrines”). In other words, Rawls props up one very shaky theoretical distinction (between neutrality of aim and neutrality of effect) by having it rest upon another very shaky theoretical distinction (between political conceptions and comprehensive doctrines).

The fact that Rawls does this amount of bobbing-and-weaving in order to salvage the idea of neutrality of aim conveys to us very clearly that Rawls is fully determined to retain the neutralist thrust of his liberalism. What Rawls’s distinction between neutrality of aim and neutrality of effect implies is that a liberal order aims to be neutral, but it cannot fully live up to this aspiration because, as it were, non-neutral effects inadvertently ooze out of its norms and policies. Macedo himself pulls the rug out from under this conception when he (quite rightly) refers to “the *pattern of life* that is *promoted* by . . . political liberalism” (emphasis added)—or any other social-political order, for that matter.

Macedo's "Liberalism with Spine"

Again, Macedo does affirm allegiance to the Rawlsian theoretical framework. But I think the central conception underlying Macedo's book, that of the "transformative constitutionalism" implicit in civic liberalism, makes more sense if one makes a much sharper break with the residual neutralism of Rawls's political liberalism. I don't think Macedo would have a great problem swallowing the proposition that citizenship in a self-governing republic is a substantive good, and that virtues, social practices, and public agencies that fortify this good are to be welcomed, whereas habits of behavior or conceptions of life that hinder this good are to be resisted. Public education is a good because it furthers the good of common civic identity. This is "perfectionism," in Rawls's vocabulary, not "neutrality of aim." The fact that Rawls *does* have a problem swallowing anything that smacks of perfectionism tells us something important about the limits—or, one might say, the highly deliberate self-limiting character—of his philosophical horizons.

Unless one is willing to invest the idea of citizenship with some perfectionist credentials, one will not be able to give one's liberalism a sufficiently civic dimension (as Macedo does and Rawls doesn't). Consider another important passage from *Political Liberalism*, this one directly addressing the problem of civic education: "[J]ustice as fairness does not seek to cultivate the distinctive virtues and values of the liberalisms of autonomy and individuality, or indeed of any other comprehensive doctrine. For in that case it ceases to be a form of political liberalism." Macedo says he wants to articulate "a liberalism with spine." But I have trouble seeing how one can have a liberalism with spine if, bound by Rawls's philosophical strictures, political liberals are prohibited from endorsing "virtues and values" tied to any particular comprehensive doctrine, such as the promotion of autonomy as a morally desirable attribute. Indeed, why should virtues such as loyalty to civic community, or toleration for that matter, be considered less philosophically controversial than autonomy? As Macedo says, "We should acknowledge [liberalism's partisanship], lest it appear that political liberalism is a Trojan horse for a more comprehensive conception." But if the partisanship is on behalf of a substantive civic order, as it clearly is, then it's hard to see how far-reaching philosophical views of social life can fail to be at stake.

Joseph Raz's charge against Rawlsian liberalism remains apt (despite Macedo's efforts to defend Rawls against Raz's challenge): "the 'epistemic abstinence' on which political liberalism rests is impossible and, moreover, unnecessary."

Given the differences we've already traced between Macedo's and Rawls's versions of liberalism, one is prompted to inquire further into why Macedo is nonetheless so anxious to present his "civic liberalism" within a standard Rawlsian theoretical framework. An expanded account of the philosophical motivation that is common to these two kinds of liberalism should help us to understand this better. Civic liberalism, like Rawls's political liberalism, according to Macedo's account, is a response to radical pluralism in modern democratic societies. The Rawlsian question is: How does one share a political order with those whose fundamental philosophical and religious views differ radically from one's own? How can the political order be made to embody mutual respect between these divergent conceptions of life? The Rawlsian answer, which Macedo embraces, is "public reason"—the attempt to justify political and legal norms in a way that does not presuppose a singular comprehensive doctrine, but rather cuts across a wide range of divergent comprehensive doctrines. As Macedo writes, "Citizens honor a duty of civility to one another" by bearing in mind that their fellow-citizens cherish radically different religious and philosophical ultimate commitments.

Hence there is what one might call an ethos of public reason that seeks to unite citizens on a civic or political plane without trying to harmonize or adjudicate their private convictions. One might interpret this duty of civility by saying that to claim moral truth for the ultimate commitments of some—with political sanction—would cause embarrassment to the ultimate commitments of the rest, so the political principles of a liberal society are to be set up so as to avoid this. In other words, those who disagree radically can agree to settle on legal and social norms *for political purposes* without attempting to settle the philosophical differences that divide them. Since any particular philosophical account of liberal principles (for instance, an autonomy-based account) will be highly contentious, the strategy is to maximize civic agreement within a liberal political community by presenting social and legal norms as a *political* settlement, rather than resting the political community on controversial philosophical principles that

will have the appearance of defining a sectarian regime. (“We should focus on shared civic virtues and values, and keep the liberal door open to those who reject the wider philosophical ideals of Kant, Mill, or Dewey.”) If Protestants, Catholics, and Jews are to share a political community, they’ll have to do so on the basis of public reasons that highlight what they share as citizens while abstracting from their differences on ultimate conceptions of life. Hence the advantage of defining liberalism in terms that emphasize the civic common ground, while de-emphasizing questions of the truth of this or that “comprehensive doctrine.”

My reply to all of this is that, public reason or no public reason, the political order will nevertheless embody a set of *outcomes* concerning how public life is organized, and these outcomes will express ultimate judgments about what is morally and philosophically desirable. Part of the problem is giving undue weight to the problem of religion within a liberal civic order. As I’ve argued elsewhere (*What’s the Matter with Liberalism?*, Chapter 3), one gets a skewed picture of both the possibility and desirability of neutrality if one sees the problem of conflict between irreconcilable religious commitments as offering a general model of how to deal with moral diversity. If we switch to the problem of class, for instance, Rawls’s neutrality of aim looks much less plausible. Contrast the civic aspiration embodied in U.S. public schools with the very different civic attitudes embodied in British-style “public schools,” which are highly elitist, class-based private schools. How can a preference for the former not rest upon a comprehensive doctrine? How can one deny the substantive egalitarianism built into the *civic* ideal, intended to embrace all citizens of the republic? A political liberal who defends public schools, as opposed to elitist private schools, cannot do so on the grounds that the latter violate the constitutional requirements of a liberal democracy as such, for the public culture of the U.K. is, no less than the United States, the public culture of a liberal democracy.

What this shows is that what is at stake in partisanship on behalf of an ideal of “civicism,” of shared citizenship, is the choice between competing comprehensive conceptions, that is, competing understandings of individual and social good. One *could* say that it’s not for a political philosopher to judge between the comprehensive philosophies that these two institutions express, but if that were Macedo’s

view, I don't see how he could have written *Diversity and Distrust*. As Macedo puts it, public education is part and parcel of "our shared civic project," and affirmation of this shared civic project is itself tied directly to a "perfectionist" ideal: sharing a civic community with all one's fellow citizens.

In the case of religion, for reasons that are familiar enough, the liberal state might well have good reason to do its utmost to display evenhandedness towards the various religious denominations, a way of dealing with religion that one might go so far as to call neutrality of aim—and political liberalism can then be seen as the theoretical encapsulation of this state policy. (Speaking from a Canadian perspective, another important part of the story here is the fixation of Americans on the Supreme Court. Public reason is to be thought of on the model of how a Supreme Court justice would frame his or her arguments, as Rawls himself makes explicit. Think of how much of politics this leaves out!) But if instead of the problems that arise from religious plurality one considers the case of using civic education to counter class divisions, there is no comparable motivation for upholding an ideal of neutrality of aim. If civic integration of classes is a social good, the aim, not just the effect, is non-neutral. Any regime of public education—in its robustness, in its command of social resources, in the priority it has among other public priorities—will express a certain way of thinking about citizenship, and this civic conception, in turn, will be grounded in an ultimate ranking of the human good (what Aristotle called an "architectonic" ordering of social purposes, which is what politics is).

All politics involves ultimate judgments about human flourishing. For instance, why would we ask citizens to set aside (for political purposes) their deeply felt religious commitments for the sake of a shared civic commitment unless we were convinced that citizenship itself embodied a substantive conception of human flourishing? Relative to a context of radical religious disagreement, commitment to citizenship may look "uncontroversial," but the fact is that there is nothing philosophically uncontroversial about the notion that citizenship is a sufficient human good to warrant trumping (for certain purposes) other non-political commitments. If someone is of the view that the key to their human flourishing is to withdraw from the civic sphere and join a monastic order (or for that matter, to agitate on

behalf of a sectarian theocratic regime), the claim about the importance of civic community is bound to appear as controversial as any other claim about what's important in human life. The Rawlsian strategy, which is to brand such moral-philosophical challenges as "unreasonable," is simply to beg the philosophical question. The valorization of citizenship itself can only be established on a perfectionist basis; this is where Rawlsian liberalism refuses to tread.

As Macedo says, "a liberal polity does not rest on diversity, but on shared political commitments weighty enough to *override* competing values"; but given the philosophical depth of the "competing values" that are being overridden, what gives the civic conception the kind of weight sufficient to dictate this deference to itself? The answer must be that citizens (not all of them, but the majority) glimpse something in the idea of citizenship itself of sufficient philosophical depth to warrant this deference.

The basic problem with political liberalism lies, I think, in its very starting point, namely the postulate of radical pluralism. The presumption is that individuals or groups are more or less locked into incommensurable moral-religious commitments, and the political challenge is to get them to share a political order on the basis of whatever aspect of their life-ideals is *not* incommensurable. But any social order *qua* social order itself embodies deep conceptions of human good; and political liberalism, with its "epistemic abstinence" and its preoccupation with (especially religious) convictions that set citizens in a liberal polity apart from one another, is handicapped from giving an account of what we can call these civically shared comprehensive commitments. As Macedo himself says, there is a "pattern of life" promoted by political liberalism. This belies Rawls's distinction between neutrality of effect and neutrality of aim. As I suggested earlier, Macedo's central idea of the educative or "transformative" dimension of a liberal constitutional order isn't merely a source of non-neutral effects, but is incompatible with neutrality of aim. If Macedo really wants to repudiate fully the neutralist pretensions of liberalism and to offer a thicker account of the "civic project" of liberal society, he would be well-advised to drop his commitment to Rawlsian political liberalism.

Beefing Up the Civic Dimension

The theoretical distinctions that define Rawlsian liberalism—between neutrality of aim and neutrality of effect, between liberalism as a political conception and liberalism as a comprehensive conception—are a kind of metaphysical sleight of hand by which Rawls tries to smuggle more civic content into liberalism than his embargo on comprehensive doctrines officially allows. Yet the minimalist account of liberalism offered by Rawls inevitably has the effect of stifling the moral and cultural resources that give liberal society civic depth. One gets a better idea of how the claim about neutrality handcuffs modern liberalism if one considers how a liberalism like that of John Rawls deals with the relationship between civic life in a liberal society and the religious commitments of its citizens.

To take a dramatic example, consider the civil rights movement. It's hard to imagine Martin Luther King Jr. mobilizing political energies as successfully as he did without his religious faith and the moral and rhetorical resources supplied by that faith. Rawls knows this yet he cannot straightforwardly embrace this fact. In *Political Liberalism*, Rawls revealingly confesses that he needed to be talked out of what he calls the "exclusive view" of public reason by two of his followers—namely, the view that "on fundamental political matters, reasons given explicitly in terms of comprehensive doctrines are never to be introduced into public reason. The public reasons such a doctrine supports may, of course, be given but not the supporting [comprehensive] doctrine itself," such as a religious commitment. Tearing himself away from this ultra-liberal position, Rawls grants that, yes, Martin Luther King is permitted to appeal to particularistic (or less than fully general) religious commitments in the public realm. But consider what a tortured account Rawls has to give in order to reconcile himself to the appeal to anything other than public reason alone: "the leaders of the civil rights movement did not go against the ideal of public reason . . . *provided* they thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized." In other words, King is permitted to make religious appeals only if it's the *only way* to see his political ideals prevail, as a necessary substitute for what really *ought to be* appeals to public reason! This is, to say the least, a rather

convoluted way to think about how one exercises one's citizenship, and it offers a telling symptom of how civic resources are diminished by the thin version of liberalism.

Macedo points out that "in choosing to criticize neutralist liberalism . . . critics of liberalism [choose] a particularly vulnerable rather than a particularly powerful target." Macedo's version of liberalism is indeed a lot more powerful than the influential versions of liberalism developed in the 1970s and 1980s; and it's also true that critics of liberalism like me made our job of criticism rather easier for ourselves by targeting the less plausible varieties. By way of partial excuse, I can point out that precisely by hammering away at issues of more robust civicism, civic virtue, character formation, and habituation to worthy civic purposes, the critics of liberalism helped to highlight what was woefully missing in an earlier generation of liberal political philosophy, and thereby helped to generate the richer civic themes in a liberalism like Macedo's. In this respect, it can be argued that the communitarian and civic-republican critics of liberalism did liberal theory a big favor. But I won't go so far as to concede that one can do full and adequate justice to civic concerns while remaining within the theoretical horizon of liberalism (certainly not within the horizon of Rawlsian liberalism!). If citizenship as a central theme of theoretical concern is now present to a much greater degree in books defending liberalism than it was 10 or 20 years ago, then I think communitarian critics of liberalism can claim at least some of the credit; and if communitarians and civic republicans keep the pressure on (rather than proclaim themselves now satisfied), they may also be able to claim credit for pushing the boundaries of liberalism somewhat further in the direction of forms of civic life that are socially and civically more ambitious than liberalism today.

The Dangerous Claims of the Animal Rights Movement

Richard A. Epstein

The field of animal *law* is one of the oldest and most well-established branches of any legal system, wholly apart from the modern preoccupation with animal *rights*. It is therefore something of a trendy commentary on our times that the law courses offered at, for example, Harvard and Georgetown, are courses in animal rights, not animal law. These courses are taught, virtually uniformly it appears, solely by advocates on one side of the issue, most notably, perhaps, Steven M. Wise, the author of the much discussed recent book, *Rattling the Cage: Toward Legal Rights for Animals*. Briefly stated, Wise's position is that animals, especially chimpanzees and their close relations, the bonobo, are entitled to legal personhood, which at the very least guarantees them protection against exploitation and capture by man. His book is a passionate if one-sided treatment of a difficult and complex question, and it should surely strike an uneasy nerve in all of its readers, unless they are utterly devoid of the empathy that marks every well-developed human being.

I can offer some personal evidence of the disturbing power of Wise's thesis. This past summer I took a phone call from William Glaberson of the *New York Times*, asking me to comment on the above-mentioned courses on animal rights. It was clear that most independent commentators were reluctant to speak on the record about this question. Perhaps I should have followed suit, but my contrarian nature led me to begin with the admission that I had not specialized in this particular topic, but had nonetheless over the years done a fair bit of scattered work about animals in connection with my other academic research. I have written on the rules that govern the liability for animals, on the rules for transferring ownership of animals, on the

rules limiting the killing and capture on animals, and on the role of animals in medical research. It struck me then, as it continues to strike me now, that the problem of the proper treatment of animals is much more ubiquitous than is commonly supposed. The discussion therefore ranged in some detail on what I thought were the strengths and weaknesses of the animal rights movement. Then, as often happens in these close interviews, Glaberson published a *New York Times* story, "Legal Pioneers Seek to Raise Lowly Status of Animals," in which I was quoted in opposition to this latest legal juggernaut. "Would even bacteria have rights? There would be nothing left of human society if we treated animals not as property but as independent holders of rights."

These pithy remarks generated a veritable deluge of phone calls and e-mail messages, and requests for interviews, radio, and TV shows. Not all the attention was, to say the least, complimentary. (For the record, I know that bacteria are not animals, and that irritability is not quite the same as sensation.) But in today's fast-paced world, two sentences on the front page of the *New York Times* was all it took to make me an expert on the question of animal rights, and for the next two weeks I was treated as a minor celebrity, besieged with requests to do radio and television shows on the subject. Since that time, further requests come in on a regular basis, including at least a half-dozen requests to comment on Steven Wise's book, and several to take on the unenviable task of debating him on the subject.

In this case, the press of popular concern has forced me to think harder about the subject than I have before, and has led me to see if I could work out to my own uneasy satisfaction a fuller account of the relationship between human beings and animals (yes, I am aware that human beings are themselves highly evolved animals) that might be advanced in opposition to views such as those that Wise presents. What follows is a sketch of some of those ideas.

Animal Hybrids

The regulation and use of animals did not suddenly pop onto the social agenda. Rather, it has been with us from the beginning of human society. The early domestication of certain wild animals—horses, pigs, goats, cows and sheep (what Jared Diamond calls the major five in *Guns, Germs and Steel*)—was completed by 2,500 B.C. The

success of that movement, as he demonstrates in great detail, was critical to the survival of all early cultures, as a source of food (meat and milk), agriculture (oxen pulling the plow), warfare (on horseback), fertilizer (no need to explain how), clothing (from leather and wool), and germ warfare (against unexposed populations).

In dealing with the legal status of animals, it is often said by writers like Wise that animals were treated as property, as mere things. But that assertion massively oversimplifies a difficult area of law, and is no more accurate than the common proposition that slaves were treated as things, when in fact from the earliest time they were governed by a set of rules that treated them as legal hybrids, part property and part human beings. It is not difficult to see how a rule of capture (he who takes an unowned thing from the state of nature may treat it as his own) applies in an easy fashion to a seashell or a stone. It is rather more difficult to apply that rule to animals who are able to elude capture, who may be wounded by one person and taken by another, or who may be able to escape to their original habitat after capture but before taming. Nor did the legal rules act as though animals were inanimate objects incapable of forming intentions. The rule was that an animal that left its owner's home with an intention to return (the so-called *animus revertendi*) could not be taken by another, while the animal that had regained its freedom in the wild could be so captured. The rules in question did not afford animals rights as such, although they did speak of how these animals could preserve or regain their natural liberty. Quite simply, the primitive people who were absolutely dependent on animals did not fall into any crude classification errors.

What is clear is the importance they attached to animals. The harsh sanctions imposed on cattle thieves offer one unmistakable sign; the sacred forms of conveyances that ancient peoples used to transfer the ownership of an animal from one person to another offer yet another. The Romans, for example, reserved their most solemn form of conveyance (the *mancipatio*) to certain key draft animals, which they recognized as critical capital assets, matched or exceeded in value only by land. The law of tort discussed at great length the rules governing the liability for animals whose conduct caused harm to the person or the property (including the animals) of other persons.

Elsewhere, we often poke fun at the notion of "noxal" liability (that is, the rule whereby an animal could be surrendered by its owner

in lieu of payment of damages), or the rules governing animals *damage feasant* (whereby animals could be held as security for the damage caused to crops by straying cattle). But these rules facilitated the resolution of many low-level disputes between neighbors by sanctioning a self-help system that enjoyed widespread legitimacy in both ancient and modern farming communities. I could hold your animal until you paid for the damage it caused. Eventually, the legal system held owners directly liable for any serious injuries their animals caused to land, people, or other animals. Finally, the extensive trade in animals and animal products meant that animal resources could move in markets to their highest use, just like other resources, human and material.

During the 19th and 20th centuries, one weakness of this system of animal law became apparent. Its property-based rules provided no mechanism to prevent the systematic extinction of wild animals through overhunting and overfishing. To counter this risk, legal systems instituted, with varying degrees of success, rules that limited the catch of whales, fish, and wild game in order to counteract the “tragedy of the commons” that results when a hunter keeps his entire quarry but bears only a tiny fraction of the future loss of the stock. More recently, the more stringent protections afforded to endangered species have generated heated controversy, as farmers have claimed, rightly in my view, that they have been unfairly forced to stand aside while protected animals decimate their sheep and cattle herds, while receiving not a dime in compensation from the government. (Note that one question on which animal rights activists are eerily silent is the extent to which one kind of animal should be allowed by humans to kill and eat another.) Wholly apart from the new preoccupation of animal rights, animal law generates its own fair share of debate.

The Separation of the Species

Behind these traditional debates lies one key assumption that today’s vocal defenders of animal rights brand as “species-ist.” Descriptively, they have a point. Sometimes the classical view treated animals as a distinctive form of property; at other times animals became the object of public regulation. In both settings, however, the legal rules were imposed largely for the benefit of human beings, either in their role as owners of animals or as part of that ubiquitous

public-at-large that benefitted from their preservation. None of our laws dealing with animals put the animal front and center as the *holder* of property rights in themselves—rights good against the human beings who protect animals in some cases and slaughter them in others.

Our species-ist assumption is savagely attacked by the new generation of animal rights activists, whose clarion call for *personhood*—the choice of terms is telling—is a declaration of independence of animals from their human owners. Their theme generates tremendous resonance, but it is often defended on several misguided grounds.

First, they claim that we now have a greater understanding of the complex behaviors and personalities of animals, especially those in the higher orders. Even though the fields of sociobiology and animal behavior have made enormous strides in recent years, the basic point is an old one. Descartes got it wrong when he said that animals moved about like the ghost in the machine. The older law understood that animals can be provoked or teased; that they are capable of committing deliberate or inadvertent acts. Sure, animals may not be able to talk, but they have extensive powers of anticipation and rationalization; they can form and break alliances; they can show anger, annoyance, and remorse; they can store food for later use; they respond to courtship and aggression; they can engage in acts of rape and acts of love; they respect and violate territories. Indeed, in many ways their repertoire of emotions is quite broad, rivaling that of human beings.

But one difference stands out: through thick and thin, animals do not have the capacity of higher cognitive language and thought that characterizes human beings as a species, even if not shared at all times by all its individual members. We should never pretend that the case against recognizing animal rights is easier than it really is. But by the same token, we cannot accept the facile argument that our *new* understanding of animals leads to a new appreciation of their rights. The fundamentals have long been recognized by the lawyers and writers who fashioned the old legal order.

Second, animal activists such as Wise remind us of the huge overlap in DNA between human beings and chimpanzees. The fact itself is incontrovertible. Yet the implications we should draw from that fact are not. The observed behavioral differences between hu-

mans and chimpanzees are still what they have always been; they are neither increased nor decreased by the number of common genes. The evolutionary biologist should use this evidence to determine when the lines of chimps separated from that of human beings, but the genetic revelation does not establish that chimps and bonobos are able to engage in the abstract thought that would enable them to present on their own behalf the claims for personhood that Wise and others make on their behalf. The number of common genes humans have with other primates is also very high, as it is even with other animals that diverged from human beings long before the arrival of primates. The question to answer is not how many genes humans and chimpanzees have in common; it is how many traits they have in common. The large number of common genes helps explain empirically the rapid rate of evolution. It does not narrow the enormous gulf that a few genes are able to create.

Third, Wise and other defenders of personhood for animals have line-drawing problems of their own. If that higher status is offered to chimps and bonobos, then what about orangutans and gorillas? Or horses, dogs, and cows? All of these animals have a substantial level of cognitive capacity, and wide range of emotions, even if they do not have the same advanced cognitive skills of the chimps and bonobos. Does personhood extend this far, and if not, then why does it extend as far as Wise and others would take it? The frequent analogy of chimpanzees to slaves hardly carries the day, given the ability of individuals from different human populations to interbreed with each other and to perform the same set of speech and communicative acts. Nor is it particularly persuasive to note that individuals with serious neurological or physical impairments often have far less cognitive and emotional capacity than normal chimpanzees or dogs. For one, we in fact *do* recognize that different rules apply to individuals in extreme cases, allowing, for example, the withdrawal of feeding tubes from individuals in a permanent vegetative state. In addition, important human relations intrude into the deliberations. These human beings, whatever their impairments, are the fathers, mothers, sisters, and brothers of other human beings in ways that chimpanzees and bonobos are not.

Fourth, the animal rights activists often attack the question from the other side by offering bland assurances that people today do not

need to rely on animal labor and products in order to survive as human beings. Typically, animal rights activists put their claims in universalistic terms. But in so doing they argue as though in primitive times animals and agriculture fell into separate compartments, when in truth they were part of a seamless enterprise. Animal power was necessary to clear the woods, to fertilize and plow the fields, and to harvest the crop. Meat and dairy products were an essential part of primitive diets. The early society that did not rely on animals for food, for labor, for warfare was the society that did not survive to yield the heightened moral sensibilities of today. It was the society that perished from its want of food, clothing, and shelter—a high price to pay for a questionable moral principle. And, if this new regime is implemented, the animal rights movement condemns millions of less fortunate people around the globe to death today. Just this past March the *New York Times* ran a painful story about the question of whether the preservation of gorillas in Africa placed at risk the subsistence economies of the nearby tribes.

Today, perhaps people fortunate enough to live in prosperous lands could live without having to use animals for consumption or labor, but the long-term agenda, if not the immediate demands, of the animal rights activists cut far deeper. For activists such as Gary Francione of Rutgers-Newark Law School, the mere ownership of animals is a sin: no pets, no circuses, no milk, no cheese, no horses to ride, no dogs, cats, birds, or fish around the house. These relationships are condemned in good Marxist terms as being based on power differentials, and thus are barred: the animals who seem to like being pandered to suffer from, as it were, a form of false consciousness.

Fifth, more ominously, if pets are out, so too is the use of animals for medical science. In dealing with this issue, Wise is brutally explicit in describing what it is for chimpanzees to suffer in isolation the final effects of the ravages of AIDS. No one could argue that this conduct did not cry out for justification. Yet by the same token, the question is could the conduct itself be justified? To answer that question in human terms, one has to look at the other side of the equation, and ask what has been learned from these experiments, what wonder drugs have been created, what scourges of human (and animal) kind have been eliminated. I do not pretend to be an expert on this subject, but so long as the vaccine for small pox comes from cows or the insulin for

treating diabetes comes from pigs, then I am hard pressed to defend any categorical rule that bans all use of animals in medical experimentation. One has to have an accurate accounting of what is on the other side, and on that issue the silence of the animal rights activists is deafening.

The argument here has its inescapable moral dimension. No matter what one's intellectual orientation, no one would—or should—dispute the proposition that animals should not be used in research if the same (or better) results could be achieved at the same (or lower) cost by test tubes and computer simulations alone. Nor would any one want future surgeons to try out new techniques on animals if they could be risklessly performed on human beings the first time out. But, alas, neither of these happy eventualities come close to being a partial truth. It is easy to identify many situations where human advancement comes only at the price of animal suffering. How to proceed then turns on the balance between these two unquantifiable considerations. For example, there exists today a dreadful shortage of human organs for transplantation and unless we are prepared to do animal studies on pigs and perhaps even chimpanzees, it is likely that we will postpone, perhaps forever, the day when genetically engineered animal organs could be successfully transplanted into human beings. If this be species-ism, then I plead guilty of the charge because I do rate the welfare of humans above that of animals, even as I, like many of those who work in veterinary medicine, care as well about the welfare of animals.

Sixth, medical research is not all that is at stake once the asserted parity between animal rights and human rights is acknowledged. Our entire system of property allows owners to transform the soil and to exclude others. Now if the first human being may exclude subsequent arrivals, what happens when animals are given similar rights? Their dens, burrows, nests, and hives long antedate human arrival. The principle of first possession should therefore block us from clearing the land for farms, homes, and factories unless we can find ways to make just compensation to each individual animal for its own losses. But I fail to see how this system would work, for to transfer animals from one habitat to another only unlawfully displaces animals at the second location. The blunt truth is that the arrival of human beings necessarily results in the death of some earlier animal occupants, even

if it increases the welfare of others who learn to live in harmony with us. So if prior in time is higher in right, then we should fold up our tents right now and let the animals fight it out for territory, just as if we had never arrived on the face of the globe.

The Current Legal Scene

The defenders of animal rights shrink, at least publicly, from the stark implications of their position, and dwell instead on their victories in court. But these claims are credible precisely because they have nothing whatsoever to do with their broader claims. Animal owners have recovered large awards for the malpractice of veterinarians. The damages paid are meant to cover not only the market value of the animal, but the loss of companionship to the owner. This is simply solid economics—for what the defenders of animal rights do not tell is that this outcome derives its power from recognizing that the actual losses *to the owner* exceed the market value of the animal, precisely because they include these nonmonetary elements. Similarly, it is commonplace today to allow one spouse to recover damages for loss of companionship from the injury or death of the other. But whether for humans or pets, the interests vindicated are those of the party who suffers the emotional and companionate loss, not that of the human or animal who has been injured or died. These cases therefore gain their resonance from a traditional property rights conception, from which the actions for consortium originally derived. It is hard then to see how they auger a new judicial age in which animals are set to have rights of their own against these same owners, vindicated by their human guardians. It is not as though the offspring of the deceased animal has an action for wrongful death.

A similar logic also applies to a 1998 decision in the District of Columbia, *Animal Legal Defense Fund, Inc. v. Glickman*. Here a zoo visitor was held to have “standing” to sue under the Animal Welfare Act of 1985, which provided generally that animals’ keepers must meet conditions of confinement that ensure “the psychological well being of primates.” That objective is certainly laudable in simple human terms, even if the new animal rights activists would shut down all zoos. But allowing a zoo visitor to sue to protect the zoo animals made it crystal clear that the rights vindicated by the action were those of the individual plaintiff, and not those of the animal. And

no one doubts that Congress could reverse that decision by a statutory amendment that allows only for public inspection and enforcement of the provisions of the Act.

In sum, no one can deny the enormous political waves created by animal rights activists. (It is also easy to understand how their antiproperty theme gains many adherents from people who don't like private property for other reasons.) But it is another thing to endorse the agenda of the animal rights movement. Rules that prevent gratuitous cruelty to animals should be supported because animals suffer even if they do not think, at least as humans do. And we all know that animals are of enormous value to human beings, both in the wild and in captivity. It is, however, one thing to raise social conscience about the status of animals. It is quite another to raise the status of animals to asserted parity with human beings. That move, if systematically implemented, would pose a mortal threat to human society that few human beings would, or should, accept. We have quite enough difficulty in persuading or coercing human beings to respect the rights of their fellow humans to live in peace with each other. We have witnessed the Holocaust and other tragedies in our own time. And I must say that I find it offensive to think that anyone could find in the treatment of animals the same kind of senseless genocide, perverse evil, and unmitigated cruelty that marked those human tragedies. It is a massive intellectual and rhetorical mistake to press a concern with animals to that extreme. We should not undermine, as would surely be the case, the liberty and dignity of human beings by treating animals as their moral equals and legal peers. It would trivialize the slaughters of Hitler, Stalin, and Pol Pot by comparing them to the daily activity of slaughtering cattle. That is one kind of equivalence we must learn to fear. Animals are properly property. It is not, nor has it ever been, immoral for human beings, as a species, to prefer their own kind. What lion would deny it?

Overcoming Voter Isolation: Citizenship Beyond the Polls

Michael Schudson

American politics is built on the notion of the “informed citizen.” The guiding ideal is that of the individual, rational person who makes decisions in the voting booth based on information about candidates, parties, and issues. Such a vision is at the root of the secret ballot, the initiative and referendum, the direct election of Senators, and the presidential primary.

But our political realm wasn't always like that. This was not the model of citizenship of our founding fathers, nor the model that dominated through most of the 19th century. It was at the end of that century and the beginning of the 20th that the modern ideal emerged. The secret ballot—which many seem to think synonymous with democracy itself—was first adopted in America in 1888, with Massachusetts leading the way. The idea then caught on quickly, and by the election of 1896 it had been taken up in 38 other states. This and other electoral reforms put individual voters at the center of the democratic process as never before, and did so more sweepingly than in any other democracy in the world.

At the same time, however, people stopped voting. Turnout, routinely at 70 percent or higher in presidential elections in the late 19th century, dropped to 50 percent by 1920. Why did this happen? It seems that the individual-centered, information-based, rationalist model of citizenship has a downside. It fosters individualistic politics rather than coalition-building politics, single-issue voting rather than party allegiance, and ultimately instills in citizens skepticism rather than trust. A look at what preceded the information-based citizen model may give clues to its flaws and to what other models of citizenship we might turn to for guidance.

A Very Different History

In colonial Virginia, where Washington and Jefferson grew up and learned their politics, the job of the voter—that is, the white, property-owning male—was essentially to affirm the right to rule of the solid citizens of his community. The way voting was conducted made this clear. There were no parties or nominations. Leading landowners would talk among themselves and figure out each time whose obligation it was to stand for office. In those few cases where there were more than one candidate, the two candidates would stand by the sheriff who supervised the polling place. Each voter would approach the sheriff and announce his vote, with the candidates and the other voters able to hear him. The voter would then step over to the candidate he had just selected and shake his hand. Very often the voter would have been the recipient the night before of the candidate's hospitality, including his rum.

What was required of these voters? Only enough understanding of world history to, in Jefferson's words, "know ambition under all its shapes." Citizens were to be democratic clinicians who could spot a rash of ambition before it became a full-grown tyranny. They would support the virtuous and turn back the self-seeking at the polls. They should evaluate character, but not public issues themselves. That was what representatives were for. Not parties, not interest groups, not newspapers, not citizens in the streets—legislatures and legislatures alone would deliberate and decide.

The good citizen in the late 18th century was a deferential citizen, someone who knew his place. While citizenship evolved in the years to come, for most of the 19th century the informational demands on citizens remained quite minimal. Parties did all the work. They organized barbecues, pole raisings, parades, and festivals. They had glee clubs sing from the party songbook. On election day they hired men to rouse voters and bring them to the polls. At the poll, the voter did not even have to mark a ballot. He picked up a ticket from a party worker, a so-called ticket peddler. He did not mark it; he did not even have to look at it. He just put it in the ballot box. Poll watchers could easily determine which party's ticket the voter held. No literacy required, no curtain-screened act of conscience necessary—and often a drink or a dollar waiting afterward. Voting largely expressed a social relationship to a party, not a civic duty to the state.

It was at the end of the 19th century that the “informed citizen” made his appearance. Reformers (first, a group unaffectionately known as “Mugwumps,” and later, a broader movement of reformers known as “Progressives”) sought to make elections “educational” and to insulate the independent, rational citizen from the distorting enthusiasms of party. In the 1880s, political campaigns began to shift from parades to pamphlets, and so put a premium on literacy. In the early 1900s, nonpartisan municipal elections, presidential primaries, and the initiative and referendum were introduced, imposing more challenging cognitive tasks on prospective voters than ever before.

One emblematic reform was known as the “Australian ballot” (so named because it was first used in Australia). This was the state-printed rather than party-printed ballot Americans still use today—the secret ballot. Along with the new ballot came various kinds of legislation to purify the act of voting: electioneering was prohibited within so many feet of the polling place, voter registration laws were instituted, and party efforts to convey people to the polls were restricted.

The Australian ballot shifted the center of political gravity from party to voter. The new ballot asked voters to make a choice among alternatives rather than to perform an act of affiliation with a group. It elevated the individual, educated, rational voter as the model citizen. It helped political participation become more cognitive and less visceral, more intellectually demanding and a lot less fun. The large voting public of the late 19th century, with voter turnout in the North routinely at 70 percent or more, became the vanishing public of the 1920s, with turnout under 50 percent.

Not only did Progressive reforms depress voter turnout and civic participation, but for some reformers that was the goal. They sought to disenfranchise immigrants and African-Americans. The great editor of *The Nation* and of the *New York Evening Post*, E. L. Godkin, an ardent civil service reformer, wanted to end immigration from southern Europe, to require a literacy test for voting, and to provide extra votes for the wealthy. He opposed women’s suffrage out of fear that the servant girls would outvote their mistresses. He believed that Anglo-Saxons were the backbone of our civilization and that foreigners lacked “the Anglo-Saxon respect for forms and legal traditions.” Americans, he held, placed too much stock in natural rights and not

enough in the value of education and “the authority of training and culture.”

Godkin’s views were widely shared. Between 1890 and 1908, literacy tests for voting became law not only in seven Southern states, but also in Wyoming, Maine, California, Washington, Delaware, New Hampshire, and Arizona, and a bit later in New York and Oregon. Of course, the Australian ballot made literacy a *de facto* requirement everywhere.

Unreasonable Demands

The ideal of the informed citizen in its origins, then, was linked to an ideal of a restricted franchise. But practices needn’t be bound by their origins, and this aspect of informed citizenship can be rejected without surrendering the basic claim that citizens should learn candidates’ positions and vote on the basis of some knowledge of the major issues before the nation. What is more inextricably part of the American notion of an informed electorate is a second problematic feature—it is an explicit rejection of partisan politics and of the intertwining of parties with the everyday life of citizens. Reformers sought to cripple political parties. They branded them corrupters of democratic life, not contributors to it.

This anti-party sentiment still colors our view of citizenship today. We are regularly reminded that voting is a private act of conscience that should not be based on a rote attachment to party, but on a well-informed judgment of the candidates and their views. From the perspective of our own history—or from the vantage of most European democracies where national elections are held only once in three or four years, where primaries are largely unknown, and where party label is almost always a good guide to a candidate’s views—American voting looks remarkably demanding. Elections in the United States are more frequent and for more offices (more than 500,000 in 1992) than in any other democracy. It is no wonder political scientists sometimes explain America’s low voter turnout as “voter fatigue.”

This is not to offer excuses for not voting. Voting matters. The predictable low voter turnout among poorer and less educated Americans allows parties and candidates to give short shrift to the political views of the least advantaged. It skews the action of government in

favor of the wealthier and better educated—with serious social and perhaps long-term political consequences. The passage of laws is no inconsequential matter. Citizens should vote.

But it is not possible to be a fully informed citizen. Not even members of Congress are well informed about many of the questions on which they vote; they typically turn to others in their party who are more expert on a particular issue or rely on their own large staffs. Yet in the austere privacy of the voting booth, citizens try to make decisions about offices they know nothing about, candidates they have never met, and ballot propositions they cannot completely decipher. When editorialists scold them for their ignorance, they can only feel guilty as charged. Under the circumstances, it may be surprising that Americans vote as much as they do. How can ordinary citizens be expected to arm themselves with sufficient information to decide complex matters that are generally at the margins of their consciousness?

Those 364 Other Days

What is needed is a reconsideration of the informed citizen ideal. Our ideal needs to be more realistic about the extent and detail of political knowledge an ordinary citizen can be expected to attain, and thus needs to be less antagonistic toward parties. Equally important, we must recognize a variety of forms of political knowledge and political action, not just those a political scientist or pollster would approve.

Consider Joe Citizen. He works full-time and does a conscientious job. He helps out with his daughter's Little League softball team. He recycles his trash. He sends a check each year to the National Rifle Association or the Environmental Defense Fund or some other political group of his choice. Like half of his fellow Americans, he goes to church a couple of times a month or more. He knows several neighbors by name, so that they can knock on his door to borrow a shovel or collect money for a charity without fear of being rebuffed. And his citizenship extends to the workplace. One day, perhaps, a coworker complains to him about a supervisor's sexual remarks; Joe once served on a grievance committee, so he can advise her what to do. Or maybe he overhears the offending remarks and, relying on long-term trust, takes the supervisor aside and cautions him.

Joe subscribes to a newspaper, mostly for the sports. He stops at the evening news or CNN as he flips channels at night. He likes to think that he has at least a headline's acquaintance with what's going on. He votes in presidential elections, because he always has. In a general way that he could not define, except in platitudes, he thinks it is his duty. But he passes on off-year and local elections because they just don't seem to matter very much to him.

So is Joe a good citizen? The better question may be: When and where is he a citizen? Let's say a good citizen is someone who thinks and acts, under relevant conditions, in the public good. When Joe helps a coworker defend her rights, he is acting as a citizen. So too when he recycles his garbage or watches the news. As for Joe's connections to church, neighborhood, and Little League, they strengthen the social bonds that make public life possible. He may have taken them up with little or no regard for the public good, but they help build the human networks that make "public good" more than an empty phrase.

In each of these examples of citizenship, it does not diminish the civic character of Joe's action that it has been made easy for him or that it may offer personal satisfaction. There is no reason to make civic action difficult or unrewarding or saintly; it is better for us all if jury duty, military service, or going to the polls can be made more appealing. Personally, I'd like to see some of the 19th century's fun at the polls restored. Maybe the Girl Scouts could sell cookies, the PTA sell raffle tickets, and musical groups provide entertainment. Internet voting from one's house, on the other hand, would be the ultimate triumph of the individualizing and privatizing tendencies of the informed citizen model, draining away the last social and public elements of voting that the polling place preserves.

On this expanded terrain of citizenship, the informed citizen model becomes less acutely pertinent, and a new understanding of the appropriate division of informational labor among citizens, parties, interest groups, and experts becomes more necessary. Democratic theory finds expertise an embarrassment, but should be in the business of figuring out what roles for expert knowledge and judgment are compatible with democracy. Citizens by themselves cannot be encyclopedias of contemporary politics. It might be more appropriate to ask them to serve as monitors of our public life. Citizens as

monitors will not be able to chart each issue in an election; instead, they will keep scanning the public scene for signs of danger. Picture the police officer on the beat, the nurse on duty, or the playground supervisor—each not exactly gathering information, but keeping an eye on the scene. They may look casual, even inactive, but they are ready if action is required. Like them, the citizen-as-monitor is not studious, but watchful. Then, when danger appears, such a citizen may do more than just vote; he or she may join a political group, campaign, petition, gather more information, and make some civic noise.

It is time to rethink the standards by which we judge and criticize our political health. We should understand that civic education is not a piling on of information, but the creation of opportunities for genuinely satisfying involvement in community life. That involvement can be directly in the political process, in which case the satisfaction may come largely from party involvement and the experience of party solidarity. But the satisfaction can also come from outside the realm of politics. People are already reinventing citizenship as they recognize the public issues implied by their personal concern with everything from street crime to breast cancer. But to see the reconstruction of citizenship at this level, you have to know where to look, and the polling place is not the only site.

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The Power and Purpose of Jewish Law

Michael J. Broyde

Law is one of the means by which groups of people cohere to form a society. The law embodies the values of a community and backs up these values with the force of the state. Religious law also serves a cohesive purpose, dictating who is part of a community and establishing rules of conduct for that subgroup. And while not backed up by the force of the state—at least in most modern societies—religious law is not without teeth.

Consider Jewish law. Jewish law has functioned for the past two millennia with essentially two jurisdictional bases to punish violations: the “pursuer” jurisdictional grant, and excommunication or shunning. The pursuer rationale (*rodef*, in Hebrew) is the jurisdictional source of power for a Jewish court or community to intervene to prevent life-threatening violence. This area of Jewish law is widely known and much written about, and normally irrelevant to the formation of sub-communities in modern times, as the class of cases it governs are also crimes within secular society, and thus are typically referred to the police.

Excommunication and shunning, however, have not lost their relevance. The ability to exclude people from a community is a power that can frequently encourage conduct in ways that formal law itself either cannot or will not accomplish. A case from the rabbinical courts of Israel demonstrates this well, and presents itself as a modern—but classical—example of the power of social shunning generally, and the Jewish courts in particular. Here the Supreme Rabbinical Court in Israel is discussing what to do in a situation where a divorce seems proper and is desired by the wife, but the husband will not cooperate:

In the appeal that was presented before us on January 7, 1985, the court did not find sufficient cause to compel the husband to divorce his wife. The court did, however, try to persuade the man, who is religiously observant, to follow the proper

path and to obey the decision of the court [that it is proper for him to issue the divorce], for it is a good deed to heed the words of the rabbis who religiously obliged him to divorce his wife whom he has chained needlessly. The court gave the husband an extension of three months within which to grant a divorce to his wife. However, when the court saw that three months passed without response, we instituted the separations of Rabbenu Tam as found in the Sefer HaYashar (*Chelek HaTeshuvot* 24) which states:

Decree by force of oath on every Jewish man and woman under your jurisdiction that they not be allowed to speak to him, to host him in their homes, to feed him or give him to drink, to accompany him or to visit him when he is ill

We added to these strictures that no sexton of any synagogue in the area where the husband resides be allowed to seat him in the synagogue, or call him to the Torah, or ask after his welfare, or grant him any honor. All people are to distance themselves from him as much as possible until his heart submits and he heeds to voices of those instructing him that he grant his wife a divorce. . . . And so it was done, at which time the husband submitted and granted his wife a divorce. [translated by author]

Without the force of the state—without *any* coercive power—the court was able to achieve its goal, and the community’s interest was thus duly served.

Am I My Father’s Keeper?

While the above example demonstrates the potential power of religious law, it does not address a number of important issues. First is the question of the immediate goal of the law, which is, of course, a topic of debate in the secular realm as well. Whom is Jewish law seeking to deter through the process of excommunication? Is it the person who is flaunting community standards? Or is it the community at large that will witness the person’s exile from the community and thus be deterred? A second and, in the case of Jewish law, more controversial question is the propriety of taking action against the violator’s family.

The first issue—that of individual versus broader deterrence—is far from just a theoretical concern. What if the person to be excluded will simply abandon religious observance in response to such treatment? If it is that person whom the law is concerned with, then logic

would dictate that shunning is to be avoided. Indeed, the penalty of exclusion only works on the one being shunned if he or she desires the approbation of the community of faith that is excluding him or her. In modern secular societies, when people's connection to their faith is often already weak, shunning may simply expedite a total severing.

While such concerns are not irrelevant, they have not carried the day. Rabbi Moses Isserless, one of the codifiers of Jewish law, writing in his glosses on *Shulchan Aruch*, articulates the generally accepted wisdom on this issue:

We excommunicate or shun a person who is supposed to be excommunicated or shunned, even if we fear that because of this, he will bring himself to other evils [such as leaving the faith].

Later authorities have explained the rationale for this clearly: The purpose of the shunning or excommunication is to serve notice to the members of the community that this conduct is unacceptable, and also, *secondarily*, to encourage the violator to return to the community. In a situation where these two goals cannot both be accomplished, the first takes priority over the second. Thus even in situations where there is a reasonable possibility that the person will simply abandon any connection with the community to avoid the pressures imposed on him or her, the shunning and excommunication can still be said to have accomplished its goals.

The second—and as noted more controversial—issue is whether a community may shun the relatives of a person in order to encourage the person to cease his disruptive activities. The instinctual answer of most people is, of course, no. And as a general matter, classical Jewish law follows these instincts and prohibits punishing an innocent person as a way of punishing another. This principle, however, does not settle the issue. The question becomes whether shunning is really a form of punishment, or is it some other type of activity not bound by the jurisprudential rules of punishment?

Providing one answer, Rabbi David Halevi, writing in his commentary *Turai Zahav*, states:

Heaven forbid [expelling children from school to punish parents]. The world is only in existence because of the studies of children in school. It makes sense to prohibit circumcising children, as that obligation is solely the father's; the same is true for burying his dead. . . . However, studying by children

has no restitution. . . . So too, to exclude his wife from the synagogue is improper: *If he sinned, what was her sin?*

A fair question. Rabbi Halevi views excommunication and shunning as forms of judicial punishment, subject to the general rules regulating the fairness and propriety of any given punishment. He thus reasonably concludes that we cannot justify punishing a child or wife for the sins of the father or husband.

By no means, however, is this the only possible ruling. As with the question of individual deterrent versus general deterrent, Rabbi Isserless again adopts the legal rule that posits that punishment is not the goal:

It is within the power of a Jewish court to order [as part of a shunning] that a violator's children not be circumcised, that his dead not be buried, that his children be expelled from the school, and that his wife be removed from the synagogue until he accepts the ruling of the court.

According to this interpretation, letting the close family of an excluded person participate in the religious sub-community—using its synagogue, cemetery, or schools—still allows the excluded person to be part of the community. As for not punishing the innocent, Rabbi Isserless, and those authorities who follow his view, simply assume that the normal rules regulating judicial punishment do not apply in the case of shunning and excommunication—not because on a practical level the innocent person is not hurt, but because on a philosophical level exclusion is not punishment. As Rabbi Hershel Schachter wrote in a recent article,

He [the one being shunned] would agree to obey the law, in the particular area in which he is remiss, in order to afford his wife and children a proper religious environment. Using the children as leverage is not to be confused with punishing them unjustly.

Of course, it is quite easy to see why an affected child or spouse would question such reasoning. From their perspective, they *are* being punished. However, while their claim is undeniable, it is also considered secondary. The reasoning behind the “punishment” of those who are not guilty lies not in the apparent impact of shunning or excommunication, but rather in its ultimate purpose. It is to this purpose that I now turn.

Jewish Law's *Raison D'être*: Justice or Community?

In concluding that it is appropriate to shun an individual even when doing so might drive that person completely away from the religious community, Jewish leaders, as noted earlier, cite as the basis for their judgment the goal of communicating to the rest of the community that certain conduct is unacceptable. Thus is served the broader purpose of Jewish law: *communal cohesiveness*. In order to survive, many religious communities cannot be fully open to any and all conduct by their members. Like other faiths, Judaism established a mechanism and procedure—including partial shunning, complete shunning, and in rare situations excommunication—for the exclusion of members of the faith who reject basic norms of the community in either practice or theology. Such exclusionary practices allow for the formation of self-selected sub-communities sharing common religious values.

It is with this purpose in mind that one must judge the practice of “punishing” the non-guilty spouse or child. It is true that they are treated as a means to an end, but the ultimate end is the formation and maintenance of community, not simply the punishment of the offender. In a situation where shunning relatives would have no impact on the conduct of the principal and would not *de facto* admit the person to the community, punishment of a spouse or child would be prohibited.

The guiding concern of sub-group solidarity can also be seen in the list of specific offenses for which the classical code deems shunning proper. The common characteristic of these violations is not their seriousness or their religious importance; rather it is their breach of community discipline. Those to be shunned include one who denigrates a community scholar or an agent of the Jewish court while he is doing his job, or one who mocks—not who violates—one of the rules of Jewish law. Other offenses include declining to accept the jurisdiction of the Jewish court system to resolve disputes with members of the community, and conduct that desecrates God’s name. Each of these offenses (as well as all the others listed in the *Shulchan Aruch*) share the central characteristic that they are violations that appear to hinder the creation or maintenance of community.

In these significant ways Judaism parts company with the classical Christian and Mormon practices of using shunning to enforce

observance of the details of the law and to supervise the private conduct of church members. That was never its use in the Jewish tradition. In fact, adultery, Sabbath violations, ritual violations, and other central tenets of the faith were never subject to shunning *unless* the person engaged in this conduct in a public manner intended to indicate defiance of tradition.

As for when the law is actually enforced—an empirical question that reveals much about most every legal system—while the theoretical Talmudic law is clear (“one who violates any prohibition may be shunned”), in practice this is limited to situations where the person has already been formally warned that his public conduct violates the law. Similarly, one may not excommunicate or shun a person who unintentionally violated Jewish law. Indeed, one may not shun a person who is aware of what the rule of law is, tries to observe it, and occasionally slips. All of these rulings are the natural outgrowth of a doctrine focused on building communal cohesion. Traditional Jewish communities build a social structure that creates a climate where religious behavior is the social norm; shunning and excommunication are the tools these communities use to ensure community formation.

Why is Jewish law primarily concerned with community, even arguably at the expense of fairness? To answer that question one would have to look extensively at history and at the social conditions that provided the context in which the applications of Jewish law developed. Such a task is too large for the confines of a short essay. It is probably fair to note, however, that for a religious minority, cohesion is vital not simply to the strength of a community, but often also to its existence. This truth bore relevance to Jewish communities decades, centuries, and millennia ago, as it does in the pluralist societies of today.

Privacy and Living Arrangements

Steven L. Nock

People often assume that more privacy means less government. In practice, however, it can mean the opposite. By definition, an increase in privacy means less of one's behavior is subject to the scrutiny of others. However, given the need all societies have for some control over the individual, when non-governmental means of achieving such control fade, it is almost inevitable that government will step in to fill the void. This potential source of government intrusion is of particular importance when one considers that privacy appears to grow in concert with a general decline in family living arrangements, and that we have been experiencing such a decline for decades. Thus, how we congregate has implications well beyond the domestic sphere.

The Virtues of Nosy Neighbors

Privacy is the legitimate right to restrict others from observing or knowing about one's actions. By legitimate, I mean that there is broad agreement (socially and legally) that certain realms of behavior are off-limits. This definition follows the Constitutional argument advanced in *Griswald v. Connecticut* and *Roe v. Wade* (viz., that contraceptive and reproductive behaviors are legitimately off-limits to the state). I also rely on the traditional distinction between privacy and secrecy. Hidden illegitimate behaviors are secret, not private. Secrecy is deviant and is appropriately the subject of social control. Privacy is legitimate and a person's right. But the boundary between the two is not fixed: things once secret (e.g., abortion) are now legitimately private, while things once private (e.g., wife-beating) are now secret.

There has clearly been an increase in privacy this century. As a result, there is more concern about secrecy, and more elaborate methods of social control have been designed to uncover and contain it. Some call such methods surveillance. I see them as the costs paid for

our privacy. Both the rise in privacy and the costs we pay for it are tied directly to the family, or more accurately, family living arrangements.

Living arrangements are significant because methods of establishing and maintaining reputations—particularly a reputation for trustworthiness, without which much of what we consider important in life is not possible—historically relied on family status. By custom and law, the head of the household was accountable for the actions of all members of the family. Husbands were required to settle the debts of their wives just as parents were required to compensate others for the wrongful actions of their children. Access to credit, or trust, was historically *ascriptive*—based on the family name—as Max Weber observed when he visited North Carolina in the late 1800s. This social and legal arrangement rested on one very simple element of family life: close supervision of and by all members, or what most people today would call a lack of personal privacy. The families and neighbors of our ancestors quite openly snooped on one another.

As long as people lived in families, family identity was central to personal reputation. Indeed, the historical record shows that those who live in families have generally been viewed as more trustworthy than those who don't. Colonial American settlements forbade, or taxed, solitary living arrangements; and strong social norms against non-family living persisted until the middle of the 20th century. But for the past 50 years, growing numbers of people have formed independent, non-family living arrangements. Among the elderly, mortality is the primary reason. Among middle-aged (35 to 45 years old) individuals, high rates of divorce produce separate households for the formerly married. In all, one in five Americans (19% of men, 21% of women) are now living outside of any family arrangement.

Another trend leading to solitary living arrangements has been no less than the creation of a historically new stage of life. Until the middle of this century, most young people lived in their parents' home until marriage, often for a decade or more after finishing school. Now a period of life intervenes between adolescence and adulthood. Beginning in the late 1960s, large numbers of youths began to leave their parents' homes to establish independent households. For five to ten years, young people live alone, with roommates, or with cohabiting partners. Although this is a historic anomaly, it is now fairly common.

Approximately half of those in non-family living arrangements live completely independently, while the other half share a residence with an unrelated individual (roommate or cohabiting partner). If we add the 1.5 million unmarried college students under 30 residing in dormitories, then about 30% of American men and 25% of women under age 30 live outside any type of family arrangement. In 1949, fewer than 3% of either sex lived this way. These changes are the result of later first marriages, higher levels of educational attainment, increased affluence, and a growing tolerance of independent non-family living. Though seemingly unremarkable as a stage in the life of youths, this is quite remarkable in its consequences for privacy. Once young people leave home, they are no longer subjected to routine supervision. Leaving home is a way to escape the monitoring of parents and other family members. There may be no other stage in life during which individuals enjoy such freedom, autonomy, or privacy.

Solitary Living's Impact on Attitudes

Does it matter? Are there any consequences of solitary living? First, I want to consider this question from the perspective of the individual. Then I'll turn briefly to the collective consequences.

Demographers Frances Goldscheider and Linda Waite have shown that the experience of independent living is associated with greater individualism, less orientation toward family in general, lower marriage rates, and later fertility. Moreover, parents who lived independently before marriage raise their children differently than those who did not. In particular, their children are not taught how to manage the routine tasks involved in running a household. In short, living independently before marriage, or being raised by parents who did, leads to diminished family orientations. But this should not be surprising. Independent living is less constraining. That it fosters attitudes and behaviors that are more individualistic should be expected.

Given the dearth of research on the issue of privacy, it is not easy to demonstrate empirically that independent living directly influences our expectations of privacy. There is, however, some evidence that gives us at least a partial picture of the nature of that influence. In March 1998, a CBS News/*New York Times* telephone poll of a national sample of 994 adults was conducted in connection with the Monica Lewinsky/Bill Clinton matter. This poll contained sufficient material

to allow me to perform very simple analyses. My sole question was whether there is a discernable and important difference in beliefs about privacy associated with living arrangements.

For purposes of this essay, I focus on three questions. Admittedly, these are not the questions I would ask were I designing the study, but they provide some provocative suggestions for future research on this topic. The first question was related to the Lewinsky matter. The other two questions dealt with surveillance and privacy.

- Do you think of this whole situation (the Lewinsky matter) MORE as a private matter having to do with Bill Clinton's personal life, or MORE as a public matter having to do with Bill Clinton's job as president?
- Some people think installing video surveillance cameras on some city streets is a good idea because they may help to reduce crime. Other people think this is a bad idea because the surveillance cameras may infringe on people's privacy rights. What do you think? Do surveillance cameras help reduce crime or do they infringe on privacy rights?
- Some people think installing traffic surveillance cameras on some city streets is a good idea because they may help to reduce traffic violations. Other people think this is a bad idea because the surveillance cameras may infringe on people's privacy rights. What do you think? Do surveillance cameras help reduce traffic violations or do they infringe on privacy rights?

Though the meaning of the first question is obviously tinged with politics, the second two strike me as quite fascinating. They ask people whether monitors installed on public streets violate privacy. This is an interesting question because surveillance cameras in other public spaces (hotels, parking garages, department stores) are ubiquitous. Those who see monitoring of behavior on public streets as a violation of privacy surely hold stringent ideas about what constitutes privacy. Indeed, a right to privacy on a public street is a curious concept.

I was interested to see how answers to these three questions differed according to living arrangements. To make the story simple, I compared single persons living alone or with other non-relatives with people living with their own children or other related adults.

Among *all adults*, those living alone were more likely than others to view the Lewinsky affair as a private matter rather than a public

issue (67% of single adults said it was private, 59% of others did). The questions about surveillance cameras revealed larger differences associated with living arrangements. Four in ten (42%) adults living alone believed that surveillance cameras on streets infringe on privacy. Only a little over a quarter (27%) of those who live with other people felt this way. Traffic surveillance cameras evoked similar results, though fewer Americans saw these as violations of privacy (33% of those living alone, versus 26% of those living with relatives, saw this as a violation of privacy).

I then restricted my analysis solely to those aged 30 and younger because this is the age group for whom solitary living has been viewed as potentially problematic. Among younger adults, privacy seems more important, and opinions about privacy matters differ more starkly than they do among all adults. For example, eight in ten (78%) young adults living alone felt that the Lewinsky affair was a private rather than a public concern. By comparison, 60% of those young adults living with others (children or adults) felt this way. With respect to surveillance cameras focused on street crime, 44% of those living alone said these were an infringement on privacy, compared with only 29% of those living with others. Traffic surveillance cameras produced similar results. In sum, those who live alone expressed different opinions about these three privacy questions than those living with others. There is, in short, some evidence that solitary living arrangements are associated with a stronger sense of privacy.

Solitary Living's Impact on Others

Now, consider the other side of the coin. Is there a *social consequence*, for matters of privacy, of the growing number of people who live outside of families? I believe there is. In particular, I think the growth in non-family living is paradoxically responsible for the development and elaboration of many types of surveillance.

With the loss of social controls that result from more privacy from one's family, we have increasingly had to turn to the government and to government-like large, anonymous, bureaucratic corporations for such surveillance, in the form of credentials and ordeals. Examples of credentials include credit cards, drivers' licenses, and educational or professional degrees. The significance of such credentials is easily illustrated by considering the consequences of losing them. How

would our lives be altered if we were to lose all our credit cards, our driver's license, and all other identification? The most obvious immediate consequence would be difficulty in transacting business with people we do not know well—cashing a check or purchasing an item on credit. To many people with whom we interact we are known only by these credentials. Only those with whom we share regular face-to-face relations know us well enough to trust us without our wallets or purses. If we add all the other types of credentials on which our identities are based (educational degrees, professional certificates and licenses), it is clear that modern society relies heavily on these objective, portable indicators of identity and reputation for the conduct of ordinary life.

The other elementary basis for establishing and maintaining reputations among strangers is the “ordeal.” An ordeal is a ritual that determines whether a person is telling the truth. It always begins with a presumption of guilt or unresolvable doubt. The verdict is based on an appeal to a nonhuman power—science. Just a few examples of growing number of contemporary ordeals are the so-called lie-detector test, drug and alcohol tests, and pre-employment and integrity tests. The important feature of ordeals is that they are used in the absence of reliable personal knowledge. In a society with widespread privacy, such personal knowledge is often lacking. Thus the elaboration of credentials and ordeals mirrors the growth in non-family living arrangements in this century.

Those who object to the distribution of their personal information have only one real choice. In order to restrict the distribution of personal financial, legal, medical, and educational information, one would need to forego a driver's license, credit cards, insurance policies, and bank accounts. Since driving, obtaining credit, cashing checks, buying a house, and obtaining insurance are so valued, few would be willing to sacrifice these objectives for the sake of restricting the wholesale distribution of personal information. Such is the price we are willing to pay for these privileges. But they are also the costs we pay for our privacy—especially in a society of people who increasingly live in non-family arrangements. As with any exchange of values, I would ask whether the privacy we have bought from our families is worth the costs—manifested as less privacy from our government and other similar institutions.

Reflections on Responsibility: More than Just Following Rules

Philip Selznick

When we think about following rules or meeting goals, responsibility has a fairly definite but narrow meaning. We want people to be “accountable” for their acts or failures. We say they should be *held* responsible. To do so, we need standards for judging conduct, testing performance, and determining who will be exempt or excused. Holding people accountable works best when we can identify *minimal* conditions of good conduct or performance, as when someone breaks the law or fails a test. For this reason, accountability should be considered an important but rudimentary form of responsibility.

In a richer meaning, however, responsibility reaches beyond accountability. The question is not what will put you in prison, cost you money, or cause you to lose a job or a professional license; it is whether and to what extent you care about your duties and act accordingly. An ethic of responsibility calls for understanding as well as conformity; it looks to ideals as well as obligations. Even when responsibility is quite limited in its demands, we expect it to be based on an inner sense of rightness. A responsible pedestrian does not have to do much more than obey signals and avoid jaywalking; responsible customers pay for what they take or consume. Still, if they are truly responsible they are guided by duty, not by worries about costs and penalties.

As obligations and relationships thicken, as they become more enduring and more complex, following rules is not enough. A responsible employee shows initiative as well as conformity; responsible lovers consider the physical and emotional well-being of their partners; responsible citizens study the issues before they vote. Responsibility requires reflection as well as choice.

Clear rules are more important for accountability than for a higher ideal of responsible conduct. As parents know very well, what parenting requires is often uncertain, subject to change, and much affected by circumstances. Obligations are met in the light of what people can do as well as what they should do. By contrast, in a tightly run organization rules abound. Even there, however, an ethic of genuine responsibility is seldom irrelevant or unneeded, even or perhaps especially in military units. In combat, more is wanted than checking regulations and obeying commands.

The responsible person asks: Who am I? What is my duty? What does this situation require? These reflections presume commitment—to an ideal, a profession, a skill, an institution. Here we see the intimate connection between responsibility and community. Responsibility is the psychic tissue of community. Its mainstay is the “covenanted” person, whose life is enriched by belonging and enhanced by obligation.

If responsibility requires judgment, it also presumes a measure of autonomy. Thus we say people in authority should be governed by “the rule of law.” Their decisions should be authorized by properly adopted rules, and they should abide by those rules. On the other hand, we know rules should be applied with wisdom, taking into account exceptional circumstances, the costs of demanding strict compliance, and the reasons behind the rule—that is, what purpose it is supposed to accomplish. Therefore we have to give officials leeway to use good judgment, which we call “discretionary authority.” We try to elect or appoint officials whose professional training and good character will lead them to apply rules with fairness, compassion, and fidelity to purpose. We may demand tight rules and very limited discretion when officials can do great harm, as in the use of firearms by police, but for the most part we respect the fact that officials, to be responsible, must have some part in deciding what their duties require, including the possibility of ignoring or even violating an apparently applicable rule.

The Claims of Identity

To be a responsible parent, teacher, citizen, or judge, one must accept an appropriate identity, that is, a well-formed perception of how one fits into a social world. Identity is an aspect of personality

and character or, as we sometimes say, of selfhood. Identities emerge from the experience of being raised by particular parents; from belonging to a particular family, religion, or social class; or from life choices, such as marriage, employment, a hobby, even a team to cheer. Most people have multiple identities: a woman can be wife, mother, teacher, lawyer, Methodist; a man can be husband, father, businessman, sailor. Identities are not necessarily permanent, and only some are really important. Even salient identities can be resisted and transformed: people drift away from their families, change their names and religious affiliations. The more seriously people take their identities, the stronger are their feelings of responsibility, which may go well beyond mere lip service or external conformity.

Thus responsibility depends on how deeply we have internalized the values that enrich a particular role. The more complicated the role, the more nuanced the understandings and judgments it calls for, the more important is the construction of a distinctive identity. To a large extent, that is what specialized and professional training tries to do.

Institutions as well as persons are sustained by distinctive identities. For colleges, hospitals, foundations, churches, government agencies, and many business firms, strong identities produce clearer missions and more effective strategies. As institutional identity weakens—as banking, for example, becomes like any other business, undisciplined by a special connection to financial safety and prudence—officials become distracted. Responsibility loses focus and may be unduly limited.

An “identity crisis” may arise from a conflict between work and family, or between principle and expediency. These difficult choices put selfhood in play and integrity at risk. Most urgent—and under modern conditions most troublesome—are the claims of rootedness and authenticity, based on bonds of kinship, locality, nationality, religion, race, and ethnicity. Not everyone honors these obligations. They may seek, instead, more cosmopolitan or professional identities. However, most people take these “anchored identities” seriously, are comforted by them, and are moved by them to care for children, relatives, and community members. These attachments are often experienced as burdensome, and they can produce evil as well as good. But anchored identity remains the surest foundation of personal responsibility.

Anchored identity springs from very deep human needs for giving and receiving nurture, acknowledgment, and protection. These identities tell us most clearly *who* we are, rather than *what* we are as determined by tests and achievements. Our lives are bound up with people closest to us in kinship, friendship, or shared allegiance; most directly affected by what we do or neglect; vulnerable to us, and dependent on us. Some connections are quite temporary and do not create sustained identities: for example, when we depend on a particular driver to avoid an accident. Anchored identities are more lasting, and the obligations they create are more demanding and more open-ended. Their most compelling basis is love, or at least some significant attachment. A sensed unity of self and other is the ground of obligation. The well-being of another becomes a condition of one's own satisfaction and self-esteem. This morality of the "significant other" looks to the *flourishing* of children, friends, and communities. We care about more than injury, survival, loss, or compensation.

Broader Identities, Broader Responsibilities

The realm of special obligations has no clear boundaries. It may include distant relations as well as close kin, friends, neighbors, fellow Jews or Catholics, fellow immigrants, fellow soldiers, fellow citizens. Therefore, even "special" obligations may broaden or expand identities. In this process a crucial step is the perception of strangers as belonging to one's own community, which may ultimately extend to all humankind and to other animals as well. Moreover, some anchored identities endure while others are lost. In Western history, for example, many local and ethnic identities were eclipsed by the rise of the nation-state.

The expansion of identities promises a more robust concern for human equality and human rights. That generous spirit is undone, however, by the recurrent upsurge of parochial passions, including prejudice and xenophobia. Patriotism can call people to heights of nobility and self-sacrifice. It can also nurture dark hatreds and uncritical beliefs.

Expanded identities blur the line between personal and collective responsibility. We may share a nation's pride in its achievements—for example, the American Constitution or German music and literature. But if we identify with a nation's or a church's history, we are not

wholly free to pick and choose. American history includes the moral ruin of slavery; Catholicism the Inquisition; German history the Nazi regime and the Holocaust. In each case the connection between past and present makes for a legacy of collective responsibility. This is not the same as individual or collective guilt. Perhaps “shame” is a more appropriate term. But collective responsibility has consequences—evils acknowledged, reparations paid, and education rethought. Furthermore, collective responsibility cannot be made good without a sense of *personal* responsibility. Otherwise there would be no support for the acts (and costs) of apology and renewal.

These reflections remind us that an ethic of responsibility—so central to the communitarian vision—demands a strong sense of self and a life sustained by commitment and connectedness. Such a life looks outward as well as inward: toward rootedness and special obligation; toward expanded horizons of understanding and fellowship.

“The true source of rights is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like a will-o’-the-wisp. The more we pursue them, the farther they will fly.”

Mohandas K. Gandhi

AN R.C. DOCUMENT

Preparing for Longer and More Varied Lives

Geoff Mulgan

From a paper presented at a conference of the Organization for Economic Cooperation and Development (OECD) Forum for the Future, held in Berlin.

Where previously people could rely on a predictable passage through childhood and education, work and child rearing (with income tending to rise during working life), and a fairly brief period of retirement, a very different pattern of life is now taking shape. In early life many more years are now needed to accumulate knowledge and skills; in later life longevity has opened up the prospect of decades in retirement. Compounding these changes have been the collapse of youth labor markets; the destruction of jobs for the over-50s, particularly men; and new patterns of childbirth in which women can have children into their 50s. According to one partly humorous extrapolation from current trends, by the middle of the next century people will move straight from full time education to retirement.

These shifts are putting great strains on existing welfare structures and on the implicit contract between the generations. When Bismarck introduced the state pension, life expectancy was decades lower than eligibility at 65. Today life expectancy is typically 10 to 15 years older than the age of eligibility. Most employment insurance systems were designed to cover periods of relatively brief unemployment, not large-scale structural unemployment, and certainly not large numbers of people leaving work for good in their early 50s.

Aging affects not only the costs of pensions but also health care. In the U.K., for example, it costs 20 times as much to care for an 85-year-old as for someone in middle-age.

These trends are not inherently dangerous. Longer lives are in many ways a great boon providing a valuable extra resource for every society: a pool of labor, a source of voluntary help and care. In some countries there is little risk of a demographic time-bomb. Everywhere it is likely that each new cohort will enjoy more disability-free years after retirement, and in the future each new cohort will be more prepared to learn new skills. Some—mainly the wealthy—may quite soon benefit from dramatic improvements in life expectancy if the promise of new medical advances to prevent aging is achieved. However, despite these optimistic possibilities, difficult choices will still need to be made about how to adapt to these new patterns of life.

The first and most visible issue facing many societies is how to pay for a longer period of old age, as well as for other periods out of work, such as periods of full- or part-time parenting, or time off to learn new skills. Most welfare systems were developed around a fixed set of entitlements and expectations linked to age, with education up to age 16 or 18, state pensions at age 60 or 65, and so on. Most insurance systems combine some age-related entitlements with entitlements related to need: Germany has pioneered the imposition of an additional charge for care, and Japan is now introducing an extensive insurance-based system to finance long-term care, with eligibility linked to assessments of need. The problem many face is that governments have made unrealistic promises about what can be afforded. In France, Germany, Japan, and Sweden state pensions will take 15 to 20 percent of GDP by 2050, compared to 8 percent in the U.S. and 4 percent in the U.K.

Although steps have been taken to raise retirement ages, these have risen more slowly than life expectancy. Moreover, all insurance-based systems face questions about whether they are now focused on the right risks, and about how to avoid problems of moral hazard.

Some of the more radical thinkers have proposed moving entirely away from age-based entitlements towards entitlements based on need, on the grounds that age is no longer a good proxy for need. They have argued for a return to the working patterns of a pre-industrial

economy, where the elderly continue working while steadily reducing their working hours in line with their capacities, with public provision making up for the difference rather than offering a fixed sum entitlement. But reforms of this kind are hard to implement and clash with perceptions that there is a natural entitlement to payments after a lifetime of employment.

These various considerations are likely to continue focusing attention on self-funding. Self-funded pension schemes have grown dramatically and have been encouraged by public policy from Chile to the U.K. (and in the U.S. 75 percent of financial assets are owned by people over 65 years old). In theory, self-funding allows public funds to be targeted on those in greatest need. In theory, too, the money purchase of defined contribution arrangements gives people a visible stake in their society or company, and goes with the grain of an equity culture based on individual ownership. However, self-funding is no panacea: it still requires there to be a transfer of resources from people in work to pensioners, even if the mechanism is dividends rather than tax or insurance. Moreover, there are serious dangers with over-reliance on self-funding, including often very high transactions costs and risks if stock markets underperform. The most promising examples of reform have therefore introduced complex systems combining self-funding, insurance-based models, and guaranteed minimum incomes linked to earnings, with strong incentives for self-reliance coupled with a reasonably generous safety net (and subsidies for caregivers and others who are unable to sustain contributions to funded schemes).

Many of the same considerations apply in thinking about how to finance some of the other needs of longer and more complex lives: parental leave, periods of eldercare, re-education, and so on. All can in principle be supported through pooled insurance models, tax finance, or self-funding, so long as there are sufficiently long periods of earnings to cover periods without earnings, and (in the first two cases) so long as there is sufficient willingness to cross-subsidize from the relatively wealthy to those unable to earn for such long periods.

However, the issue of changing life patterns is about more than money. It is also about how to mobilize the energy and skills of older people. The strong pressures to encourage early retirement in the 1980s and 1990s now look to have been a historic mistake. They left

large minorities out of work, often depressed, and facing the prospect of poverty in old age. As a result, policy attention has turned to new issues: how to bring the over-50s back into the labor market, if not in full-time jobs then in part-time jobs; how to increase voluntary activity on the part of the over-50s, including the use of new payments systems such as LETS and Time Dollars as half-way houses between formal paid employment and volunteering (encouraged by the strong evidence that useful activity and personal health are strongly correlated). The big issue for the next two decades looks to be not about how to cope with a demographic time-bomb but rather how to turn longer lives into a boon—a resource for societies and communities to draw on.

FROM OUR CRITICS

Communitarianism: A Medicine Worse than the Disease?

Václav Klaus

It is always fashionable to talk about a crisis. It gives those who use such terminology a special aura—they see the world more sharply than the rest of us; they possess a noble vision of a better world; and they know how to get there. The question we must ask, though, is where their feeling of certainty of a crisis starts—in a deep and penetrating analysis of the status quo, or in an elitist and moralistic ambition? Is it a real breakthrough, or is it merely a new fashion in thinking, merely an attempt to create a niche in the very competitive marketplace of ideas?

I must confess that I do not see any crisis around me, that I do not know of any feasible alternative to Western liberalism, and especially that I do not believe in efforts to construct a brave new world—of any form, color, or smell. My position is based both on theoretical arguments in economics and other social sciences, and on my personal experience with communism and its transformation into the free, open society we in the Czech Republic have experienced in the last decade. Both sources carry the same weight with me.

No one would dare claim that we are approaching paradise. There are many problems in the real world and no one should neglect or underestimate them. The only issue is how to tackle them. Some of us believe in individual human beings and in their motivation to

better the world around them—provided that the basic institutions of society make that possible. Others believe in themselves and believe that the government should follow their recommendations on what to do with the world, a world which these critics have ambitions of bringing to perfection. I agree with Thomas Sowell that these two approaches very clearly describe the current “conflict of visions” and that the second, anti-liberal vision is “the vision of the anointed” (to use the titles of his two important books).

I strongly believe in the liberal world order. Such a world is, of course, not without prerequisites. Together with Margaret Thatcher, I am convinced that “the life of free men and women has to be a life of self-discipline, self-control, and self-sacrifice,” and in this respect it must be based on an elementary moral system. At the same time, I believe in the inherent morality of markets, in the ethics of work and saving, and in the crucial link between freedom and private property. It is neither possible (nor desirable) to legislate—from above or outside—a better world.

This way of thinking has recently come under a new, strong, and dangerous attack. The adjective “dangerous” is appropriate because I see a virus of demagoguery and romanticism in the visions of the preachers of “communitarianism” and “civil society.” There is no identity between the two terms, but the idea of civil society, in its current Central European meaning, has many similarities with communitarianism. And I am aware of the dangers of this idea. There was—perhaps—some justification of (or excuse for) the idea of civil society in the communist era, when it was one of the strategies for resistance, although I never shared this strategy. But while communism is over, the old anti-liberal ideas are still with us. They can be seen in continuous attempts to find third ways, to integrate markets with non-markets, to construct capitalism with a human face, to attack individualism (by caricaturing it), to confuse genuine and spontaneously evolving associations of individuals with organizations based on obligatory membership, to disregard the crucial role of private property, and so on.

Communitarianism, as I see it, represents a new version of an old anti-liberal approach to society, a shift from traditional liberal democracy to new forms of collectivism—a romantic dream. It proposes a new way of integrating society by organizing it at the micro level.

Communitarianism is an attempt, in the words of the philosopher Gerard Radnitzky, to “impose the moral system of the face-to-face group on the large, anonymous society.” (Communitarianism may, however, be a simple and much more modest empirical hypothesis: that a deeper and denser network of human associations creates more social capital. But surely real communitarianism is much more.)

My first argument with communitarians concerns their analysis of contemporary society. They interpret it as an egoistic, individualistic world, where the basic form of social interaction takes place among atomistic units (human beings). Individual persons are supposedly alone, i.e., not rooted in the various social institutions that would provide them with motives beyond the purely egoistic. I disagree with such an interpretation. I do not think it reflects the prevailing atmosphere in our society. It may describe the more or less pathological situation of some individuals with problems of association, but not the real world we know and live in. There is—with all known undermining and weakening factors and influences—the institution of the family, which remains the main foundation of our society and of our public life. In addition, we are—mostly voluntarily—members of other social institutions which bring us into contact with other people. It starts with schools, with workplaces, and with free-time activities (e.g., sports clubs). The more active we are, the more people we meet and collaborate with. To caricature life in the contemporary Western world as an uncooperative game (or fight) of isolated, self-centered, self-interested individuals is simply not justified.

Furthermore, we should not be ashamed of self-interest. It is not a motivation unworthy of human beings. We have known—at least since the time of Adam Smith—that society cannot rest on the noblest motives. We know as well that self-interest is the strongest motive, whether we like it or not. It does not imply that self-interest blocks our interest in other people and their well-being. In the language of economics, we can say that the well-being of other people can be, and very often is, a factor (with a positive sign) in our “utility function.”

My second argument concerns communitarianism as an alternative ideology. I have already mentioned some of my criticisms but would here like to emphasize the two most important ones:

- Communitarianism wants to change human beings (instead of taking them as they are).

- Communitarianism, in its aversion to individualism and its advocacy of coercive means of fostering human association, is another form of collectivism.

Czechs are, with our communist past, exceptionally wary of both of these aspects of communitarianism.

Because of its ambitions to change human beings, communitarianism is a form of elitism. Its advocates believe that they have been chosen to advise, to moralize, to know better than “normal” people what is right or wrong, as well as to proclaim what people should do and what will be good for them. They not only want us to be free, but to be good, just, and moral as well—of course, using their definition of what is good, just, and moral. In contrast, I, again as with Thatcher, start with the assumption that liberty is an individual quality and, therefore, we should not collectivize it.

Communitarianism wants to socialize us by forcing us into artificial—not genuine, not spontaneously formed—groups or groupings. In this respect it is another version of corporatism or syndicalism, of organizations with obligatory membership which bring together people of the same profession, age, habits, or interests. We Czechs used to live in a world of obligatory memberships: there was one tourist organization, one organization of pet lovers, one horse-riding club, and so on. And we know what that means. For that very reason, we want to be free to choose.

My third argument concerns how to get to the brave new world of communitarianism. One dangerous route is to create an intellectual climate hostile to traditional Western liberalism. This proved to be very easy to do, and very efficient. After the collapse of communism, in a moment of ideological vacuum, communitarian (and environmental) proponents took their chance. They came up with new arguments against our contemporary society, relied on the belief in “the end of ideologies,” and exploited people’s inclination to continuously search for something new (or quasi-new).

Communitarianism cannot win through preaching alone. Its preachers are here, but they cannot start a mass movement that would lead to a social revolution. Instead, they try to reach the legislators and to legislate the world according to their dreams. And this is something I am afraid of, because we live in a world of unconstrained partisan-

ship. By “unconstrained” I mean unconstrained by a feeling for the whole of society and its fragility. Milton Friedman recently put it clearly: “We are ruled by a majority, but it is a majority composed of a coalition of minorities No minority has any incentive to be concerned about the cumulative effects of the measures passed.” And this is very dangerous, especially when the decision makers’ and legislators’ thinking is based on, to quote the legal theorist Henry Manne, “an incredible mishmash of pseudo social science, pop-psychology, vacuous moralizing, rank ideology, and political bias.” It is our task to limit the introduction of systemic changes based on such “a prioristic” backgrounds and motivations, and instead to rely on the spontaneous evolution of human institutions.

If communitarians would concentrate on founding specific institutions and on working in them, I would be on their side. But it must be done retail, not wholesale. It is necessary to do something specific, not to continually advise others what to do.

Jesus Beats Father Julia

Here are the percentages of Americans who believe that each of the following events will definitely or probably happen in the next 50 years: ordinary people will travel in space (57%); we will clone humans (51%); Jesus Christ will return to Earth (44%); the Catholic Church will allow priests to marry (43%); the Catholic Church will ordain women as priests (43%); an asteroid will hit the earth (31%); we will make contact with alien life (27%).

The Pew Research Center for the People and the Press

THE COMMUNITY BOOKSHELF

Building Inclusive Communities

Steven Jones

Henry Tam, *Communitarianism: A New Agenda for Politics and Citizenship* (New York: New York University Press), 288 pp.

Most of the readers of this journal are already familiar with the basic themes of communitarianism as a body of thought and its goals as a social movement. By and large, 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. Given this situation, they fear that national leaders seeking to restore social order and moral cohesion will resort to authoritarian techniques, thus severely constraining, if not eliminating, personal freedoms. Thus, communitarians seek to develop a body of ideas and a set of social reforms that will strike an effective balance between the two extremes of individualism and authoritarianism. In this vein, Henry Tam's *Communitarianism* is a thoughtful exposition of communitarian ideas as well as a welcome exploration of communitarian reform proposals.

Tam, who is the chair of the United Kingdom Communitarian Forum, focuses his attention on the concepts and reforms needed to develop "inclusive communities." Inclusive communities are distinct from other types of communities, even communities characterized by widely shared beliefs and values. Rather, inclusive communities exist when social, economic, and political power is distributed such that community members have "equal shares of the overall power for

determining collective action.” Thus, in Tam’s version of communitarianism, it is not shared values per se that characterize strong communities, but rather adherence to those “higher order” values that guarantee effective inclusion for all the community’s members.

Inclusive communities, according to Tam, are founded on three fundamental principles: cooperative inquiry, mutual responsibility, and citizen participation. *Cooperative inquiry* requires that community members openly discuss issues that concern them on the basis of equal access to all relevant information and a recognition that the claims of discussants be subject to verification based on logical reasoning and the weighing of evidence. *Mutual responsibility* requires that community members recognize their duties and responsibilities to one another and that they treat each other accordingly. *Citizen participation* requires that in all cases in which institutional policies and decisions affect a community’s members, those affected will have not only a voice in the decision-making process, but power as well.

In turn, these principles reflect those higher order values that are more or less, according to Tam, universal in nature. First is the value of love, which incorporates the values of caring, compassion, sympathy, friendship, and devotion. Second is the value of wisdom, which includes “the experiences of understanding, clarity of thought, being able to think for oneself, to weigh evidence, and to make good judgments.” Third is the value of justice, which is reflected in fair treatment, nondiscrimination, and respect for reciprocal relationships. Fourth is the value of fulfillment, or self-actualization.

A Demanding Agenda

It is easy to see why these values are necessary for the practical application of the communitarian principles Tam has espoused. For example, cooperative inquiry requires not only adherence to the value of wisdom, but to the values of love, justice, and fulfillment. Communities will not necessarily deliberate effectively about issues of mutual concern even if all members are well versed in logical thinking. They must also show respect for each other’s feelings (the value of love), their inherent dignity (the value of justice), and their desires for their own and their children’s personal development (the value of fulfillment). I need only to remember my own experiences in college seminars and faculty meetings to recognize the necessity of all of these

values in the pursuit of cooperative inquiry, and, by extension, consensus decision making.

However, in order to make inclusive communities a reality, more is needed than acceptance of communitarian principles and adherence to higher order values. According to Tam, members of inclusive communities require that these principles and values be taught and reinforced through education, through meaningful and satisfactory employment, and through the protection of those core principles and values from external and internal threats. As such, we need to rethink the roles and functions of families, schools, jobs, and policing mechanisms from the perspective of what is needed to develop and sustain inclusive communities.

In the chapters addressing each of these areas, Tam offers some familiar proposals. He recommends greater community support for families in the form of available, affordable day care, flex time for working parents, peer-based parenting classes and support groups, reform of divorce laws, and community intervention in cases of parental abuse and neglect. With respect to improving education he proposes focusing the educational mission of schools on citizen preparation and character development and providing students with the skills for lifelong learning. He argues against proposals that schools be organized and managed according to market principles. He advocates that the nature of work be reformed through workplace democracy, enterprise training for workers, participatory investment schemes for workers, guaranteed minimum incomes for all citizens, and the establishment of minimum global standards for worker safety, income, and benefits. Finally, in his discussion of how citizens are to be protected from threats to life and property and from psychological harm, economic destitution, and cultural deprivation, Tam offers a variation on Amitai Etzioni's theme of "the moral voice." In short, what is needed to make communities safer is not more police and more prisons, but a greater willingness of community members to hold each other accountable for their mutual responsibilities. Although these suggestions are not necessarily original, Tam gives them new life by presenting such reforms not as ends in themselves, but as means for creating and maintaining the type of community he envisions.

Having discussed the nature of inclusive communities and their needs, Tam then explores the proper interaction that should exist between communities and business, the state, and the so-called third sector of society. In essence, he argues that businesses, governments, and voluntary associations should all operate in accordance with the principles of shared inquiry, mutual responsibility, and citizen participation. Thus, citizens must insist that our political, economic, and social organizations take steps to ensure that stakeholders have an effective voice in decisions that affect them. Such steps will, at the very least, require the decentralization of decision-making power.

The Economy, the Media, and Social Choices

In general, I found much to admire in Tam's book. One of the critiques leveled at communitarianism is that it focuses too much on values and morals (or the lack thereof) as the source of societal problems, rather than looking at inequalities in political and economic power. Tam's work demonstrates that communitarians can be concerned about values while recognizing the importance of equitable distributions of power. In addition, although some communitarian writers have been critical of capitalist economic systems, few that I have read have been so adamant in their condemnation of market forces and their effects on communities as Tam. Still, Tam does not advocate centralized economic control. He recognizes that excessive limits on market exchanges would result in authoritarianism and would violate the value of fulfillment.

Tam's book also adds to the existing literature on deliberative democracy by demonstrating how the principles associated with deliberative democracy should be applied not only to intra- and inter-community deliberations, but also to relations between governmental, business, and voluntary organizations and their stakeholders. Indeed, many of Tam's recommendations reflect values similar to those of liberal thinkers, namely, the protection of the most vulnerable members of society from the arbitrary and impersonal forces of the state and the market.

Although I found myself agreeing with many of Tam's insights and proposals, I also found myself vehemently disagreeing with others. For example, in Chapter Three, "Education for Citizens," Tam argues that the mass media should take a more responsible role in

providing citizens with the information needed to participate in decisions that affect them, a proposition with which I agree. However, he then calls for community-based “censorship panels” that would monitor the media for their potentially negative and harmful output, a proposal with which I strongly disagree. It would not matter that such panels were community-based rather than state-based; as Mill warned us, a dictatorship by the people is just as suppressive of liberty as a dictatorship by the state. In my view, there is a distinction between the communitarian “moral voice” and communitarian paternalism. In this particular case, Tam’s proposals raise the possibility of paternalistic communities rather than inclusive communities.

Furthermore, like his colleague, Amitai Etzioni, Tam argues that one of the advantages of communitarian thinking over other modes of thought is that it avoids false dichotomies. I was deeply disappointed that Tam then went on to create a false dichotomy of his own: individualism and authoritarianism on one side, and communitarianism on the other. By presenting communitarianism as the only viable basis for making social choices, Tam ignores other alternatives, most notably liberal approaches to deliberative democracy, such as John Rawls’s notion of “the overlapping consensus” or Amy Guttmann and Dennis Thompson’s work on deliberative democracy under conditions of moral controversy. Because liberal thinkers value the autonomy of the individual does not mean that all such thinkers should be branded as radical individualists. Liberal thought is diverse and it does recognize the importance of shared values, contrary to attacks from communitarians like Tam. In addition, liberal thinking does not lead inevitably to moral relativism, as Tam implies.

Not only does Tam create a false dichotomy of his own by presenting communitarianism as the only viable alternative to individualism and authoritarianism, he also violates his own recommendations for shared inquiry. If citizens are to have equal power in shaping decisions that affect them, then they must have access to competing perspectives. By throwing all alternatives other than communitarianism into either the individualist or authoritarian camps, whose proposals must be rejected a priori, Tam implicitly creates exclusive rather than inclusive deliberative communities.

Finally, I am not as optimistic as Tam with respect to how citizens deliberate issues of common concern. Tam assumes that citizens in

inclusive communities will be able to weigh evidence, show tolerance for competing perspectives, and arrive at choices through reasoning together. Having participated in various community fora on diverse social issues, I have to say that they rarely reflect the kind of decision-making processes that Tam assumes. People rely on any number of factors for determining “the truth.” Rational thinking based on evaluation of empirical evidence is one method, and I agree with Tam that it is superior to other methods. However, other people believe that religious authority, or weighing choices on the basis of short-term economic self-interest, or tradition, or ethnic solidarity, should be the basis for evaluating decisions and policies that affect them. To recognize that real people bring different modes of decision making to deliberations is not to deny the importance of such deliberations. However, it does imply that how we structure such deliberations and the mechanisms we use to educate citizens are issues that deserve a great deal more attention if we are to realize the promise of deliberative democracy.

Tam’s book is an admirable treatment of communitarian ideas and how those ideas can be implemented to address issues of common concern. On the other hand, it also reflects some of the weaknesses of communitarianism, such as the tendency to prefer paternalistic solutions to social problems and the unwillingness to acknowledge the degree to which the ideas of non-communitarians can be fruitfully merged with those of communitarians. Hopefully the future work of Tam and other communitarians will focus not only on building more inclusive communities, but a more inclusive body of communitarian thought as well.

THE MORAL DIMENSION OF THE MEDIA

Government and Hollywood, Together Again

Paul Lieberman

Warren Weideman was having a hard time delivering, so to speak, for the U.S. Postal Service. All it wanted was a few “positive portrayals” on TV and in the movies. But try as he might to get Hollywood to show postal workers as nice guys, all the entertainment marketing specialist saw were postmen who were mean to kids or kicked dogs or shot people—going “postal,” as they say. Then there were those sorry bag-toters on two of the highest-rated TV series ever, *Cheers* and *Seinfeld*: smart-aleck Cliff Claven, who sat on a bar stool, and the fat, nasty Newman, who dumped mail in a warehouse rather than deliver it.

That’s why Weideman decided to become a Hollywood producer—to make a movie about the Postal Service. Weideman had a story to pitch, sure, but his real asset was how the Postal Service would promote it: by paying for posters for its 40,000 facilities, displaying life-sized cutouts of the main characters, issuing commemorative envelopes and, if you called a post office and were put on hold, you’d hear the star, Louis Gossett Jr., imploring you to “watch Showtime on Sept. 20.”

So it was that a movie called *The Inspectors* aired in 1998, delivering excellent ratings and an image boost for the Postal Service. So it was, also, that Weideman had to laugh earlier this year when he saw “all the hoopla about this infiltration of government into entertainment,” specifically that federal officials had offered TV networks financial incentives to inject anti-drug messages into series. With its overtones of censorship and propaganda, the revelation set off finger pointing and apologies, then a pledge by the White House drug czar,

retired General Barry R. McCaffrey, that his office would stop reviewing scripts to eliminate “any inference of federal intrusion in the creative process.”

But the “ah ha!” rhetoric obscures a basic reality: how this sort of interplay is common, and always has been. Government officials have long sought to use the mass media to get out their messages, whether about the evils of communism, the righteousness of a war, or the dangers of drunken driving. Back to the first days of film, when the issues were sex and morality, they have used the leverage of public harangues and tangible threats—often of new regulation—to influence what viewers see. They also learned to dangle a carrot. Want a military base for filming? No problem—if the script has the right spin.

And while many writers and producers abhor such cooperation, others see no problem in it. For some, it’s the practical price you pay to get something. Others are simply with the program. Ask *Baywatch* executive producer Greg Bonann how he’s worked with the Coast Guard, Marines, Army, or Navy, the latter of which worries about public support for a fleet of nuclear submarines now that the Cold War is over. “How do they explain to people why we need these things?” Bonann asks. “What better way than with the most-watched TV show in the world?” What’s in it for him? “A chance to use a billion-dollar piece of equipment for free.” In return, he’ll portray Navy personnel like those “Baywatch” lifeguards—as rescuers. He’ll also let the military review scripts, and more. “I don’t care what it is—they are welcome.”

Wartime Allies

When the first Oscar was awarded for best picture in 1927, military officials should have been at the podium. They staged the crucial World War I aerial combat scenes for the winner, *Wings*. But during the real WWI, when President Wilson faced the daunting task of gaining support for U.S. involvement, it was the fledgling silent movie industry that helped the government. In theaters across the country, shows would be halted between reels so one of a cadre of “Three-Minute Men”—from the Office of Public Information—could rise and exhort the audience to back the war and buy Liberty Bonds.

Like any relationship, though, it was not all hugs and kisses. The new industry came under attack after the war for its racy “roaring

twenties” themes. To mollify critics, President Harding’s postmaster general, Will Hayes, was recruited in 1922 to head the Motion Picture Producers and Distributors of America. Eight years later, as silent films gave way to talkies, it adopted the Production Code under the principle, “No picture shall be produced which will lower the moral standards of those who see it.” Its list of specific “applications” reflected concerns voiced to this day: Murders were not to be presented in ways that would “inspire imitation.” Adultery was not to be “treated attractively.” There was to be no ridiculing of “any religious faith.”

Moviemakers then ignored the code until 1934, when Congress prepared the Federal Communications Act, annexing the airwaves for “the public interest.” That summer, the Hayes Office began enforcing the rules for real.

Going Overboard?

Rick Jewell, who teaches a censorship course at USC’s film school, notes how, from the earliest days, Hollywood often used preemptive strikes to stave off “government intruding into their business.” Other times it seemed a love-fest, as during World War II, when actors such as Ronald Reagan appeared in troop training films, directors such as Frank Capra rallied the home front with patriotic documentaries (*Why We Fight*), and Walt Disney helped smooth ruffled feathers in Latin America with Donald Duck movies that portrayed a region of colorful fiestas, with nary a dictatorship in sight.

Some historians suggest that the studios had a self-interest in keeping the government happy, such as making sure enough stars were free from active duty to do commercial films. Whatever the motives, the close cooperation did not seem to play as well after the wars. The post-WWII years gave us the McCarthy anti-communist crusades and blacklists that still divide Hollywood. This also was the period of such alarm-ringing films as *I Married a Communist*. And just as the Los Angeles police worked with Jack Webb in the creation of *Dragnet* in 1952, federal law enforcement officials such as J. Edgar Hoover saw the value of programs on radio—then TV—that took gloating material from their files for *Your FBI in Peace and War* or *Your T-Men in Action*.

Director Robert Wise (*The Sound of Music* and *West Side Story*) recalls wanting Army tanks for his 1951 sci-fi classic *The Day the Earth*

Stood Still and how “you had to go to Washington and show them your script.” His told of a space alien, Klaatu, who is killed by a fearful government agency, and ended with Wise’s plea for peace. The verdict? “They refused to cooperate. I wasn’t going to change the script,” said Wise, 85. Wise’s philosophy of filmmaking underscores one reason political efforts to “send a message” often fail: Wise believed a message was best imparted “between the lines.”

That subtle approach was rarely embraced by government or religious campaigns to scare young people away from drugs, as with the 1935 film that became a camp classic when re-released in the 1970s as “Reefer Madness.” A decade after audiences howled at “Reefer,” the “Just Say No” drive was launched by First Lady Nancy Reagan, who, not surprisingly, enlisted the help of Hollywood. In 1986, actor John Travolta gave her a list of 300 celebrities endorsing the campaign. The next year, the pledge was embraced by the adorable 12-year-old star of *E.T.*, Drew Barrymore. By 16, Barrymore had written an autobiography, *Little Girl Lost*, confiding her own drug problems. Travolta went on to revive his flagging career by playing a heroin-addicted hit man in *Pulp Fiction*. Last year, the group carrying on Mrs. Reagan’s campaign was retitled “Youth Power,” acknowledging, “The ‘Just Say No’ concept has taken on a number of negative connotations in popular culture.”

The Recent Story

Though Republicans have often been the loudest critics of Hollywood’s influence on culture, Democrats have seemed more willing to pass legislation to affect programming. In 1988, President Reagan vetoed a bill limiting commercials during children’s programs and requiring stations to serve the needs of children as a condition of renewing their FCC licenses. Congress passed a similar measure two years later, but the perception was that broadcasters didn’t take the commitment seriously, claiming that reruns of *The Jetsons* met the requirements.

The Clinton administration then held summits with Hollywood officials and introduced a series of measures to underscore its concern about effects on children. These included support for the V-chip, a device allowing parents to block out programs; further limits on tobacco advertising; and an agreement in 1996 for broadcasters to air

at least three hours of educational children's programming weekly, rather than action shows such as *Mighty Morphin Power Rangers* or other toy-driven half-hours.

The next year, Congress authorized the program to buy one billion dollars in air time for anti-drug announcements—provided the networks donated equal time for such spots. And after TV executives complained that that was too costly, the White House Office of National Drug Control Policy decided they could earn credits for some of that time—and thus sell it for profitable ads—by instead injecting anti-drug story lines into shows. Though the drug fight is popular, the undisclosed arrangement outraged media historians like Carlos Cortes, a professor emeritus at UC Riverside. “This is the most blatant economic kind of leverage that I can recall being used by government,” he said.

A Happy Marriage for the U.S.P.S.

Warren Weideman doesn't mind if he's seen as a booster—that's what he was before he became a producer. He was a “product placement” man, cutting deals to get Michelin tires or Polaroid cameras on TV and in movies. He saw himself playing no different a role with another client, the quasi-governmental Postal Service. But as years went by he grew frustrated by his failure to produce positive images. Then a brainstorming session shifted his focus to the service's federal law enforcement wing, which once hunted down Butch Cassidy and the Sundance Kid and more recently made the cases against evangelist Jim Bakker and financier Michael Milken.

Armed with rights to develop a TV movie on *The Inspectors* and the Postal Service offer to provide marketing, he formed Park Avenue Productions in Los Angeles. He and his writers then worked with a high-ranking postal inspector to find a juicy story in the files. His understanding was clear: “I'm going to portray them in a positive light” and they'd “make sure we didn't embellish.” But that didn't mean some “Buy Stamps” infomercial, which no network would buy—and no one would watch. The movie sold to Showtime starred Gossett and Jonathan Silverman as one of those odd-couple crime-fighting teams. It may not be a *Lethal Weapon* franchise, but they're back in *Inspectors 2*, which premiered March 6 at Washington's Kennedy Center before an audience including the postmaster general.

This time, the duo is after a credit card scammer played by Michael Madsen. The script injects reminders to tear up unwanted credit card applications, but it has romance too, Weideman says. Postal officials won't be alone in promoting the sequel. Bank of America, which figures in the plot, will tout it at thousands of branches and on bank statements. The task now? "We're looking for a story for *Inspectors 3*."

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KALEIDOSCOPE

Wrongs and Responsibilities: The United Nations and the Fall of Srebrenica

It is known as “the shame of Srebrenica.” In July of 1995, with a battalion of Dutch U.N. peacekeepers looking on—and at times actually helping—thousands of Bosnian Muslim men were taken by Serb forces from a U.N. enclave the Dutch were protecting. Virtually all were soon slaughtered. It was the largest massacre in Europe since the end of World War II.

While there is no doubt that the Serbs were the executioners, another question remains: Were the Dutch soldiers, and the U.N. as a whole, essentially willing accomplices? It is a question that still haunts the conscience of the Netherlands, a nation that usually considers itself a model of responsible international citizenship. “The Fall of Srebrenica,” a report released late last year by Secretary General Kofi Annan (U.N. report A/54/549), gives almost all parties involved even more reason to question their actions.

In the early morning of July 6, 1995, Serb forces launched a full-scale assault on Srebrenica, a Bosnian town located in a mountain valley near the Serb border. Two years earlier, with the enclave entirely surrounded by the Bosnian Serb Army, the U.N. had made it one of six internationally protected “safe areas.” With such a designation came a battalion of peacekeepers. That July the battalion was a Dutch rotation that had been there since January. It consisted of about 450 troops.

The town also held Bosnian government forces, numbering three to four thousand. When the attack occurred, the poorly armed Bosnian

forces immediately requested that the U.N. Protections Force (UNPROFOR) return the weapons they had surrendered as part of the demilitarization agreement of 1993. The request was denied because, in the words of a U.N. commander, “It was UNPROFOR’s responsibility to defend the enclave, and not [the Bosnians’ responsibility].” In response to the offensive, the Dutch Battalion Commander requested air support. While the request was approved by the commander’s immediate superior, it was denied as it moved up the chain of command. The U.N. believed—or some say wanted to believe—that the Serbs only sought a small enclave in the south.

After a day of relative calm, July 8th through 10th saw steady Serb advances and another denied request for air support. The Serbs forced the Dutch out of a number of their observation posts, and in one such case Bosnian soldiers, feeling betrayed by the U.N. troops, deliberately fired on the retreating Dutch soldiers, killing one. With the Serbs advancing, civilians on the outskirts moved toward the center of town. This group was primarily composed of women, children, and the elderly, as most of the men of military age were gathering in the northwestern portion of the enclave with the intention of making their way through the Serb line and escaping to Tuzla. Nevertheless, about 3,000 of the group in the center of town were men between 17 and 60. (Of the 12, 000 to 15, 000 men who fled Srebrenica, estimates are that about 2 out of 5 made it out, 1 out of 5 were killed in combat or committed suicide rather than be taken prisoner, and the rest were taken prisoner and soon executed.)

Air support finally came on July 11th. A total of two bombs were dropped, the targets being suspected Serb vehicles. This attack was immediately followed by a message from the Serbs to the Dutch, threatening to shell the town and the Dutch compound if air strikes were not immediately stopped. Given the proximity of the Serb troops, the Dutch felt compelled to follow the request, and all air action was halted.

By late afternoon on the 11th, somewhere between 20,000 and 25,000 Bosnian Muslims were converging on the Dutch headquarters compound at Potocari (a suburb of Srebrenica). Believing that the main gate was vulnerable to Serb fire, the Dutch cut a hole in the fence on the opposite side of the compound. After 4,000 to 5,000 of the

refugees were let in, concern about space and provisions led to the hole being blocked.

By the 12th, Srebrenica had come under complete Serb control. Serb soldiers surrounded the mass of Bosnian Muslim civilians, who themselves surrounded the Dutch compound. The Serbs promptly began dividing up the 15,000 to 20,000 who were outside of the compound, separating the men from the women, children, and elderly. As the men were directed to the “white house”—a building directly in front of the compound—the rest were put on buses and trucks and deported, most of them to safety in territory held by the Bosnian government. The Dutch provided one escort vehicle for each of the convoys that left the compound area. Although the escorts were permitted to begin the journey, by the end of the day Serb forces had hijacked 13 or 14 of the escort vehicles, along with their weapons. The Dutch soldiers were left unharmed.

Throughout this period, the Serbs assured the Dutch, their U.N. superiors, and the civilians themselves that all of the refugees would be taken to safety. General Ratko Mladic, the leader of the Serb forces at Srebrenica, guaranteed that the refugees would be treated in accordance with the Geneva Conventions. Also concurrent with these events, 31 Dutch soldiers were being held hostage by the Serbs.

On the night of the 12th, the Serbs began taking the men in the “white house” away. In this case, Dutch escorts were forbidden to accompany the convoys right from the point of departure. As this was happening, other events, described in the U.N. report, were being witnessed by the Dutch soldiers:

[D]uring the evening of 12 July, a Dutchbat [the Dutch battalion] soldier saw about 10 people being led by two armed BSA [Bosnian Serb Army] soldiers in a westerly direction from the Dutchbat compound towards a dirt track. Several soldiers from Dutchbat went to the area on 13 July and found the corpses of nine men near a stream. All of the dead had gunshot wounds in their backs at heart level. In another incident, Dutchbat personnel saw BSA soldiers force at least five men into a large factory opposite the Potocari compound. Shortly afterwards, they heard five or six shots. A Serb soldier later emerged from the factory, armed with a pistol Another Dutchbat soldier described an incident where he saw a man kneeling or sitting in the middle of a group of soldiers. The

group was approached by a number of Serb soldiers, who took the man and dragged him to an area behind a house. Screams and a shot were then heard, and the soldiers returned alone, shook hands with the other Serbs and left”

On the morning of the 13th, the Serbs resumed the deportation of the population outside of the compound. They continued to separate the men from the rest, although they were no longer being placed in the “white house,” but were instead being led directly to the buses. Again, the Dutch were not allowed to follow the vehicles carrying men.

In the late afternoon, the Serbs turned their attention to the remaining civilians—those who were inside the Dutch compound. By this time the Dutch knew of the nine bodies that had been found near a stream. They had also witnessed at least one killing of a Muslim male, shot in the back of the head right in front of the compound. But guided by their concern for their own safety, their inadequate weaponry, and orders from above to avoid confrontation and (U.N.) casualties, the Dutch cooperated fully with the Serb demand that all of the refugees be handed over to their control. Seeking to avoid panic in the camp, a Dutch officer has stated that they kept secret from the Muslims knowledge about any killings, including both the corpses at the stream and the man shot just outside the gate.

Nevertheless, the men inside the camp feared for their lives. They expressed to the soldiers their belief that they would be killed. They begged not to be turned over. These concerns were passed on to the battalion’s Deputy Commander, who was at that time also reminded of the bodies found near the stream. The pleading was to no avail.

Before expelling the Muslims from the compound, the Dutch made a list of 239 of the 300 or so men among this final group of refugees (the other 60 refused to give their names). The Dutch soldiers then proceeded to round everyone up. They set up tape to help guide the refugees to the gate, where they were given over to the Serb soldiers. As before, the men were separated from the rest, and the two groups were then put on separate buses. Those Dutch personnel involved in leading the Muslims out of the compound have since stated that since most of the men were on a list, they believed the men would enjoy some degree of security. All 239 men are still missing.

The larger story of Srebrenica, which began to emerge in the weeks after, was described in a press release issued by the International Tribunal for the Former Yugoslavia four months after the events:

After Srebrenica fell to besieging Serbian forces in July 1995, a truly terrible massacre of the Muslim population appears to have taken place. The evidence tendered by the Prosecutor describes scenes of unimaginable savagery: thousands of men executed and buried in mass graves, hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mothers' eyes, a grandfather forced to eat the liver of his own grandson. These are truly scenes from hell, written on the darkest pages of human history.

From this tragedy, at least one lesson did emerge. When a nation or group of nations offer a people sanctuary, and take actions that dispossess those people of the capacity to take responsibility for themselves (e.g., the arms embargo on Bosnian Muslims), the protectors *must* accept the burdens of that responsibility. They must actually provide protection. They must be willing to sacrifice their own lives. Furthermore, as was the case with the United States in Kosovo, if actions are taken to provide others with protection, the intervening nation cannot allow its desire to avoid losses to its troops to trump all other concerns, especially when those concerns include the safety of civilians.

After nine years, the Communitarian Platform is again open for endorsements. The text of the platform, a list of previous endorsers (which includes John Anderson, Robert Bellah, Betty Friedan, Francis Fukuyama, and other leaders of society), and a form to sign the platform are available at www.communitariannetwork.org.

AUTHORITARIANS, LIBERTARIANS, COMMUNITARIANS

From the Authoritarian Side

I Have a Cousin Named Rover

Try to put yourself in her shoes. You're visiting a local zoo, or in this case the Canadian Agriculture Museum, and you discover that—gasp!—you and a resident cow shared the same name. The horror!

As the *New York Times* reported, such was the experience of a Canadian woman. Not happy with the situation, she complained to the relevant authorities. In response the institution banned giving human names to newborn animals. And while an ensuing uproar resulted in the policy being repealed, other stories of government restrictions on speech in Canada have come to light.

In Toronto, once dubbed “Hogstown,” a law proposed by the district school board would essentially ban students from mocking the city or making jokes at its expense. In a similarly restrictive move, the Canadian Broadcast Company (CBC) refused to air an American-made commercial that depicted a funny white man in a faux Indian headdress attempting to instruct elderly folk in the performance of a so-called rain dance. The CBC said that the ad belittled Indians and old people and thus deserved to be banned. In addition, the Canadian Radio-Television Telecommunications Commission investigated a local Winnipeg radio station and threatened to revoke its license after two talk show hosts “made anti-gay remarks.” The station, in order to keep the license, had to ban from its airways all “badgering, ridicule, or insult” and any speech likely to offend “a considerable portion of the audience.” Howard Stern and Rush Limbaugh should be grateful they were born south of the border.

No Good Deed Goes Unpunished

Wintercomfort, a day center for the homeless in Cambridge, England, has strict rules banning drug use. The center's policy is simple and clear: anyone suspected of dealing or using is permanently banned from returning to the premises. To facilitate carrying out the ban, a book listing all banned persons is maintained by the Wintercomfort staff. Ruth Wyner, director of the center, and John Brock, the center's project manager, adhered to the policy, adding names to the list and removing from the premises those who were on it. Wyner had even once called the police to ask for help in removing a client who had been banned. (The police response was that they could not help as the client was not acting in a violent manner.)

So Wyner and Brock were quite surprised when they were arrested and convicted for "allowing the supply of heroin on the premises," and were absolutely shocked—as was much of England—when the two were sentenced to five and four years in prison, respectively—terms they are now serving.

The charges and conviction were based on a police sting operation. Having discovered drug activity immediately outside of Wintercomfort, the police decided to send two officers undercover. They planted surveillance equipment inside the center and also carried hidden cameras on their person. In a four-month period in 1998 they recorded more than 300 hours of tape. In this mass of potential evidence police were able to capture a total of *eight* drug deals occurring at the center, *all out of sight of the defendants*. Nevertheless, Judge Jonathan Haworth justified the harsh sentences on the grounds that Brock and Wyner had created "a haven for heroin dealers."

In the eyes of many Brits, the judge's handling of the case has raised issues beyond that of equitable punishment. In the course of prosecution, police requested the list of all banned clients. Wyner refused to hand it over, citing Wintercomfort's confidentiality rule, which was modeled after Britain's Citizens Advice Bureau. The rule was intended to facilitate building a trusting relationship with clients, and also to ensure the safety of the staff. Judge Haworth was not convinced, finding that the refusal to turn over the book constituted a willful obstruction to the police investigation. The judge stated that the rule "kept them [the staff] from effectively removing dealers and made them responsible for the trafficking on their premises."

Adding at least a bit of irony to insult, Wyner—who is imprisoned alongside others convicted of “drug crimes”—has since been assigned the task of counseling fellow inmates addicted to heroin, a role that requires her to adhere to a strict confidentiality rule. Wyner explained that prison officials “were adamant ‘confidentiality is paramount, otherwise no one would use the service.’”

Wyner, 49, has worked with the homeless for 23 years and has two children. Brock, also 49 and parent of two, suffered a nervous breakdown upon entering prison and was ruled a risk to himself. His 10-year-old son wrote a letter to Home Secretary Jack Straw asking for his release writing that he felt it was “unfair and unjust that my dad should be put in prison for doing his bit for caring for the homeless.”

The case has created a major controversy and has gained the attention of Members of Parliament.

From the Libertarian Side

Woe for the Poor—“Data” Poor—Web Corporations

Libertarians are once again attacking policy regulations enacted to prevent websites from soliciting minors’ personal information without first obtaining the consent of a parent or guardian. In October 1999, the Federal Trade Commission unanimously approved such restrictions. But, complains Ryan H. Sager in a *Reason Magazine* editorial, these “hastily” approved regulations make “much ado about next to nothing” and are simply the consequence of “apocalyptic rhetoric.”

The purpose of the rules is to protect children from unknowingly subjecting themselves to marketing efforts from both the companies they give their information to as well as the organizations that buy the information. Ironically, Sager claims to be concerned that many children will be at a disadvantage because their parents may not speak the language, know how to use computers, or have credit cards—a concern that smacks of the paternalism libertarians so often accuse others of.

Sager is also worried that “many smaller outfits do not [have the resources to solicit the necessary permissions], putting them at a

competitive disadvantage.” In contrast, he writes, large companies such as Disney and the Discovery Channel will still be able to finance such personal information-gathering, even with the new FTC regulations. His confidence in this assertion is curious at best. If the discussion were on any other topic, Sager would surely be telling us that one of the wonders of the Internet is how it empowers the small entrepreneur. Why it would be more difficult for a small operation to obtain parental permission than it would for a larger one is far from clear.

From the Community Side

A Harlequin Fatherhood

Think of Harlequin romances, and “hot and heavy” will probably come to mind before “fatherhood and family.” Harlequin novels have not been known to describe shining examples of moral rectitude. That, however, may be changing—at least to a degree.

As reported by the Institute for American Values, fatherhood has become a central Harlequin plot driver. Recent novels include *Do You Take This Child?*, *The Secret Baby*, *McCallister’s Baby*, and *The Father of Her Child*. In these new modern family tales, it’s no longer the case that love precedes marriage which precedes sex which precedes baby. However, Harlequin must be given some credit for incorporating all of the elements in some fashion along the way. In these latest offerings, man and woman meet and conceive a baby in a moment of passion, which quickly cools when Mom discovers she is pregnant. Inevitably Dad has a change of heart, recognizes his paternal responsibilities, and even finds love and commitment to his child’s mother. And strangely, as Harlequin’s female leads reflect the contemporary hesitancy regarding marriage, it is the men who realize the primacy and importance of familial relationships first. Romantic, indeed.

Addicts in Acuras Getting Smacked

What is being called a “drug user liability bill” has been introduced to the Maryland Legislature. The bill, drafted by Baltimore’s Community Law Center, would allow community groups and treatment centers to sue the rich drug user who goes to a poor neighborhood to purchase drugs.

As reported by the Center for the Community Interest, the bill's supporters reason that the affluent users are liable because they help perpetuate inner-city drug markets. Anne Blumberg, director of the Law Center, testified to this effect: "The customers are not innocent bystanders, but active participants in illegal activities which destroy people's lives, neighborhoods, and properties." If adopted, the law would allow for judgments of up to \$25,000 against those who illegally purchase drugs, guns, or sex.

Beyond the Booming Market

We tend to associate economic prosperity with greed, hedonism, and self-centeredness. Yet as the U. S. continues to enjoy the longest period of economic growth in its history, more Americans than ever are turning to their communities and embracing volunteerism.

According to a survey recently released by the Gallup organization, over 109 million Americans gave an average of three and a half hours per week to volunteer work. This represents a 36 percent increase in the number of Americans volunteering since 1987. As cynicism about the effectiveness of government to solve social problems continues to grow, more and more Americans seem to be recognizing the value of community-based efforts to tackle difficult issues.

In addition, many parents are using volunteerism to teach values. According to the American News Service, nearly one in five Americans volunteer at least once a week as a family project. Steve McCurley, a Washington state-based consultant in volunteer management, notes, "They [parents] look at family involvement as a way to demonstrate values without being preachy. And the kids like it as well."

Beyond an expanding role in the family, volunteerism is penetrating many corners of American life. In the nation's capital, a group called Single Volunteers of D.C. has combined matchmaking with volunteer work. At the University of Texas, volunteers use the Internet to become "virtual" tutors, mentors, counselors, and teachers for people with disabilities. And in New Jersey, the Holiday Project arranges for volunteers to visit with the elderly and infirm over Christmas, Hanukkah, and other holidays.

Rachel Mears and Joseph Ura

COMMENTARY

The Universalist/Relativist Human Rights Debate

Daniel A. Bell is among the more sensitive of Western intellectuals when it comes to the “Asian values” debate. Unlike most, he does not dismiss the cultural relativist argument out of hand; in an appropriately qualified sense, he embraces it. Resistant to cultural imperialism (“colonizing” via claims of cultural superiority) and similarly insidious cultural ethnocentrism (“Westernizing” via claims of cultural bias), he works to discern the basic human values that are shared worldwide, to forge common conceptions of human rights, and thereby to lessen the tensions that divide those who assert the universality of internationally prescribed human rights and those who insist that human rights are a function of local culture. For these efforts, he must be complimented.

However, in his fictional dialogue (“Are Rights Universal? The ‘Asian Values’ Debate,” Winter 2000), Bell does not move the inquiry much beyond where he found it in his anthology (with Joanne Bauer), *The East Asian Challenge for Human Rights*, on which his discourse is largely premised. His core thesis is that “rights—if they’re to be meaningful in practice—must have *some* grounding in the local culture.” Billed by this journal as “a third position,” presumably because it is neither wholly universalist nor wholly relativist, it is supported by essentially two complementary arguments: *first*, that, to be effective, human rights activists should pay more attention to “local justifications for human rights” (religious or secular) because “cultural traditions can shed light not only on the most effective arguments for human rights, but also on the groups most likely to bring about human rights reforms”; *second*, that, for the same reason, human rights activists should be “not . . . too abrasive in pushing for human rights in the region” lest they be perceived as “high-minded and self-righteous,” and therefore resisted. Unless we are Jesse Helms-style jingoists, these arguments, however expedient, are appealing for the cosmopolitanism or ecumenicism they display. But they’re not new.

More importantly, they do not resolve the universalist-relativist dilemma, ergo do not move the cross-cultural project very far. (Bell's fictional construct of two protagonists who are essentially pro-global human rights but unchallenged by a competing perspective more or less assures this result.) Even if deferential diplomacy (or its appearance) is desirable most of the time, a local cultural justification for human rights, however strategically attractive, is no more conceptually satisfactory an answer to the cross-cultural challenge than is the claim that universalist international human rights law settles the issue. In the competition for social control that inheres in all human rights contests, by what criteria and according to whom is it decided that one local tradition should override another? Other than to acknowledge that "the question of power—of who speaks for a tradition—is an important one," Bell does not tell us. It is a complex matter, and perhaps he spells it out in his forthcoming book, *East Meets West: Human Rights and Democracy in East Asia* (from which his dialogue is excerpted). If so, hurrah! Without an analytically neutral approach for deciding when one cultural claim trumps another, be the contest domestic or international, the credibility of a pro-human rights position, however much grounded in local religious or secular arguments, is not likely to succeed very far and thus not be ultimately persuasive.

Why is this so? In a recently published essay in *The Future of International Human Rights* (edited by Stephen Marks and myself), I pose the following dilemma, quoting the germinal work of McDougal, Lasswell, and Chen in *Human Rights and World Public Order*:

Values are preferred events, "goods" we cherish; and . . . the value of respect, "conceived as the reciprocal honoring of freedom of choice about participation in value processes," is "the core value of all human rights." In a world of diverse cultural practices and traditions that is simultaneously distinguished by the widespread universalist claim that human rights extend in theory to every person on earth without discriminations irrelevant to merit, the question thus unavoidably arises: When are cultural differences to be respected and when are they not?

Then, recognizing my own vulnerability to cultural bias insofar as I rely upon analytical concepts that derive from my own culture to describe and assess realities in others, I attempt to address this issue by proposing a "methodology of respect" that first adopts an observa-

tional standpoint akin to John Rawls's "rational person" acting in an "initial position" of equality with others behind "a veil of ignorance" as to her or his particular circumstance in the public order of which he or she is a part. From this more or less neutral observational standpoint, I postulate the world public order goals that would likely result from it, outline the intellectual tasks required to facilitate such goals in the concrete case (clarification of community policies; description of past trends in decision; analysis of factors affecting decision; projection of future trends in decision; and invention and evaluation of policy alternatives), and conclude with an appraisal and recommendation.

In other words, to take seriously the truth that respect is "the core value of all human rights," there is, I believe, no escaping that cross-cultural decision making about relativist/universalist controversies necessarily must reflect the complexity of life itself, implicating a whole series of interrelated activities and events that are indispensable to effective inquiry and respectful choice in decision. And to this end, I join other human rights theorists and activists in advocating the importance of dialogue across cultures and societies, among them Bell who, to his credit, sees "a need for genuine dialogue—including more input from the non-Western world—over the shape of a truly international human rights regime." But this dialogue must be not simply about ethics and morals; it must be of a kind that can yield substantial detailed consensus on the many factual and policy-oriented questions that absolutely need to be asked—hopefully systematically in keeping with a methodology of respect such as I have urged—if the core value of respect is to be honored, as surely it must, in all relativist/universalist decision making. Let's face it: whether they be locally or internationally inspired, one-sided characterizations of legitimacy and priority, which by definition discount the centrality of the value of respect in human rights, are likely to undermine—over the long term at least—the moral credibility of their proponents and the defensibility of their particularistic objectives. That is the bottom line.

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