

The Responsive Community

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Testing the Resilience of American Values

Jeffrey Rosen

When President Bush signed an executive order allowing foreigners suspected of international terrorism to be tried in special military tribunals, many on the right as well as the left complained that he had seized dictatorial power and betrayed basic American values of liberty and equality. But in fact, those values have proved to be both malleable and resilient over the course of American history, and their most reliable defenders have been the American people rather than judges interpreting unalterable principles of law.

In the face of Congressional pressure, the Defense Department has now proposed regulations for the military tribunals even more protective of basic liberties than those originally proposed by the Bush administration. In this and other legal debates connected to September 11—in particular, the evolution of the USA Patriot Act—a combination of Congressional pressure and public vigilance has ensured that the administration's response ends up being more measured than its initial instincts. As a result, the most striking aspect of the legal response to September 11 is how relatively restrained it has proved to be.

Throughout the 19th and 20th centuries, American protections for free speech and due process of law evolved dramatically, along with national views of permissible forms of discrimination. After

World War II, the nation grew more individualistic, more egalitarian, more inclusive, more suspicious of authority, and more enamored with legalistic procedures. But these trends could be slowed or even temporarily reversed without changing the character of America beyond recognition. During wartime, there have been serious assaults on civil liberties that appear unnecessary and ill-advised in hindsight.

But the nation has survived to become ever more liberal and equal. As Alexis de Tocqueville wrote, democracy in America will become more and more egalitarian in the long term—but there may be bumps along the way.

So what elements of American constitutionalism are essential and not negotiable? What legal protections and political institutions could not be jettisoned without turning America into, say, Chile under General Augusto Pinochet, a country that seemed orderly on the surface but where the order was maintained by secret courts that suppressed free speech?

There are certain minimal requirements of democracy and limited government: an independent judiciary, free elections, and basic protections for free speech, free association, and due process. But the truth is that there are few institutions and constitutional principles that haven't been adapted to fit the perceived needs of any given moment in American history and can't be similarly adapted in the future. And if there is a line that separates the United States from Chile, the restrictions proposed by the federal government in the wake of September 11 haven't crossed it yet.

The most vigorous critics of the Bush administration do claim that the government is using its new powers to protect itself from scrutiny. "What this really looks like is soft authoritarianism," said Herman Schwartz, a law professor at American University who advises emerging democracies on constitutions. "You have a very powerful secret police, and corners constantly being cut; you have a free press, but continuous pressure on it; a government which recognizes that it can't become an authoritarian or totalitarian government, but nevertheless wants to squelch opposition."

It is hard, however, to point to any formal suppression of dissent, let alone anything comparable to the government censorship imposed after World Wars I and II. Pressures to curb free speech today come

primarily from public opinion rather than federal or state governments.

Other critics of the administration argue that noncitizens as well as citizens are entitled to due process, and that there is something un-American about depriving noncitizens of basic procedural protections. “The most troubling thing is the detentions,” said Akhil Reed Amar, a professor at Yale Law School. “Who are these thousand people and what are they being charged with?”

Alan Brinkley, a historian at Columbia University, said: “Habeas corpus is gone, trial by jury is gone. This is one of the most extraordinary assaults on civil liberties, albeit not of citizens, in our history.” Except for the Japanese internment during World War II, he said the United States has never targeted citizens or noncitizens “in measures that would strip from them virtually all of the constitutional protections.”

It is not clear whether President Bush’s executive order does, in fact, suspend habeas corpus appeals for noncitizens convicted in a military court. Nonetheless, Charles Fried of Harvard Law School insists that even if President Bush has suspended the writ of habeas corpus in the military tribunals, he would be justified. In fact, the Constitution allows Congress to suspend habeas corpus “when in cases of rebellion or invasion the public safety may require it.” Lincoln got away with usurping Congress’s prerogative during the Civil War.

“Is this due process?” asks Professor Fried. “Yes. It is that process due under the laws of war. The British call it principles of natural justice, recognized universally: that you be tried before an impartial tribunal; that you have a chance to hear the evidence against you, to question and to produce your own evidence, and the right to some kind of assistance of counsel, although not necessarily the person you’d want to have.”

The refusal of Congress and the president to impose more draconian restrictions on noncitizens has impressed some scholars of immigration. “There’s been a remarkable degree of self-restraint so far, which I think speaks well for the country in its attitude toward aliens,” says Peter H. Schuck, a professor at Yale Law School. Professor Schuck insists that the current treatment of noncitizens looks nothing

like the internment of Japanese Americans during World War II. “There hasn’t been a whisper of that kind of policy,” he said, “and the president’s emphasis on the rights of Muslims and Arabs in this country was unprecedented for a president in time of war.”

It is true that America’s attitude toward immigration and undocumented workers seems to be growing more restrictive in the days since September 11. But even a reversal of the postwar trend toward welcoming immigrants could hardly be called a violation of basic American values, in light of the shifts in immigration policy through the 19th and 20th centuries. “We’ve had closed borders, open borders, and semi-open borders,” says Alan Wolfe, a professor of political science at Boston College. “If we were to now say that illegal immigrants who have overextended their visas have no right to be here, that would be tighter than where we were over the last 10 years, but looser than we were” in the 1950s.

For most of American history, distinctions between citizens and noncitizens were far more dramatic than they became at the end of the 20th century. The classical model of citizenship, evident at the nation’s founding, gave government broad discretion to discriminate between citizens and noncitizens. The Chinese, for example, were prohibited from naturalization in the 1880s, and the Supreme Court upheld Congress’s decision to deport Chinese laborers. It wasn’t until after World War II that the Supreme Court created a more expansive view, in which distinctions between citizens and noncitizens became less significant.

Perhaps the real story after September 11 is that America hasn’t yet come close to abandoning any immutable principles of its national identity. But might it do so in the future? Today, for example, any government suppression of citizens’ First Amendment rights of free speech and association could be viewed as crossing a line in a way that would not have been the case in the 1920s, during the Palmer raids, and in the 1950s, in the McCarthy era. Now that several generations have come to regard an ever more rigorous protection of free speech as fundamental, the bar for what government can acceptably do has been raised.

But no citizens' rights of free speech have been suppressed by the government so far. "Freedom of association is the bedrock of who we are," said Roger Wilkins, a history professor at George Mason University. "That came under withering attack in the 1950s, but I don't see any threat to it now." The most plausible criticism of the wartime emergency measures is that some seem to have no end in sight. For this reason, the challenge will be to ensure that measures adopted in the name of national emergency don't endure after the emergency ends. As Harvey C. Mansfield, the Harvard political theorist, warned, "The trouble of speaking about necessity is that that concept is elastic, and it can be stretched to include many things that aren't really necessary."

What America has learned after September 11 is that the most fundamental aspects of its national identity today are political, not legal. They must be defined by politics rather than the courts. And when it comes to national politics and values, Americans' commitment to liberty remains strong.

Before the Twin Towers were destroyed, it was easy to dismiss as a bromide Justice Learned Hand's declaration during World War II that "liberty lives in the hearts and minds of men and women; when it dies there, no Constitution, no law, no court can save it." But Hand was right. One heartening response to September 11 has been the determination, by civil libertarians on the right and left, to ensure that restrictions on liberty have some logical relation to increases in security.

The lack of a similar civil libertarian tradition in the democracies of Western Europe doesn't make them antidemocratic. But America's civil libertarian tradition—rather than its courts, lawyers, or Miranda rights—is what makes the country distinctively American.

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Is Racial Profiling a Liberal Myth?

Heather Mac Donald

I've been amusing myself recently with the following experiment: I call up the most strident anti-police activists of recent years, including Washington's local police scourge, Georgetown law professor David Cole, who argues that every aspect of the criminal justice system is racist. I ask these police critics the following question: Suppose that in the wake of September 11, the FBI decides to check out recent graduates of American flight schools to see who else may be plotting to use airplanes as weapons. Which students, I ask, should the FBI investigate—all of the would-be pilots, or a subset of them?

Without exception, I get the following answer: "The FBI should investigate everyone."

"Everyone?" I respond. "That's a big number. You'd be stretching the resources of the FBI dangerously thin. Wouldn't you look," I ask, "at a student from Saudi Arabia more closely than you would at someone from Kentucky?"

Nope, comes the reply. The FBI has to investigate everyone equally to avoid racism. A civil liberties law professor from St. Louis University even insisted: "I'm sure the FBI has the resources to investigate everybody."

Now I have drawn the following conclusions from my experiment: First, these self-described policing experts know absolutely nothing about police work. Any police investigation has to use known facts to narrow the scope of the inquiry, since manpower is finite. In this case, the FBI would be nuts *not* to use the nationalities and religious identities of the 19 hijackers to search for their co-conspirators among flight school alumni, since the hijackers themselves define their mission religiously.

Yet despite their obvious ignorance, the police critics in my canvas and others like them have controlled the public discourse about law enforcement for the last half decade, creating a public relations and policy nightmare for cops.

I also conclude from my experiment that if these critics exert the same influence over counterterrorism as they have over domestic policing—most significantly, through the anti-racial profiling movement of the 1990s—we're all in trouble. Indeed, we probably already missed an opportunity to avoid the terror of 9/11 because of their efforts.

The debate around racial profiling is ultimately a debate about how to interpret numbers—specifically, the high stop and arrest rates of minorities. The people screaming about racial profiling hope to persuade the public that if the police stop and arrest proportionally more blacks than whites, for example, it's because officers are racist.

But there's obviously another possible explanation: blacks are stopped and arrested more than whites because they commit more crime; racism has nothing to do with it.

To see how this debate plays out in practice, let's look at a beloved statistic of anti-police activists in New York. Blacks are 25 percent of New York City's population but are the subject of 50 percent of the stop-and-frisks conducted by the New York Police Department.

Now this statistic provides clear evidence of police bias, as the activists claim, only if all groups commit crime at equal rates.

But the facts are these: Blacks in New York are 13 times more likely to perpetrate a violent assault than whites, according to victim identifications of their assailants. Blacks commit about 62 percent of the assaults in New York City, so they are actually being frisked less than what their level of crime would predict.

Crime data and community complaints about crime, not racism, send the police to minority neighborhoods; once the police are deployed there, so-called racial profiling would be useless, because most people on the street are of the same race. Instead, the police look at suspicious behavior and location—a known drug corner, say—in determining whom to stop. This is just good police work.

The result of the campaign against the police has been officer demoralization and unnecessarily strained police-community relations in minority neighborhoods. In those cities where the anti-police rhetoric has been particularly virulent, such as Cincinnati or Los

Angeles, the cops have pulled back from discretionary activity, such as getting guns off the street. Crime has shot through the roof.

Unfortunately, it's not the ACLU that pays for police demoralization, it's the minority victims of crime. As I've discovered, there is a legion of law-abiding minority citizens in poor neighborhoods who see criminals, not the police, as the biggest threat in their lives, and who support law enforcement with all their hearts. The mainstream press, however, never seems to find them.

Now the exaggerations of contemporary police criticism would be bad enough if they only resulted in more domestic lawlessness. But I fear that they have also left us vulnerable to terrorist attacks.

In 1996, Vice President Al Gore chaired a commission on aviation security to strengthen airline defenses against terrorism. When word leaked out that the commission was considering a profiling system that would take into account a passenger's national origin and ethnicity, among other factors, in assessing the security risk he posed, the anti-law enforcement, as well as the Arab, lobby went ballistic. The counsel for the ACLU fired off an op-ed to the *Washington Post* complaining that "profiles select people who fit the stereotype of a terrorist. They frequently discriminate on the basis of race, religion, or national origin."

Now when the author invoked the terms "stereotype" and "discriminate," the reader was supposed to shriek in revulsion and march on the Federal Aviation Administration (FAA) in protest. But can we turn off our exquisitely-honed racism radar for a moment and consider the question of terrorist profiles with cold reason? The ACLU's counsel complains that "profiles select people who fit the stereotype of a terrorist." But a stereotype in this case is nothing more than a compilation of facts about who has attacked American interests in the past and who, given what we know about the networks that promote anti-American terrorism, is most likely to do so in the future. It is al Qaeda and its brethren that have defined themselves by religion and regional interest, not American law enforcement.

Beyond mere numerical odds, there is no inherent connection between race and robbery. Whites may commit proportionally less robbery than blacks, but commit it they do. Islamic anti-American terrorism, on the other hand, is by its very definition perpetrated by

Islamicists to avenge American imperialism in the Middle East. If we concentrate our investigation on Middle Eastern Muslims, we are not playing the odds, we are following the terrorists' own self-definition. We run virtually no risk of overlooking terrorists if our investigation ignores Unitarians from Minnesota, whereas, by contrast, the police will overlook robbers if they never consider whites as suspects.

Such hard truths about the terrorist threat, however, violate the central precept of our modern discourse about crime and law enforcement: that all groups commit crime, or, in this case, terrorism, at equal rates. So the Gore Commission dutifully abjured the inclusion of national origin, religion, ethnicity, and even gender in its recommended passenger profiling system. The result, the Computer-Assisted Passenger Profiling System, or CAPPs, omits precisely those criteria that are the major predictors of a predisposition to anti-American terrorism. Instead, CAPPs looks only at such behaviors as cash payments for tickets and one-way trips, behaviors which terrorists can easily change.

The anti-law enforcement ethos of the time further emasculated the terrorist-fighting potential of CAPPs. Because questioning or searching someone was now seen as akin to brutality—even, apparently, when performed by private security guards—the CAPPs system would be used only to secretly screen checked luggage; the owner of that luggage would not himself be searched, for that would be discriminatory.

Had a fully rational profiling system been put into place instead of CAPPs, one that takes advantage of everything we know about anti-American terrorism, there is a chance that the September 11 plot would have been foiled. As it was, two of the September 11 terrorists were flagged that day, presumably because of their travel itineraries and method of payment, but, consistent with the rules of the system, only their checked luggage was scrutinized. Had they themselves been searched, security officials may have wondered why two Arab men already under suspicion were carrying box-cutters, and looked further.

After the implementation of CAPPs, as the hijackers were learning to fly and casing their targets, the promoters of the equal crime and

terrorism fiction busily kept up the pressure. Hussein Ibish of the Arab-American Anti-Discrimination Committee fumed in early 2000 that Americans were really hung up on this silly notion of Islamic terrorism. “Shadowy Arabs and Middle East terrorism fit into the mind of the media,” he sneered. Of course an Algerian had just been caught with explosives to blow up the Los Angeles International Airport for the millennium, and Jordan had foiled other millennial plots against American interests in the Middle East. But we can’t notice those facts, since doing so would contribute to stereotypes.

Islamic advocacy groups also incessantly complained about airport searches. The Department of Transportation penitentially ordered an audit of airline security checks, even though in all of 2000, only 15 Arab Americans actually filed discrimination complaints.

The results of that audit, performed last June at the Detroit Airport, remain a secret. It’s not hard to guess why.

Let’s assume that the audit shows that CAPPs still disproportionately selects people of Arabic ancestry, since it does flag passengers who have traveled frequently to terrorist-sponsoring states. Under the logic of the equal crime and terrorism fiction, the FAA would have to discard that travel criterion, since it is unacceptable that any group be shown to have a greater likelihood of terrorist associations than any other group. Before September 11, it is quite conceivable that the FAA would indeed have monkeyed with its passenger screening system until it created something that flags all groups equally. But after September 11, the FAA may be a little less willing to sacrifice safety for political correctness, so it is simply keeping the audit under wraps.

If the FAA is having second thoughts about the imperatives of the anti-law enforcement agenda, the primary keepers of that agenda have been totally unfazed by September 11.

I asked University of Toledo law professor David Harris, easily the loudest voice in the anti-racial profiling crusade, whether the New York police could rationally decide whether to focus their terrorism intelligence-gathering on mosques in Brooklyn or Catholic churches in Bensonhurst. “Why would I want to speculate on that?” he shot back, ducking the question.

I asked discrimination law professor Melissa Cole if there's an equal chance of a Scandinavian and Arab Islamic cell member. "I don't see why not," she said brightly. "Just because it's never happened before, doesn't mean [the Scandinavians] are not the next ones to commit a terrorist act."

This kind of radical skepticism may be fine for a freshman philosophy paper, but law professors should know better. It is irresponsible to argue that our severely limited resources for tracking down terrorists should be spread evenly across society.

There is a lesson to be drawn from our current predicament: bad ideas have consequences. We let them fester at our own risk.

As the campaign against the police gathered steam in the 1990s, few people spoke up against it, or tried to understand the complexities of policing that are suppressed in the anti-profiling crusade. Swearing opposition to racial profiling—and thereby implying its existence—became an easy way to show one's racial good faith, even if the swearer had not the slightest idea whether cops really practiced it. Now a construct that was bogus from the start is intruding itself into a battle even more serious than the war on crime.

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ESSAYS

MORAL IMPERATIVES

What Makes a War Just?

Jean Bethke Elshtain

From President George W. Bush to the average man and woman on the street, Americans are evoking the language of justice to characterize our response to the despicable deeds perpetrated against innocent men, women, and children on September 11. When they do this, they tap into a complex tradition called “just war.”

The origins of the just war tradition are usually traced to St. Augustine’s Fourth-century masterwork, *The City of God*. In that great text, Augustine grapples with Christian teaching’s challenge to violence. He comes to the conclusion that wars of aggression and aggrandizement are never acceptable. But there are occasions when resorting to force may be tragically necessary although violence is never a normative good. What, then, makes it justifiable? For Augustine, the most potent justification is to protect the innocent—those in no position to defend themselves—from certain harm. If one has compelling evidence that harm will come to persons unless action involving coercive force is taken, a requirement of neighbor love may be a resort to arms. Self-defense is trickier. According to Augustine, it is better for the Christian as an individual to suffer harm rather than to commit it. But are we permitted to make that commitment to non-self-defense for others? No, surely not.

The upshot of Augustine's reflections, refined over time, is that a primary rule for those committed to just war is noncombatant immunity, or the so-called principle of discrimination, meaning that non-combatants must not be the intended targets of violence. A further implication is that a carefully worked out act of mass murder against noncombatants of one's own country is an injury—an act of war—that demands a response. That response involves just punishment—not in order to inflict grievous harm on the noncombatants of a country whose operatives have harmed the citizens of one's own country, but in order to interdict wrongdoers from causing further harm and to punish those responsible for the harm that has already occurred. In taking this action, one reaffirms a world of moral responsibility and justice.

When a wound as grievous as that of September 11 has been inflicted on a body politic, it would be the height of irresponsibility, a dereliction of duty, a flight from the serious vocation of politics were one to fail to respond. The Christian tradition tells us that government is instituted by God. This does not mean that every government and every public official is godly but, rather, that he or she is charged with a solemn responsibility for which there is divine warrant. Surely it is an exercise in bad faith to accept this warrant but to disdain its effective use—even as one enjoys the benefits of that civic peace, the *tranquillitas ordinis*, for which government is responsible. A *political* ethic is an ethic of responsibility. The just war tradition offers a way to exercise that responsibility.

This way of thinking rejects both the “anything goes” ethic of Machiavellian *realpolitik* and an ethic that forswears action even if that action commits the country to the use of armed force in a responsible and limited way.

Apropos of the latter stance, it must be asked: Why are the practical alternatives to the use of armed force to preserve and protect civic peace so inadequate? Can one cry peace when there is no peace and no possibility of such, as those who have decided that an entire country is composed of “infidels” fit only for destruction are not going to cease their efforts to kill as many of those infidels as they can? What is the plausible alternative to protect the body politic? Too often one is offered pieties cast in the form of moral superiority rather than possibilities or policies.

For Civic Peace

In the immediate aftermath of the events of September 11, I said to a friend, “Now we are reminded of what governments are for.” The shepherd is charged with protecting the flock. None of the goods human beings cherish, including the free exercise of religion, can flourish absent a measure of civic peace and security. If evil is permitted to grow, good goes into hiding. Evildoers who lurk and plot in darkness and secret, who operate stealthily, and who refuse to accept responsibility for wrongdoing perpetrate harm beyond the immediate violent event. It is they who would force good into hiding as we retreat behind closed doors. What good do I have in mind? The simple but profound good that is moms and dads raising their children, men and women going to work, citizens of a great city making their way on streets and subways, ordinary people buying airplane tickets in order to visit the grandkids in California, men and women en route to transact business with colleagues in other cities, the faithful attending their churches, synagogues, and mosques without fear.

Make no mistake about it: this quotidian idea, this basic civic peace, is a great good. Of course, it is not the peace of the kingdom promised by Scripture. That awaits the end-time. Beating swords into plowshares and spears into pruning hooks, a world in which “nation shall not lift up sword against nation, neither shall they learn war any more,” is a vision connected with certain conditions, as Kenneth Anderson reminds us in a recent article. For the prophet tells us that the condition of eschatological peace is one in which the Lord’s house has been established everywhere and all “go up to the mountain of the Lord. For out of Zion shall go forth the law, and the word of the Lord from Jerusalem.” We are not there yet, to put it mildly. As Martin Luther observed: “If the lion lies down with the lamb, the lamb must be replaced frequently.”

Yet the ordinary civic peace that horrific violence disrupts and attempts to destroy offers intimations of eschatological peace and is a good to be cherished and not to make light of. It is a good we charge our public officials with maintaining. If we live from day to day in fear of deadly attack, the other goods we cherish become difficult. Human beings are fragile, soft-shelled creatures. We cannot reveal the fullness of our being, including our deep sociality, if airplanes are flying

into buildings and cities become piles of rubble composed in part of the mangled bodies of victims. We can neither take this civic peace for granted—as we have learned so shockingly—nor shake off our responsibility for helping to respect and to promote the norms and rules whose enforcement is constitutive of civic peace. St. Augustine taught us that we should not spurn worldly vocations, including the tragic vocation of the judge—tragic because he or she can never know with absolute certainty whether punishment is being meted out to the guilty and not the innocent. But we depend on judges and others to uphold a world of responsibility, a world in which people are not permitted to “devour one another like fishes,” in Augustine’s pithy phrase.

Wartime Ethics

Public officials are charged with protecting a people. As those extraordinary fire fighters in New York City said, “It’s my job.” The same holds for our military: it is their job and it is our sons and daughters who do it. This is their right authority—another vital dimension of the just war tradition and one aimed at limiting freelance, opportunistic, and individualistic violence. So even as just war permits limited resort to arms, it challenges the “anything goes” approach to violence. Responding justly to injustice is a tall order, for it means that it is better to risk the lives of one’s own combatants than to intentionally kill “enemy” noncombatants. It is often difficult to separate combatants from noncombatants, but try one must. The restraints internal to the just war tradition encode the notion of limits to the use of force. Many of these rules and stipulations have been incorporated into international agreements, including several Geneva Conventions.

During and after a conflict we assess the conduct of a war-fighting nation by how its warriors conducted themselves. Did they rape and pillage? Were they under careful rules of engagement or was it a free-for-all? Was every attempt made to limit civilian casualties knowing that, in times of war, civilians are invariably going to fall in harm’s way? It is unworthy of the solemn nature of these matters to respond cynically or naively to such attempts to limit the damage. As theologian Oliver O’Donovan put it at the time of the Persian Gulf War: Just ask yourself whether you would rather have been a citizen of Berlin in

1944 or a citizen of Baghdad during the Persian Gulf War? The answer is obvious, as every effort was made in U.S. targeting strategy to avoid civilian targets during the latter conflict.

Since the Vietnam War and the restructuring of the United States military, pains have been taken to underscore the codes of ethics that derive from the just war tradition in our military academies and in the training of our soldiers, sailors, marines, and flyers. No group in this country pays more attention to ethical restraint on the use of force than does the United States military. We do not kill or even threaten to kill over 3,000 civilians because that number of our own civilians has been murdered by perpetrators who scarcely deserve the name of either soldier or warrior. We put soldiers into combat rather than unleashing terrorists. The soldiers puts themselves at risk as surely as the fire fighters. By contrast to the terrorists, they seek to search out and to punish those responsible for planning, aiding and abetting, and perpetrating an evil deed. Just punishment is different from revenge. Revenge repudiates all limits; just punishment observes restraints.

The course thus far charted by the administration is admirable in its complexity and its restraint. The use of military force is planned as one part of an overall strategy that involves decoding messages and following and cutting off money flows. One sign that the president and his advisors are aware of the need for restraint is their renaming a mission that was first dubbed “Operation Infinite Justice” with a more modest name that does not suggest a utopian goal. Another sign is the president’s repeated insistence that our response is not aimed at a whole people or nation or way of life but is, instead, directed at those who defame their own religion, drag their own people into harm’s way, and perpetrate an ideology that has as its end the deaths of babies, people in wheelchairs, moms and dads, brothers and sisters, uncles and aunts, grandmas and grandpas, friends and lovers, going about their daily routines.

And why should they die? Simply because they are infidels—they are Americans. It matters not if you are white or black, young or old, male or female, able-bodied or with a disability, gay or straight, Christian, Muslim, or Jew—you die. The aim of terrorism is terror. The terrorists did not issue a set of demands; they simply murdered. That is why one does not negotiate with them. There is nothing to

negotiate about if the end your opponent seeks is your complete obliteration. At some point, the call to responsible action begins.

A Call to Life

This is an extraordinary moment in our nation's history. Americans tell us they are prepared for this different kind of war. But the number of those who support action against terrorism begins to waver when the question is put as to whether this force would be acceptable if "innocent men, women, and children" are the victims. No war, as I have already indicated, can be fought without putting noncombatants in harm's way. The American people favor doing everything possible to limit this damage and in this I heartily concur. One reason the country wearied of the Vietnam war was the realization that fighting a guerrilla war meant that we could not distinguish combatants from noncombatants and that, even without horrors like the My Lai massacre, our soldiers were put in the impossible position of regarding everyone as "the enemy." So respond we must and respond we shall. We are obliged to stop those who use civilians against other civilians by turning a great symbol of human freedom of movement—the commercial airplane—into a deadly bomb. We will put our combatants in harm's way to punish those who put our noncombatants in harm's way and have no compunction about mass murder. That is the burden of the just warrior. And that is his and her—and a nation's—honor.

In the dark days of Nazi terror, a brave young German theologian, Dietrich Bonhoeffer, who had been moving—remarkably so for a German Lutheran of his era—toward pacifism, committed himself to a conspiracy to assassinate Adolph Hitler, to cut off the head of the snake. He asked: Who stands fast? Bonhoeffer observed that the great evil that had appeared among the German people had "played havoc with all our ethical concepts." He was particularly severe in his criticism of those who "flee from public altercation into the sanctuary of private *virtuousness*. But anyone who does this must shut his mouth and his eyes to the injustice around him. Only at the cost of self-deception can he keep himself pure from the contamination arising from responsible action." Obedient and responsible action. One who

cares about these, Bonhoeffer taught us, asks the following question: How is the coming generation to live?

We know what happens to people who live in pervasive fear. It isn't pretty. It invites lashing out and severe isolation from a desire to protect oneself. It encourages harsh measures because, and in this Thomas Hobbes was right, we simply cannot live as human beings if we live in constant fear of violent death. Recently, my daughter and I found ourselves discussing the need for a family plan should there be a biological or chemical attack. The International Criminal Court or International Human Rights Tribunal is not going to protect us from that—or anything else. The world of international relations is not the same as a domestic legal jurisdiction that has, by definition, a punitive and enforcing arm. So we are forced to ask: Who would pick up all the children, the grandchildren? Where would we rendezvous? Should we buy gas masks? Should we discuss any of this with two five-year-olds and a seven-year-old? Already JoAnn, Christopher, and Bobby are drawing pictures of planes flying into buildings, and asking: What happens if Grandma's plane is hijacked? We reassure them, knowing that the correct answer is: there is no more Grandma. Of course, we all must die one day. But we are called to life.

Christians are taught that their Saviour came that believers might have life and have it more abundantly. There are times when the call to live demands action against those claimed by death. I do not believe this is contrary to our tradition. I believe it is consistent with it and with the fact that believers are claimed by a God of mercy who is also a God of justice.

A Stronger Nation

Alan Wolfe

The terrorist attacks against the United States, meant to divide Americans from one another, have united them as at no time since World War II. Immediately before the events, we were still discussing the 2000 presidential election and whether the person elected with more blue states than red ones—or was it the other way around?—held office legitimately. The issues we debated then included whether frozen embryos were human beings and whether the Boy Scouts could exclude homosexuals from their ranks. People talked seriously about a deep chasm between one America that was presumed to be devout and another that was routinely described as secular. Political speculation focused on whether President George W. Bush could cut taxes and expand the military at the same time and what the Democrats would do to ensure that he could not. And underlying the whole discussion, a debate was taking place over whether Americans were losing their sense of civic participation and concern for the direction of their society.

It takes a real war to make Americans realize how insignificant our culture war has been. Twice in recent years Americans have been victims of murderous terrorist attacks at home: one took place in Oklahoma, the other in lower Manhattan and on the outskirts of Washington, D.C. Oklahoma, in many ways the most conservative state in the union, symbolizes the side in the culture war that stands for a return to the religion, values, and morality of years past. Lower Manhattan, probably the most liberal slice of America, represents

modern urbane cosmopolitanism, racial and ethnic diversity, and openness to the rest of the world. And Washington, as the nation's capital, stands in the conservative mind for big government and in the liberal mind as the embodiment of U.S. military power. Yet what the terrorists proved by their acts is that, no matter how different Americans may be from one another in their religious beliefs or political views, they are all equal before the onslaught of machinery transformed into weapons. The United States really is one nation, even if it needs other nations, or international bandits without a nation, to remind it of that fact.

America was the target of the September 11 attacks because its commitments to free speech, religious liberty, gender equality, and racial and ethnic diversity were intolerable to theocrats persuaded that only one truth exists and that it is their mission to ensure that no one thinks otherwise. The United States was made vulnerable to terrorist attack because it has open borders, a dedication to civil liberties, an aversion to discrimination on the basis of group characteristics, a free market, and a strong belief that the pursuit of the good life and the quest for zealotry are incompatible. How much will change as a result of September 11? Certainly airport security will be tightened, electronic and other forms of communication will be more closely monitored, and police will be more forthright in their use of profiling—racial and otherwise—to stop violent acts before they happen. But none of these steps will change America's commitment to liberal and democratic values. Instead, the most likely effect of the terrorist attacks will be to strengthen American liberties by grounding them in reality and underscoring why we value them in the first place.

Religious Difference

Illustrative of what is likely to emerge in the America shaped by the events of September 11 is a firmer sense of the proper role for religion in a society no longer shaped by a common faith tradition. Although the Constitution formally separated church and state, America was nonetheless governed throughout the 19th century by an unofficial Protestant morality that structured its educational system, political values, approach to child-rearing, work ethic, and even foreign policy. As Catholics and Jews increasingly made the United States their home, however, the nation's understanding of morality

could no longer be based on the assumptions of one faith. Not without serious conflict, American morality did change. For a time, the term “Christian” came to replace “Protestant” in descriptions of the nation, so as to include Catholics. Then, as the country fought a war against the most anti-Semitic regime in modern history, it broadened the description once again to “Judeo-Christian,” even though Jews and Christians had been fighting each other for two thousand years.

Before September 11, there were already more Muslims in the United States than Episcopalians—and it is only a matter of time before adherents of Islam replace Jews as the largest non-Christian religious group in the country. Scholars were engaged in an effort to develop a replacement term for “Judeo-Christian” that would cover this new reality, with “Abrahamic” emerging as the leading candidate, since Muslims, like Jews and Christians, trace their origins back to Abraham. Although this term has its limits—it does not encompass Hinduism, Buddhism, or many other religions now practiced by large numbers of Americans—it does continue a longstanding process of recognizing the increasing religious diversity that characterizes American society. When President Bush spoke at a Washington mosque on September 17, praising Muslims for their “incredibly valuable contribution to our country,” his words could be understood as an official recognition of post-Judeo-Christian America. (And when, in the aftermath of attacks on turban-wearing Sikhs across the country he invited a group of Sikhs to the White House to reassure them, he moved beyond “Abrahamic” religions as well.) It took an act of Middle Eastern terrorists to make Americans realize that many peaceful, hard-working, and law-abiding Muslims live in their country.

Just as Americans have learned something about their religious diversity from the attacks launched on them, they have also learned something about the proper role for religion in a society committed to separation of church and state. Before September 11, the U.S. Supreme Court tended to draw a sharp wall between these two institutions. In June 2000, for example, the Court ruled that prayers before a high school football game, amplified over loudspeakers, created a coercive atmosphere and thus amounted to an unconstitutional establishment of religion. Although the Court’s jurisprudence in this area has often been inconsistent (it has also ruled that student fees collected at a public university cannot be denied to a conservative

Christian student publication), the trend of at least some of its decisions has been in the direction of questioning an active role for faith in the American public square.

Yet in response to the terrorist attacks, the country's entire political elite assembled in the National Cathedral and was led in prayer by religious leaders of many faiths—and no one thought to object. The fact that religion and politics were so seamlessly blended, and that no danger to the Republic followed from their mixture, suggests that in an emergency the right balance will be found. One side in the debate over religion and politics can take heart from the fact that Americans, even when they assemble in public, need the healing that faith offers to overcome tragedy. And the other side can recognize that, under contemporary conditions of religious diversity, no single religious point of view will be used to coerce others. The World Trade Center and Pentagon attacks brought out common sense on one of our most contentious issues, a lesson that may be found useful as future court decisions are handed down in this area.

One American who showed no appreciation for common sense in the days following the attacks was the Reverend Jerry Falwell, and one of the more important cultural responses since September 11 has been the widespread revulsion against his hateful message blaming gays, feminists, and civil libertarians for the tragedy. In an odd way, the terrorists were more egalitarian than Falwell: they cared not a whit whether the Americans they killed were gay or straight, left-wing or right-wing, devout or secular, male or female, black or white—or even whether they were Americans. Hatred that indiscriminate reminds us why more discriminate forms of hatred are un-American. So long as Falwell was viewed as a man who might deliver votes, politicians bent over backward to appease him. Now that he is rightly seen as a man who instead delivers hate, they will avoid him. Falwell's intolerance establishes a barrier that no preacher of hate will be able to scale for the foreseeable future. Let someone start attacking people for the fact of their difference in the years ahead, and someone else will remind them that our enemies make no such distinction.

Free to Be

But surely, it will be said, the United States has responded by going to war, and war is harmful to the exercise of civil liberty. At one level, this is obviously true: depending on how we pursue this war, we can expect pressure on newspapers to support their government, accusations against dissenters that they are aiding and abetting our enemies, and greater suspicion of those whose appearance or language marks them as somehow “different.” Those who fear a potential encroachment on civil liberties can point to the Bush administration’s proposal to Congress for new legislation that would loosen restrictions on wiretapping and would allow police and the courts to rely on foreign evidence gathered by means that did not meet U.S. constitutional standards. Yet the fact is that Congress has raised serious questions about the administration’s more draconian proposals, reminding everyone of why we insist on the importance of civil liberties in the first place. There is no reason to believe that a U.S.-led campaign against terrorism will make such extensive inroads into civil liberties that anything like a police state will result.

There are two additional reasons why we are unlikely to see substantial encroachments on freedom as we mobilize for a response to terror. The first is that America has become a much more tolerant society than it was throughout most of the 20th century. It was not that long ago when, in response to World War I, we banned the teaching of German in our schools or when, during the next world war, we locked up people who shared the same heritage—Japanese—as the enemy we were fighting. Nor can it easily be forgotten that, during the McCarthy period, we practiced a politics of intolerance that stigmatized the guilty and the innocent alike. The periods of intolerance that have marked our past have raised legitimate questions about how we will respond in the future.

Yet how we have changed! In interviews I have conducted with middle-class people from every corner of the United States, I have seen that a culture of nonjudgmentalism has become widespread in this country. With the exception of homosexuality and, to a lesser degree, illegal immigration, Americans seem increasingly reluctant to insist that certain ways of life are wrong, cruel, sinful, or misguided. Such nonjudgmentalism can have its downside; as the terrorist at-

tacks remind us, there are times when we need to insist that some kinds of acts are so evil that no excuse or justification for them is possible. But this particular variant of nonjudgmentalism has made few appearances in the aftermath of the attacks. Except for a few isolated voices on the left who found moral equivalence between the destruction of the World Trade Center and events such as the U.S. invasion of Grenada, most people in this country made the snap, and quite correct, judgment that the perpetrators of such evil acts can and ought to be punished for their deeds.

There is also a positive side to nonjudgmentalism: compared to intolerance, it allows people to find the good among the bad. That may be why we are not likely to enter a new McCarthy period in the wake of the terrorist attacks, despite the fact that most of the terrorists entered this country surreptitiously and that their religion is one that historically has fought wars against both Christians and Jews. It is true that in the days immediately following the attacks, incidents of hatred were directed not only against Muslims but also against others, such as Sikhs, who were mistaken for Muslims. There are no excuses for such deplorable acts. Yet they were not contagious; nothing in the response of the American people suggests anything like a hysterical, panic-driven movement to find scapegoats and hold them responsible. September 11 was not Pearl Harbor and we are no longer the country of the Ku Klux Klan.

Another reason exists for concluding that a war against terror will fail to result in a serious diminution of civil liberty. Past wars, for all the restrictions on free speech they brought, also significantly expanded other kinds of liberty. Before World War II, America had no modern welfare state and individuals had few protections against corporate power. In part because war demands that all of those recruited to fight it be at the peak of physical and mental health, World War II, even more than the Great Depression, modernized the American state. Once the war was over and the troops returned home, no one could make the case that veterans did not deserve access to housing through a subsidized mortgage program, to education through the "GI Bill," or to health care or death benefits. One of the effects of the war was to lift an entire generation of Americans into the ranks of the middle class and, by doing that, to expand their opportunities and those of their children. Despite the subsequent election of conserva-

tive presidents such as Dwight Eisenhower, Richard Nixon, and Ronald Reagan in the decades after the war, Republicans chose not to stop the expansion of government that the war started. It is fair to say that the old isolationist and small-government right wing never really survived World War II.

Civic Re-engagement

One of the unanswered questions stemming from the September 11 attacks is whether Americans will return to the culture of civic disengagement and disinterest that, according to critics such as Harvard political scientist Robert Putnam, has characterized U.S. society since the passing of more civic-minded generations. In some ways, the question answers itself. If rates of participation and involvement do in fact vary with generations, then the generation that will deal with the aftermath of September 11 is also the generation that will change the most. Americans in their 20s and 30s have never experienced recession or a war that threatened their homeland. Now they are getting both at the same time. That may be enough to shift their attention from dot-com start-ups to blood donation. Who, after all, would have thought that there would be more Americans prepared to help the injured than there were injured? Yet there were, and not only because the sheer violence of the attack left so few survivors, but also because those who survived wanted to do something, anything, to help. Americans went in a flash from bowling alone to surviving together.

It is also unlikely that one aspect of the recent civic disengagement—a tendency to ignore anything that takes place outside U.S. borders—will be sustainable in the aftermath of the attacks. As the president brings more foreign leaders to the White House and travels around the world in search of new partners, Americans will inevitably find themselves learning more about other countries and how their citizens view the world. No one at this point can predict how forceful and persistent the American response to terror will be. But it is not hard to predict that America will be more engaged with the rest of the world than it has been for the past two or three decades.

War cannot cure any of the pathologies that afflict the country. If indeed Americans have lost the sense of moral wholeness that conservatives believe they once possessed, they are unlikely to recover it just

because some of their fellow citizens will be called on to sacrifice their comforts, and perhaps their lives, to combat terrorism. America may give too much to rich white males and too little to women and people of color, as many on the left charge, but neither the attacks themselves nor the responses to them will eliminate inequality and privilege. Then again, perhaps America was never in quite as bad shape as many of its critics suggested. To be sure, its moral condition has changed, just as its civic life has. But such changes have always been part of American history. And they rarely go only in one direction or only at one pace. If the attacks and their aftermath have effects on American civic culture, those effects are likely to be gradual rather than dramatic. They will take the form of reminders: suggestions that there are good reasons to be concerned with public life and warnings not to turn our backs on the needs of our fellow citizens.

Public life in the aftermath of September 11 will have its frustrations and restraints. We may never be able to stop terrorists from doing what they do. Americans may never get used to the new restrictions on the freedom to travel where and when we want. Political leaders may start looking for new moral campaigns at roughly the same time that economic leaders start putting profit first. Yet some aspects of the country's public life will be better for having lived through the attacks of September 11. Before that day, the American political system, for all its faults, guaranteed a level of personal freedom and democratic stability rare anywhere in this world. That has not changed and will not change because some fanatics hate us so much for doing so many things so well. If the tragedy generates a moment to pause and to reflect on who we are as a people, and how we have changed from the days when we wrongly believed that the world's problems would never affect us, we will have matured as a nation.

The New Public Spirit

Bruce J. Schulman

The federal government takes over airline security and asserts new powers to secure the American “homeland.” Outgoing New York Mayor Rudolph Giuliani pledges that rebuilding plans for the World Trade Center must center around a “soaring monument” to those who perished at the site. Despite heightened security, record crowds fill the streets to cheer on runners in the New York City Marathon and to celebrate First Night in Boston. Meanwhile, plans for a “faith-based” initiative to turn over provision of social services to religious institutions and a fiscal stimulus emphasizing tax reduction stall in the Congress.

Already, just a few months after the attacks of September 11, Americans are renegotiating the social contract, groping toward new understandings of national community. Over the past 25 years, Americans largely stressed the market and the private sphere over collective action, religious commitments over secular community, and individual rights over civic obligation. While it is too soon to draw definitive conclusions, the nation appears to have embarked in a different, more communitarian direction—rethinking the rights and the responsibilities of citizenship.

Trauma as Catalyst

Of course, war and national trauma always redefine American society, often in ways that do not become apparent until years after the crisis has passed. Six years of Franklin D. Roosevelt’s New Deal barely relieved the poverty and misery of the Great Depression, but the collective effort altered the fundamental relations between state and society. It established the Social Security system, made organized

labor a full partner in American public life, and brought immigrant Catholics and Jews into the counsels of power and the corridors of culture.

World War II similarly reknit the fabric of American life. The stunning success of the top secret Manhattan Project gave science new prestige and authority. It forged an alliance between government, universities, and research laboratories that still defines the scientific enterprise today and that no one could have predicted on the morning of Pearl Harbor.

Even more telling, World War II unleashed the civil rights revolution of the 1950s and 1960s. Military service created a cadre of activists and leaders—veterans who returned to the segregated South unwilling to accept the injustice they had fought to eradicate on the battlefield. Although not immediately apparent, the war against Fascism thoroughly undermined the idea of racial segregation. After the Final Solution, notions of racial hierarchy, the very idea of fixed racial differences at all, became unacceptable. Before World War II, most Americans, even most liberals, believed racial justice an unrealizable goal and an unnecessary distraction from more serious reform. After World War II, civil rights reached the top of the policy agenda; President Harry Truman felt obliged to take steps, like the desegregation of the armed forces, that his predecessor thought impossible.

Just months after September 11, the implications of the current crisis are beginning to emerge. While it is too soon to know for sure, a number of trends point toward a new vision of community: secular, public-spirited, oriented more toward social responsibility than individual rights.

Public Officials and Public Spaces

First, as many observers have noted, the crisis has arrested the longstanding drift toward smaller government and privatization. Since the late 1960s, Americans have relied more heavily on the market to ensure prosperity and solve social problems. Even though they embraced specific public programs, Americans spoke derisively of government, nearly always referring to it in the third person as a hostile “they,” never as the instrument of “our” national purpose. Amid the booming 1990s, Democrat Bill Clinton echoed the pro-

nouncements of Republicans Richard Nixon and Ronald Reagan that the era of Big Government had ended.

Since September 11, long scorned public institutions—the Congress, the Pentagon, even the Post Office—have become potent symbols of American democracy. Public employees have emerged as heroes while private contractors no longer seem an efficient, reliable alternative to costly government agencies. Few Americans today prefer Argenbright Security to a public agency staffed by civil servants. To be sure, President Bush has only reluctantly embraced the revival of the public sphere. His economic stimulus proposals would strip funds from initiatives not directly connected with the war on terrorism and shrink government’s capacity to take collective action in the future. But that program is unlikely to win Congressional approval.

Americans have not only reconsidered the role of public institutions, they have also taken to the nation’s streets despite continued concerns about security. Indeed, the outpouring of assemblies in public spaces—vigils, marches, athletic events, concerts, charitable functions, holiday celebrations—goes beyond a defiant response to the terrorist attacks. Rather it suggests a new understanding of the need to build civic community outside the home and the marketplace, to reclaim and rebuild genuine public spaces. Americans seek settings for informal social interaction and democratic exchange.

This vibrant street life suggests a reversal of the nation’s dependence on quasi-public spaces, such as privately owned-and-operated shopping malls, hotel atria, and commercial complexes connected by skyways and underground tunnels. Over the past three decades, the United States witnessed a thoroughgoing privatization of everyday life. Corporations and private organizations gradually assumed control over the basic services Americans relied upon, the spaces where they congregated, even the nation’s hallowed instruments of self-rule. These facilities served some of the purposes of sidewalks and town squares, parks and community centers, but lacked the openness, spontaneity, and potential for social interaction and community.

As Americans strolled through the overhead skyway or the upscale Galleria, actual physical contact between different types of people diminished—between people of different ethnic and racial back-

grounds, different lifestyles, different tastes and values, different economic status. A sense of togetherness, of shared national identity, slowly atrophied. Malls and other private spaces regulated not only the climate, but the nature, appearance, and business practices of their tenants. They policed common spaces even more strictly, fixing seating and traffic patterns and manipulating music and climate controls to encourage consumption and influence patrons' behavior. Private security forces removed vagrants, quieted boisterous teens, and harassed loiterers. Unlike downtowns or city plazas, enclosed emporia guaranteed that their favored clientele would mix only with the right type of people. Even the newest megamalls, which serve a wide variety of people, began carefully monitoring patronage and segmenting areas of the mall by demographic groups.

Still, a genuine hunger for public space persisted, a craving for the excitement of city streets and the shared experience of the town square. The renewed popularity of farmers' markets and coffee houses, the efforts to design "pedestrian pockets" in suburbs and small towns, the construction of light rail and trolley lines, the efforts of advocacy groups like New York's Project for Public Spaces in trying to revive streets and public parks—all these attested to a continuing desire for public places to walk, talk, eat, drink, garden, exercise, to discover oneself or other people. The privatization of everyday life depleted America's stock of responsive, democratic, meaningful public space, but never entirely erased the nation's desire to rediscover and resuscitate it.

The debate over the rebuilding of lower Manhattan has highlighted a renewed concern about democratic public space. Some voices argued that the World Trade Center site be left to market forces; initially even Rudy Giuliani endorsed this view. But the former mayor and many others have since joined a consensus, one insisting that the site encourage commerce and reflection, that it include memorials and space for social interaction and civic purpose. The site of the demolished towers may suggest a new model of communitarian public space for the country.

Religion and Rights

This revived community will surely be secular, rather than religious. To be sure, the immediate aftermath of September 11 featured

overt displays of faith. Churches from St. Paul's across the street from Ground Zero to the National Cathedral in Washington, where President Bush led a prayer service a few days after the attacks, played leading roles in the work of grief, relief, and community endeavor.

Still, the war on terrorism must prompt a rethinking of religion's place in the American public sphere. In past decades, religion has played an increasingly large role in public policy and social life. Public figures, even political leaders, have made open show of their spiritual beliefs and the courts have relaxed the walls between church and state. President Bush's "faith-based initiative" proposed to turn provision of social services over to religious agencies. Even the recent vogue of John Adams, the intensely religious founding father, who has replaced the Deist skeptic Thomas Jefferson in the national pantheon, testifies to a general comfort with overt displays of spirituality and a corresponding suspicion of people who do not avow religious faith.

But the national community, defined more by the flag than the cross since September 11, will likely insist on a more circumspect role for religion. Our war against terrorism—a war waged against a theocratic regime, terrorism inspired by religious beliefs—will necessarily prompt Americans to rethink the social and political influence of religion and perhaps to rebuild the barriers separating church and state. Certainly, the faith-based initiative will not proceed without much stronger safeguards.

Finally, public support for a reasonable middle ground on antiterrorism measures suggests a growing suspicion of excessive claims of individual rights. Despite the efforts of some partisans to frame the debate as a struggle between public safety and civil liberties, most Americans have remained sanguine, sensing the need for greater surveillance and security while remaining sensitive to the rights of minorities and individuals. In the process, many observers have pointed away from adversarial litigation as a vehicle for public policy and toward a more communitarian recognition of the obligations and the benefits of citizenship.

Making his farewell a few blocks from Ground Zero, Mayor Giuliani quoted from Lincoln's Gettysburg Address, the memorable oration that dedicated a blood-soaked battlefield to those who gave

their lives that the nation might live. Lincoln saw in that tragedy the potential for “a new birth of freedom,” the reestablishment of a union more generous, more responsible, more perfect than the noble experiment that had preceded it. Perhaps, as he surveyed the wreckage of September 11, the mayor saw it too.

Putting Patriotism into Practice

Senator John McCain

Since September 11, Americans have found a new spirit of national unity and purpose. Forty years ago, at the height of the Cold War, President John F. Kennedy challenged Americans to enter into public service. Today, confronted with a challenge no less daunting than the Cold War, Americans again are eager for ways to serve at home and abroad. Government should make it easier for them to do so.

What is lacking today is not a need for patriotic service, nor a willingness to serve, but the opportunity. Indeed, one of the curious truths of our era is that while opportunities to serve ourselves have exploded—with ever-expanding choices of what to buy, where to eat, what to read, watch, or listen to—opportunities to spend some time serving our country have narrowed. The high cost of campaigning keeps many idealistic people from running for public office. Teacher-certification requirements keep talented people out of the classroom. The all-volunteer military is looking for lifers, not those who might want to serve for shorter tours of duty.

The AmeriCorps Exception

The one big exception to this trend is AmeriCorps, the program of national service begun by President Bill Clinton. Since 1994, nearly 250,000 Americans have served one-to-two-year stints in AmeriCorps, tutoring school children, building low-income housing, or helping flood-ravaged communities. AmeriCorps members receive a small stipend and \$4,725 in college aid for their service. But the real draw is the chance to have an adventure and accomplish something impor-

tant. And AmeriCorps' achievements are indeed impressive: thousands of homes constructed; hundreds of thousands of senior citizens assisted to live independently in their own homes; millions of children taught, tutored, or mentored.

Beyond the good deeds accomplished, AmeriCorps has transformed the lives of young people who have participated in its ranks. They have begun to glimpse the glory of serving the cause of freedom. They have come to know the obligations and rewards of active citizenship.

Though some early critics of the program, myself included, feared that AmeriCorps members would elbow out other volunteers, they have done the opposite. AmeriCorps members are typically put to work recruiting, training, and supervising volunteers. For instance, most of the more than 500 AmeriCorps members who work for Habitat for Humanity spend less time swinging hammers themselves than making sure that hammers, nails, and drywall are at the worksite when the volunteers arrive. They then teach the volunteers the basic skills of how to hang drywall. As a result, studies show that each AmeriCorps member generates, on average, nine additional volunteers.

But for all its concrete achievements, AmeriCorps has a fundamental flaw: In its seven years of existence, it has barely stirred the nation's imagination. In 1961, President Kennedy launched the Peace Corps to make good on his famous challenge to "Ask not what your country can do for you, but rather what you can do for your country." Since then, more than 162,000 Americans have served in the Peace Corps, and the vast majority of Americans today have heard of the organization. By contrast, more than 200,000 Americans have served in AmeriCorps, yet two out of three Americans say they have never heard of the program.

In addition, AmeriCorps members often take on the identity of the organizations they're assigned to. In the process, they often lose any sense of being part of a larger national service enterprise, if they ever had it at all. Indeed, staffers at nonprofit groups sometimes call AmeriCorps headquarters looking for support for their organizations, only to find out that *their own salaries* are being paid by AmeriCorps. It's no wonder most Americans say they have never

heard of the program. And a program few have heard of will obviously not be able to inspire a new ethic of national service.

The Next Step

If we are to have a resurgence of patriotic service in this country, then programs like AmeriCorps must be expanded and changed in ways that inspire the nation. There should be more focus on meeting national goals and on making short-term service, both civilian and military, a rite of passage for young Americans.

That is why Senator Evan Bayh and I have introduced legislation to revamp national service programs and dramatically expand opportunities for public service. Many tasks lie ahead, both new and old. On the home front, there are new security and civil defense requirements, like increased police and border patrol needs. We will charge the Corporation for National Service, the federal office that oversees national volunteer programs, with the task of assembling a plan that would put civilians to work to assist the Office of Homeland Security. The military will need new recruits to confront the challenges abroad, so our bill will also improve benefits for our service members.

At the same time, because the society we defend needs increased services, from promoting literacy to caring for the elderly, we will expand AmeriCorps and senior service programs to enlarge our national army of volunteers. Currently, more than 50,000 volunteers serve in AmeriCorps. Under our bill, 250,000 volunteers each year would be able to answer the call—with half of them assisting in civil defense needs and half continuing the good work of AmeriCorps.

We must also ask our nation's colleges to promote service more aggressively. Currently, many colleges devote only a small fraction of federal work-study funds to community service, while the majority of federal resources are used to fill low-skill positions. This was not Congress's vision when it passed the Higher Education Act of 1965. Under our bill, universities will be required to promote student involvement in community activities more vigorously.

We also seek to better enable seniors 55 years and older to serve their communities in a variety of capacities, including education, long-term care, and serving as foster grandparents. Our legislation

removes the low-income requirement for participation in all three Senior Service programs, provides low-income seniors with a stipend for service, and creates a competitive grant program to provide seniors with training both to prepare and encourage them to serve.

And for those who might consider serving their country in the armed forces, the benefits must keep pace with the times. While the volunteer military has been successful, our armed forces continue to suffer from significant recruitment challenges.

Our legislation encourages more young Americans to serve in the military by allowing the Defense Department to create a new, shorter-term enlistment option. This “18-18-18” plan would offer an \$18,000 bonus—in addition to regular pay—for 18 months of active duty and 18 months of reserve duty. And we would significantly improve education payments made to service members under current law.

Public service is a virtue. This is the right moment to issue a new call to service and give a new generation a way to claim the rewards and responsibilities of active citizenship.

After eleven years, the Communitarian Platform is again open for endorsements. The text of the platform, a list of previous endorsers (which includes numerous leaders of society and intellectuals), and a form to sign the platform are available at www.comunitariannetwork.org.

A New Draft for a New Time

Paul Glastris

President Clinton has made the point in recent speeches that terror—the deliberate killing of noncombatants for economic, political, or religious reasons—has a long history; in fact, it’s as old as combat itself. And yet it has never succeeded as a military strategy on its own, and it’s not going to today. America will survive this, but it is also true that in war, defenses usually lag behind offenses. And that is where America is today. Our ability to defend ourselves against terrorism lags far, far behind the ability of terrorists to inflict damage on us.

So regardless, then, of our successes in Afghanistan, President Bush is right when he says—and he has said it repeatedly—that this is going to be a long, long war, and a war unlike any we have ever fought. In the search for precedents, people have talked about World War II. A number of people have pointed out, though, including my colleague Charlie Moskos, that a better precedent is the Cold War—more like 1948 than 1941. Like then, we are probably at the beginning of what could be a decades-long struggle that will only occasionally be played out on the battlefield, but that will nevertheless demand a reordering of our national priorities and a vast amount of treasure and attention.

The only question is: How will we mobilize our nation to fight it? Are we going to rely solely on our professional military and security forces—our Coast Guard, Border Patrol, Federal Emergency Management Agency, and so forth? Or are we going to supplement that effort by asking average citizens to take a role in their own defense? And if so, will we—can we—rely on volunteers? Or do we do what America has always done in major wars, including the first decades of the Cold War, and require service by instituting a draft?

Defensive Needs

I believe that we do need a draft and that we needed one long before September 11. The draft is sort of like an army knife: it does a lot of things very, very well. But because this is a new kind of war, we need a new kind of draft—one that would focus less on preparing men for conventional combat than on training young men and even young women for the arguably more daunting task of guarding against and responding to terrorism here at home.

Now, there's been a heartening resurgence of voluntary service in recent years. We all know that, and it's exciting and tempting to think that this new ethos of volunteerism, plus a bit more spending on the military and national security, will solve the problem. But it's my feeling that that's not the case. There's a reason America has instituted a draft in past wars and that's because volunteers don't fill uniforms. Soon after the events of September 11, for instance, newspapers reported that the phones in military recruitment offices were ringing off the hook. Follow-up stories showed that all the clamor had brought, as far as we can tell, virtually no increase in new recruits. Our patriotism, though sincerely felt, has so far amounted to flag-waving.

The need for more manpower is clear. The U.S. military actions in Afghanistan, though modest by historical standards, have necessitated the call up of large numbers of reservists. Many reservists work as police officers, firefighters, and emergency medical technicians—in other words, we are draining our municipalities of precisely the people we are going to need if and when another terrorist attack happens. In addition to that, we are likely to need thousands more men and women in uniform to guard airports, dams, nuclear power plants, sports complexes, and U.S. embassies. We are going to need more border patrol and customs agents to keep terrorists at bay. We are going to need more INS agents to track down immigrants who have overstayed their visas, Coast Guard personnel to inspect ships, air marshals, and FBI agents to uncover terrorist cells.

Standing Up for a Draft

Where are all these brave men and women going to come from? We are a rich society; we can certainly offer substantial salaries. But the fact is, even in a weak economy, there is a finite number of

competent people willing to choose a career that requires wearing a uniform, performing often dull work, like guard duty, with alertness, and occasionally being asked to put their lives at risk. Police departments all over the country prior to September 11 were already having a hard time filling their ranks. The armed forces have had to double starting pay to get half as many recruits as they did in 1989, and there are those who argue, and I think it's probably true just from my discussions with recruiters, that the quality of new recruits is not what it should be.

A draft is the best way to meet the needs for both military and homeland security, as well as for the national service idea, which has been gaining support wisely, and I think rightly, for the last few years. Previous generations of Americans would not have thought twice about this. The curious thing is the deep psychological resistance many people have to simply talking about a draft. One of the funniest things about being here in Washington is that you talk to think tank people and Congressional people, and they say, "You know personally I think the draft is a great idea, but . . ." And the but is, it will never happen. It's almost like meeting a fellow mason—oh, you're a mason too?—there's a whole room full of masons, but no one will actually say it. And I think there just simply isn't an institution or politician anywhere in this city who can stand up and say, "I favor the draft," even though they personally may favor it.

So I want to state what it is I'd like to see in the way of a draft: a three-tiered system, not unlike what they have in places like Germany, where 18- to 25-year-olds all would serve. But they would have something that's never really happened in a draft before, but which I think is very important in this day and age, and that is to have choice. And the choice would be whether to serve in the military, in a homeland security role, or in what we might call traditional national service—working for Habitat for Humanity, working for AmeriCorps, and so forth. At least the latter two of these, in my opinion, should not just be open to but demand participation of women. And I think we could probably have a healthy discussion about whether or not to include women in the military draft as well.

At the end of these 18-month to two-year stints, each volunteer would get GI Bill-type assistance for college. Both the length of service

and the amount of the assistance would be tailored to the danger of the tasks. So if you're doing peacekeeping duty in Kosovo or standing guard at a nuclear power plant, you'd probably get a bit more in the end. But the point would be everyone would serve. And as you know, during the Vietnam War, opting to fulfill one's draft requirement stateside was considered a way to save your skin. Obviously, that's no longer true.

As we've seen with the New York firefighters, it can be dangerous work.

Citizenship and Sacrifice

Michael Lind

National service has always been the bridesmaid but never the bride in American politics. From the time the idea of some kind of service more comprehensive than military duty in the militia or in the conscript army became popular in the early 1900s, it's had a lot of support—mostly on the center-left, some on the right. But national service has never really gotten very far. Now, after a century of failed attempts, we have proposals for some comprehensive service programs at the federal level.

It behooves us to ask why this idea has failed so often. Universal military training was proposed by General Leonard Wood after World War I, and there were people who wanted to revive the Civilian Conservation Corps after World War II, but they got nowhere. There was a big debate back in the 1980s, and that got nowhere either. I think we ought to look at this and ask: What are the arguments against national service that at least the majority of policymakers and the public found compelling then? Are they still valid—or at least are they going to persuade a majority of people, whether they're valid or not?

My colleague Ted Halstead has mentioned three different rationales for national service, and I think this is a useful and constructive way of thinking about it. Two of these rationales, when it comes to the subject of a draft, are extraordinarily weak. They may be good arguments for some voluntary form of service, but not if conscription or coercion is involved. Only one argument in favor of national service is very powerful. The three that he has mentioned are: the unmet needs argument, which holds that there are not enough people helping out in nursing homes, there's too much litter along the highway, there's a need to build park benches in the national parks, and so on; the character-building argument, or the argument that people should not

go for their entire education without encountering someone from a different race, a different socioeconomic background, or a different religion; and the final argument is the one based on practical military needs and homeland defense.

It seems to me to be a mistake for proponents of national service to say prematurely that we'll have the biggest possible coalition of supporters while we agree to disagree about what the purpose of national service is. I think this has hurt many of the efforts in the past. There has to be a hierarchy among these purposes, and as I say, two of them are very weak and one of them is very strong.

Unmet Needs

The weakest, in my opinion, is the unmet needs argument. In most cases this takes the form of an assertion rather than an argument. It's very subjective to say that there are needs that are not being met, not only by the private sector marketplace but also by our very flourishing philanthropic, nonprofit, foundation-based, church-based civil society. Depending on whom you ask, we have an unmet need in bringing the arts to poor children if you're on the relative left. If you're on the relative right, you might say there's an unmet need in providing manpower to faith-based church institutions.

Assuming that you can get a majority of Americans to agree on a list of unmet needs, it seems to me that you then have to go through a second process: You have to ask, can the marketplace take care of this? And if the market can't do it, then can nonprofit organizations or churches or other institutions in our existing noncoercive, nonconscriptive civil society do this? When you're dealing with the power of the state, with something like the draft, it's not enough to say that there are not enough people helping the elderly in nursing homes because of the prices of elder care. You first have to establish that you can't pay more money for adult professionals with benefits and perhaps union representation to do these jobs. And even if you can establish that, you have to say why this job must be done by the government. Why the federal government? Why not instead by the nonprofit sector, which could have a greater foreseeable role? We tend to forget about this and think it's just a question of the market or the state, but we have the world's most developed nonprofit sector.

So I think that the unmet needs argument is the least convincing argument for a draft. In a country with our own individualistic, libertarian traditions you cannot, in essence, enslave 18-year-olds to do things that might be inspiring for a nonprofit organization to do, like beautifying highways and helping the elderly. I use the term enslavement just to be provocative, as a supporter of the military draft. When you're talking about forced labor, the alternative to which is imprisonment, you have to have very good reasons for it. And having better highways and more beautiful national parks and emptying bedpans is just not a compelling enough reason for involuntary servitude to the government.

Character Building

I don't think that character building and class mixing, as much as I support both of those, are compelling reasons for a draft, either. We've now had a generation of Americans since the Vietnam War, maybe a couple of generations of affluent kids, who have essentially lived in a socioeconomic bubble. They have managed to go from birth through school through prep school through the Ivy League without encountering anyone from outside their rarefied social stratum. I think it would be good for the souls of these kids if they went out and helped the poor or helped teach children remedial instruction or even went and dug ditches. It might be good for their souls, but I don't think they should be drafted. Frankly, I don't think the federal government is in the character-building business.

The use of government coercion to shape the character of citizens goes against the American tradition—both American traditions, really. The deepest American traditions are the Jeffersonian and the Hamiltonian traditions. Both of these are uneasy with the national service tradition, which comes out of English Fabianism and certain aspects of the socialist tradition. The Jeffersonians love the idea of the citizen soldier, but only at the local level. The whole point of the local militia was to restrain federal government, so you can't simply transfer the Jeffersonian model to the national government. The militia is intended as a check on Washington, and national service, even for the military, inspires uneasiness among right-wing militia types who are genuine, although somewhat neurotic, Jeffersonians. To make matters worse, from a Jeffersonian perspective, drafting people to per-

form civilian functions is just slavery, so no Jeffersonian could support that.

The other tradition in the United States is the Hamiltonian tradition, which supports a strong centralized government, a powerful military, and a powerful central intelligence agency. At the same time, however, the Hamiltonians love the division of labor, they love capitalism, they love commerce, and they also love expertise. Everything Alexander Hamilton says about the militia in the Federalist Papers is an insult. He was the number one aide to Washington during the Revolutionary War and both Washington and Hamilton were terribly frustrated with the performance of the militia. This was the experience of many subsequent leaders, including one of our greatest generals, General Winfield Scott in the Mexican-American War. Scott got so disgusted with the militia's incompetence that he sent them all home in the middle of the Mexican War. And he won the war with only his handpicked regular troops. It was with a great sense of relief in the 20th century that most military leaders turned to creating a professional full-time military instead of relying on what was, in some cases, little more than a local rural rabble with muskets, which often ran amok and was very difficult to control. So there's a real tension between American tradition and the idea that the federal government can simply conscript you for a period of time to perform functions that are not absolutely and immediately justified by necessity.

Military Needs

It's the third argument, the military argument, that Americans have found compelling. If there is no way to defend the country adequately with your professional military (and that includes having the level of expertise and the educational credentials you want in your soldiers), there seems to me to be a compelling practical argument for a draft in order to meet manpower needs alone.

In addition, there is a moral argument that is more subjective. It is the idea that in a republic, as opposed to the old-fashioned despotic monarchies, the citizens participate, they are the owners of the state, the state does not own them. The republican ideal is not socialism, but rather something like a property owners association: in return for being associated, you take part in the administration of justice through

being a juror; you take part in the selection of leaders through voting—which used to be considered a duty, not a hobby—and you take part in defense, at least locally, through the militia. This republican ideal has faded away, and in practice our relationship with the government is largely one of paying taxes. If you never have jury duty and you don't vote and you never serve in the military, there is very little difference between living in 20th-century America and being an 18th-century Hessian subject of King George.

So there is both the moral and practical argument for military conscription. And as Paul Glastris has suggested, September 11 possibly has transformed this debate about the military aspect of national service. For the first time since the early or midpart of the 20th century, homeland defense is something that is very important, very significant. Homeland defense is not an afterthought, it's not a way of avoiding the draft. Homeland defense is actually something serious.

This leads me to draw conclusions that may hearten some and dishearten others. I think that a two-tiered program of national service, which gives you the choice between military service abroad and homeland defense within the borders of the United States, can be justified. Conscription for the purpose of homeland defense seems plausible—that is, it doesn't look as though you're simply in favor of national service on principle and you've come up with an excuse for it. No, it's something we really need to do.

What would these homeland defenders do? Well, they could provide emergency personnel support for EMS units, firefighters, and police. You would want professionals to be on the front lines, but in a lot of cases people would be needed to drive ambulances, to answer phones, to arrange those logistics behind the scenes.

Frankly I don't consider the admirable activities like many of those associated with AmeriCorps or VISTA as a legitimate alternative to homeland defense or to serving in the military. It seems to me you are at least in theory risking your life if you are responding to a tornado, if you are helping firefighters respond to a terrorist bombing, if you're helping hospitals during bioterrorism attacks. There is the same connection between personal and physical labor and sacrifice and citizenship that war abroad has historically had. Now with all due respect to the proponents of other kinds of civilian national

service, I don't think that helping young children learn to read, picking up litter on the highways, or helping the elderly in understaffed nursing homes is comparable.

The contemporary debate on national service was started by William James in his essay, "The Moral Equivalent of War." I will conclude by saying that I don't think that most civilian service is the moral equivalent of war. The connection between citizenship and sacrifice lies in actually putting yourself in harm's way. I think that the argument of national defense is the most compelling argument for national service, especially if it uses the draft. And I suspect that for most of the public, it's the only compelling argument.

For a Homeland Protection Force

Amitai Etzioni

We shall soon find out what President Bush meant when he called on Americans to do more than fly, shop, and “get down to Disney World in Florida.” Bush’s director of homeland security, Tom Ridge, is heading a task force to flesh out the president’s call for Americans to volunteer for civil defense. Some 20,000 Americans are to be invited to help police, fire, and public health departments, in ways that remain to be specified. The idea has tremendous potential, but only if it withstands attempts to bend it to advance other agendas—even though these agendas have merit all their own.

True, Americans have already responded to the assault on the United States in a particularly American way: with a grand outpouring of volunteerism ranging from blood donations to cash contributions. There also have been numerous expressions of renewed patriotism: the approval rating of the commander in chief has reached historical heights and buildings and cars have been bedecked with flags.

But. But there are strong sociological reasons to fear that these sentiments will soon dissipate, as the attack—as horrible and unprecedented as it was—recedes into the familiar, and people get caught up again in the routines of their lives. Hence, now is the time to convert the newly heightened willingness to serve into more lasting forms.

On Guard

The best place to invest this enthusiasm is in homeland protection. It is the place we most need new hands, and there cannot be too many of them. It is the service most directly related to the source of renewed patriotism. And if Americans are busy helping to guard our water resources, dams, borders, airports, and other vital public re-

sources and spaces, they will transform their nagging anxieties into socially productive activities. Indeed, just as one urges depressed couch potatoes, marooned before their TV sets, to get out and do something, so Americans consumed by fear of terrorists should be urged to get off their duffs and actively participate in protecting themselves, their loved ones, and their country.

Some argue that this is the time to restore the draft, enlisting every citizen between the ages of 18 and 25—some four million!—to serve for 18 to 24 months, in the military, homeland security, or other forms of national service such as AmeriCorps. Among the draft's proponents are a leading sociologist who has dedicated a lifetime to studying these matters, Charles Moskos, and Paul Glastris, the editor of the *Washington Monthly*. Advocates of the draft hold that it would result in more qualified people choosing to do their time in the military, and that it would make the military less of a professional elite and more of an army of the people. They believe that from the practice of service to the nation will grow an appreciation of it.

Missing in all such calls-to-arms discussions I have seen is even a crude estimate of the scores of billions of dollars such a draft would cost, and of the other priorities that are going to be shelved to pay for it. And I doubt that serving against one's will is a way to reinforce or instill a commitment to the nation. A draft, after all, is the antithesis of volunteering. And it is sure to revive ugly controversies about who is to be exempt and unsavory attempts to avoid coercive service. Nor ought one to ignore the adverse effects that this cheap labor will have on employment rates and pay levels, especially in a weak economy.

Another attempt to marry Bush's call for homeland protection service with an unrelated agenda is to use the opportunity to expand AmeriCorps and vastly increase the scope of volunteers caring for elderly Americans, promoting literacy, building homes for the poor (via Habitat for Humanity), and so on. These ideas are reflected in a bill that Senators John McCain and Evan Bayh have introduced. It calls for increasing AmeriCorps membership from roughly 50,000 to 250,000. No one can quarrel with the desirability of expanding all these services, but combining homeland protection with doing good will not work well. Americans are now agitated—and for some very good reasons—over the dangers they face from terrorists. They are anxious to do something to take part in protecting our nation from

such attacks. If the call to volunteer mixes routine service that has been going on for generations (however meritorious) with responses to the new emergencies, the motivational confusion is sure to dampen the willingness to come forward. It is as if the Red Cross, following a major disaster, were to call on people to donate blood *and* provide tourists with directions.

Several progressive Democrats favor increasing the benefits for those who serve in AmeriCorps. They are asking for larger stipends, bigger college benefits, and greater tax deductions for those who volunteer. Such magnified payoffs will increase the resources available to poor and disadvantaged youth who often are drawn to AmeriCorps as a way to pay for college. As worthy as such a goal is, it is hardly a reliable way to reinforce volunteerism and to cast into lasting forms the renewed spirit of patriotism.

A Different Path

The best way to proceed is to involve many more than the 20,000 volunteers that Bush is calling for (too few to do much of anything) and fewer than the millions sought by advocates of the draft. Volunteers at this juncture should only be asked to serve in matters that directly concern terrorism prevention.

Many could serve as part-timers and should not be compensated. These could include (after proper training) many thousands of new volunteer firefighters and emergency medical technicians, to be called upon in small and large emergencies. Others could give, say, an evening a week and two weekend days a month to help patrol the perimeters of strategic sites, from bridges to electric plants. They should act as eyes and ears of public authority, equipped with communications devices but not with arms. Others, who are ready and willing to serve full-time, could serve as organizers, which any volunteer effort lives and dies by, as well as take over some duties from the National Guard, INS, and other governmental agencies.

This is the time to invest our renewed patriotism in a form that has staying power: homeland protection service. But it is not the time to piggyback other good deeds on this project. The challenge we face to our security is grave enough to command all the new hands we can marshal.

The Presidency in Wartime

Jay Winik

As the grim, grim day of September 11 wore on, at one point ABC anchor Peter Jennings asked, almost plaintively (and I paraphrase), “Where is the president? We need to hear from him—and soon.” Some were surprised that the normally composed Jennings did this. And some have questioned whether he should have even asked this question, live and on national television. But as this crisis unfolded, I think Jennings was only reflecting what many Americans felt that they needed most: their president. And herein lies a truth about the presidency and war.

The truth of the presidency and war is this: never is the presidency stronger than in wartime, and never is it more needed.

If there is any doubt about how crucial our wartime presidency is, conjure up again the events of September 11. Despite the fact that we are the oldest, most established and durable democracy in the world, recall that sense of near panic that ripped through the nation—that sense that, as the terror played itself out, time almost seemed to be standing still. Recall that sense of horror as first one plane, then a second, then a third hit their targets, and as a fourth crashed into Pennsylvania. Recall that sense of rampant fear that the White House itself—unthinkably, implausibly, but perhaps undeniably—was a target. After this, Peter Jennings’s call for the president seems more comprehensible, more understandable than ever. It is and has always been a fact that in crises, in war especially, the president, as commander in chief, as chief executive, is crucial to the leadership of the nation. Never does this seem to be more true than now.

Historically, we—and this presidency—can glean several crucial insights and lessons for the conduct of this war from previous crises, especially the Civil War, the last time that the battlefield was largely synonymous with the home front. I want to discuss four such lessons: one, the need for ongoing presidential leadership; two, the concomitant role of public opinion; three, the weighing of tough choices (and we may be there sooner rather than later); and four, the question of civil liberties.

The Need for Leadership

First, the role of ongoing presidential leadership in keeping our eyes fixed on a great goal. There is no substitute for the firm hand of the president, and we will need it for the duration of this conflict. In Abraham Lincoln's case, he started the war by calling up a paltry 75,000 volunteers, requiring a mere three-month enlistment—enough for a fleeting set of skirmishes, but little more. The war would of course grind on for four long years and consume 620,000 lives, dwarfing any other conflict in this nation's history, before or since. We couldn't have been any less prepared: for the war's first great battle, at Manassas, members of Congress and their wives came out with their finest clothes, fine picnic lunches, good china, and parasols to watch the events of the day, as though it were a sporting event; by day's end, they were retreating along with the Union army. Nor should history obscure the early mistakes made by Lincoln and the Union—something to bear in mind today as we watch the administration develop its sea legs, on the home front and abroad.

Day in and day out, as Lincoln mulled over his ocean of troubles, as he hauled his tired bones to the War Department to read the latest dispatches, he was anything but the picture of a confident, well-oiled, or seasoned commander in chief. He had generals who wouldn't fight, couldn't fight, failed to press the advantage when they did fight, or simply got whipped. He even put himself through a crash course in strategy of war, checking out books from the Library of Congress. It was almost frightening how he—and the nation—had to be brought up to speed.

But as the war ground on, despite the continuing tornado of blood and wreckage, Lincoln pressed on with brooding detachment, weath-

ering his own mistakes and the highs and lows of the war. He always kept his eye on the great goal, Union, which he knew and knew passionately could only be achieved by force of arms; he pursued it with dogged tenacity—even when there were opportunities to end the killing, to strike a deal, or when he could have grabbed the easy or expedient way out, as would have been so tempting to a lesser man and a lesser president. But he relentlessly pursued the war and, nurtured by an inner sense of destiny, he was a rock. In this conflict, George Bush will also have to be a rock, to show dogged tenacity, to weather mistakes—the good days and the bad, to quote Vice President Cheney—and never lose sight of his great goal: eradicating terrorism and its sponsors.

It is an axiom that the dynamics of war raise passions and harden sides. In the Civil War, as the war dragged on and the body count mounted, it soon enough became clear that victory would be neither brief nor easy—nor, for that matter, necessarily attainable at all. Lincoln maintained an almost mystical attachment to the Union; though he did not want war, he accepted it because it was necessary to the Union. Likewise, America did not seek the war on terrorism, but it has found us; to his credit, George Bush wisely recognizes that.

The Role of Public Opinion

Then there is public opinion. Without going into great depth about what I discussed over dinner with the vice president at the beginning of the bombing campaign, I—and the two other historians present—all agreed that President Bush cannot run this war according to public opinion. On one hand, historically the American people are enormously resilient; it is unwise for the terrorists to bet against them. But it is also likely that public opinion will wax and wane. Bush should do what Lincoln did: govern as though public opinion were perpetually at an all-time high, or, for that matter, an all-time low. We forget how difficult managing public opinion in the Civil War was, how unclear it was that the public would persevere with Lincoln.

After Gettysburg, *not* before, America had the worst riots in its history, the four-day New York draft riots of 1863, in which 105 people died, including blacks who were brutally hanged from lamp-posts. A year later, as casualties rose, the North was indeed in a foul

mood, literally crying out for peace: a storm of antiwar protests rippled through the Midwest; the Democrats had a peace plank in their presidential platform calling for immediate cessation of hostilities; an estimated 200,000 men deserted from the Federal Army; and as Horace Greeley wrote: “Our bleeding, bankrupt, almost dying country longs for peace. . . .”

But even as a deathly weariness settled over Lincoln and public opinion sagged, he never lost sight of his great goal; he did persevere. Listen to his dispatches to Ulysses S. Grant: “Hold on with a bulldog grip and chew and choke;” “Stand firm;” “Hold firm, as with a chain of steel;” “Watch it every day, and every hour, and force it.” And when the country—joined even by the first lady, Mary Lincoln—began to call for Grant’s head after his terrible losses, Lincoln cried out: “I can’t spare him. He fights!”

Difficult Decisions

A third lesson has to do with tough choices of warfare that a president confronts. After the midway point of the Civil War, as the body count mounted; as Grant was stalled against the indomitable Confederate commander, Robert E. Lee; as the antiwar movement reached a fevered pitch; as Lincoln’s own former top general, George McClellan, challenged him for the presidency; as it looked like the South might yet win the war, or at least not lose, which amounted to the same thing, the great question loomed: What next? It was a question for the Union, for history—and ultimately, for us to ponder.

What did Lincoln do? The toll on the president was evident, in the deep lines crevassing his face, in the thick black rings that framed his eyes like a somnambulist’s pouches, in his chronically clammy hands, and in the 30 pounds he had lost. But Lincoln understood that only tough, tough measures could win this war and save the Union. He and U.S. Grant embraced the concept of war, total war, an escalatory measure that had been unthinkable at the war’s outset, and unleashed their great general, William Tecumseh Sherman. Sherman announced he would “cut a swath to the sea” and “make Georgia howl!” In fact, he would batter and burn Atlanta beyond recognition, sending long lines of innocent civilians, trembling, to flee the city. When his legions finally embarked toward the seacoast, Atlanta lay behind, a smoldering ruin. In Georgia at large, he then laid waste to a vast corridor

stretching 285 miles, with everything in his way falling under a cloud of destruction. Nor did he finish there. After ripping through Georgia, he then lunged further south, undertaking a fearsome march through South Carolina (“I almost tremble at her fate,” he roared), 425 miles of death and destruction, all the way to the burning of Columbia.

The Union did this with few regrets. Listen to Sherman’s words: “War is cruelty and you cannot refine it,” he boomed. “We can make war so terrible and make them so sick of war that generations would pass away before they would again appeal to it.” And again: We must make this hostile people “feel the hard hand of war!” “Atlanta is ours, and fairly won.” And to Lincoln, he sent this jaunty wire: “I beg to present you, as a Christmas gift, the city of Savannah.” The South got the message. Here’s Mary Chesnut, the famous diarist of the South during the war: “Since Atlanta I have felt as if all were dead within me forever; we are going to be wiped off the face of the earth.” Or Confederate general Joe Johnston: “When I learned Sherman’s army was marching through the Salk swamps at a dozen miles a day, I made up my mind that there had been no such army in existence since the days of Julius Caesar.”

There may come a time in this current conflict, perhaps sooner, not later, when the president and the Congress may be faced with a comparable decision to Lincoln’s—whether it be to widen the war, or triple the troops, or escalate the campaign, or some other measure not yet foreseen. A side note here: Lincoln, after having waged total war, was then free to wage a generous, magnanimous peace, that did much to heal the country and knit it together in the war’s final days. In doing so, he thereby spared America from the cruel chain of history that has consigned so many other nations to the grisly aftermath of civil war—more chaos, more conflict, more instability, and more civil war—that had more often than not been the norm throughout history: witness the Northern Irelands of the world, the Balkans, the Cambodias. This example has obvious possible applications to a postwar Afghanistan. Another side note: the South nobly rejected this type of total warfare, and paid dearly for it.

Resilient Rights

Finally, there is the matter of civil liberties. Here I want to expand the historical canvas a bit. The historical lesson for this is that in

virtually every major conflict, an impressive roster of our most distinguished wartime presidents—Abraham Lincoln, Woodrow Wilson, and FDR, as well as John Adams—did not hesitate for a moment to undertake harsh, even draconian measures to ensure the nation's security. They thought nothing of suspending habeas corpus; of closing down newspapers; of imprisoning, for great durations, without even charging them, legislators and ordinary people alike for nothing more than their political views; of defying court orders challenging them, including from the chief justice of the Supreme Court himself; of putting those of Japanese heritage, some 110,000, most deeply loyal to the nation, in internment camps; of restricting the mail; free speech, and assembly. And the list goes on.

Ironically, they did so even though the magnitude of the threat to the American people was potentially nothing like it is today; even in the Civil War, when it was the fate of the Union that was at stake, there was no fire in the rear threatening potentially not just tens of thousands of people, but in a world where terrorists could employ weapons of mass destruction—a radiological weapon, a nuclear bomb, smallpox—hundreds of thousands or even millions. Indeed, by comparison, the just-passed antiterrorism bill, with sunset provisions, pales by comparison to what these previous presidents enacted by virtue of their wartime authority. The lesson? If, as this grim conflict marches on, President Bush should decide the nation needs to restrict civil liberties even further, America can at least look to history as a guide—and as solace. History tells us that our democratic institutions and tradition of civil liberties are enormously robust and resilient. In fact, when the threat ends, wartime restrictions fade and civil liberties not only invariably reemerge, but reemerge stronger than ever before.

Recent months have seemed dark indeed. The emotions of Americans have ranged from despair to anger to concern. But the nation has been there before. And so have American presidents. Herein, one trusts, from these past lessons, the president and the American people can take some comfort.

Public Health in the Age of Bioterrorism

The following is an edited transcript of a dialogue organized by the Communitarian Network on public health and bioterrorism. It was held at the National Press Club on October 26, 2001. The participants were Alan Kraut, professor of history at American University; Fitzhugh Mullan, a clinical professor of pediatrics and public health at The George Washington University; and Richard Riegelman, professor of epidemiology and biostatistics and the founding dean of The George Washington University School of Public Health and Health Services. Amitai Etzioni moderated the discussion.

AMITAI ETZIONI: Ladies and gentlemen, welcome to a communitarian dialogue on the ethical and legal issues raised by bioterrorism. Because one of the issues we are most concerned with as communitarians is the delicate and difficult balance between individual rights and the common good, we are concerned both with protecting our rights and with protecting the health of our people.

A place where many discussions on this issue start is with the scenario of a terrorist group infecting a large number of people with smallpox. Let's stipulate that smallpox is highly infectious, that it has a high fatality rate (30 percent), and that there is a period in which you have symptoms but you are not yet contagious. In most of the scenarios, you come to a situation where very quickly a very large number—hundreds of thousands, millions—of people are infected. And then the question is how to stop the plague. Some people call for an education campaign, some for quarantining. It's deciding from the range of voluntary to coercive means that we are so concerned with.

Personal Risk vs. the Common Good

AE: Before we even discuss the attack itself, let's talk about preventive vaccination campaigns. When we had various forms of vaccination in the past, for instance for protecting children from various diseases, we had an increasing number of parents who did what economists call "free riding": they basically assumed that if everyone else's child is vaccinated, they will not have to expose their child to whatever risk is entailed through vaccination; their child will still be protected. So, let's start with asking: How far are we willing to go in the prevention period to see that everybody takes the limited risk and participates? Because obviously, if more and more people bow out, the whole system is going to fall apart.

ALAN KRAUT: I think public shame went out with the Puritans. I don't think we're going to put people in stocks. But I think in the case of school boards and so on, there will be less tolerance on the part of those officials who are most directly involved. In other words, those who don't want to have the vaccination, parents who don't want to have their children vaccinated are going to be subjected to greatly increased public pressure, possibly social ostracism, possibly simply exclusion from the public discourse. What other measure can one adopt? In short, in crisis period, and we're talking about something that's really crisis management, the traditional level of individualism probably isn't going to be as tolerable as it was in a calmer period.

FITZHUGH MULLAN: I would be for very strenuous laws and means to prosecute any campaign of vaccination. We do that essentially with children. There are many loopholes; states treat it a little bit differently. We use schools as the hammer, actually, because kids can't go to school if their vaccine card isn't up to date. There are exclusions for religious and other reasons. Now with this scenario, we're moving in a different time frame—and with the whole population, not just kids. But I would both write laws and enforce laws that were very exacting in terms of 100 percent vaccination, if that was what was the target of mass vaccination.

AK: I would, too. I think in the redefined kind of warfare that we're talking about, we can't avoid the notion that the civilians in the society are also subject to a discipline usually reserved to the military.

AE: As bin Laden keeps reminding us.

AK: As bin Laden keeps reminding us. And it's sad but it's true. In the case of those in uniform, their bodies belong to the United States Army or the United States Navy. Certain things can be done to them and they can be exposed to certain dangers to which we wouldn't ordinarily expose a civilian population. But I think in this redefined kind of world, and redefined kind of situation, where there is a palpable threat, I agree with Fitz. I think there's a very good argument to be made to compel people to comply with a vaccination in a way that we ordinarily wouldn't, given our culture, given our society, and given our mores.

RICHARD RIEGELMAN: I think that the issue of vaccination revolves very much around what is the risk of the vaccination itself, as well as the risk of having an epidemic. But the risk of the old vaccine was considered to be quite high. The hope is that the new technologies for developing vaccines will actually reduce very substantially the risk; side effects are expected to be far less severe. But these new vaccines will be put into effect without any of the standard testing, so we are flying by the seat of our pants in terms of how safe these vaccines are going to be.

Where to Draw the Line?

AE: All right, so now we've had the attack and let's assume the terrorists used smallpox. So now we get the scenario, and instead of doing what some say is very harsh and very un-American—locking up many citizens and using at least nonviolent means to keep them there—we have the suggestion from D.A. Henderson [now the director of the Office of Public Health Preparedness in the Department of Health and Human Services] that we should encourage people to stay home. It would be a system of voluntary domestic quarantining.

AK: Well, I haven't seen the full proposal, but it sounds rather unrealistic that people are going to accept voluntarily that kind of a societal lockdown, that families won't try to see extended members of the family and friends, and so on. It really doesn't sound like a very practical way to do it.

FM: My sense is, not having talked to him [Henderson] about it, that there may be ways to abate or buffer the epidemic, short of a formal, physical quarantine of hundreds of thousands of people. This is something that you walk back to after you examine the alternative, that is the full formal lockdown of hundreds of thousands of people. I have not engaged in that war game entirely, but people are doing that. And to the extent that I have visited that scenario, it's a hard one to envision. I think it's not one we should duck, and at least in its broad outlines it makes more epidemiologic sense. But when you talk about quarantining Washington, D.C. or Topeka, Kansas the implications are far beyond anything we've ever experienced. And I would like personally to see that walked through as to how that would work.

AE: Henderson's argument is, first of all, as far as extended family is concerned, I think he would say once we explain to people that if you go to visit your grandmother, you're killing her, they may want to refrain from visiting her for 17 days. And what concerned me initially when I heard that is if I am infected and stay home, I'm going to infect my family who are healthy at that moment, and surely I will not want to do that. I'd rather go voluntarily to the place of quarantining. But it was explained to me that Henderson would suggest that you immediately vaccinate the other members of the families and you have this two-day window in which you can do that. I think there's a little more reality to it than there seems at first—other than that there's one catch, which in my judgement is not surmountable. This plan assumes a very high compliance rate. It assumes that not only will all people who have the symptoms then voluntarily stay home, be sure that nobody visits them, and have no member of the family go out—which is a hell of an assumption, as we know from compliance in practically any other medical intervention—but, worse, it assumes that a very high percentage of the people will recognize the symptoms correctly, including in our less-educated population.

AK: Using history as an example, if we take a look at the polio epidemic in 1916, and we take a look at how families reacted that were quarantined, that had a child quarantined, how neighboring families attempted to send their children out of town and to evade quarantine signs that were hung in apartment buildings in Philadelphia and in New York, there's not a really good record on Americans complying.

This individual ethic, which is such an important part of the American consciousness, of the American ethos, really works against expecting that kind of compliance. The reporting and the compliance will not be readily forthcoming.

AE: So now we discovered that after we tried voluntary quarantining for one week, the cost in human life was immense. We are now in a new city and we have an early warning system that tells us daily about new infections. And we are now examining this harsh option of quarantining. Now, we do not need in this case to quarantine the whole family, because we want to quarantine only those people who have early indications of the illness and we catch them, we assume, before the contagious stage. We don't want to quarantine the whole city, we just want to ask people who have the symptoms to join us at the most luxurious beach resort we can find, around which we are going to throw a ten-foot wall, reinforced by guards with nonviolent means of stopping people who want to leave.

FM: I don't think that's a likely scenario. I want to step back. I think we're misreading a little bit the public health management of scenario one, the initial scenario where amidst a population of hundreds of thousands, a number of thousand have been exposed—you just aren't quite sure who, or you're sure who's exposed but not to what extent. If we're talking smallpox and we're talking current vaccine supplies, the ring notion was that you vaccinate everybody who was in contact or is likely to be in contact with an infected person, and that basically provides protection, containment, exhaustion, or the extinction of that particular mini-epidemic. The problem with multiple individuals in a city is you can't ring them very easily. They are in a hundred thousand different places amid a population of a million. Then you talk about mass vaccination and that is plausible. You can mass vaccinate everybody in that city very rapidly. It would be better if our public health structure was in better shape to do it, but depending upon the circumstance, that's quite plausible.

With smallpox the problem is when you run out of vaccine and you've still got cases in two or three other cities. Then you are in a situation where you now have lost your defense, your vaccine, and then quarantine becomes your only way to limit it. Then you come to the question, now perhaps robbed of any immunologic defense, as in

vaccine, how do you contain the epidemic? And that gets to be a very difficult scenario in terms of people wanting to flee the area in particular, and the necessity to keep them there until either the epidemic runs its course or, with what vaccine you have available, you have contained it as well as you can. I think the big problem there is you're going to have people who are not sick, don't think they've been exposed, or maybe even think they've been exposed but don't want to stick around to find out, who are anxious to get out—out of the area, out of the country—and that's when I think you'll have enormous problems containing people.

AE: Let's hold it just for one second because I want to clarify the scenario. First of all, I don't know that everybody knows that we don't have endless vaccines ready. And there are some questions about how effective those vaccines we do have are, because they've been sitting there since the 1970s. Is that a fair question?

FM: Yes.

AE: And how long will it take us to make another hundred million? Over twelve months?

AK: I think the plan calls for delivery within months. And I think that the key is that this strategy avoids some of these harsh decisions we have been discussing because it prepares us, if there is an outbreak, to quickly implement this kind of a strategy.

AE: You see, I salute and celebrate your tender hearts, in that you keep saying, "That's hard; I don't want to go there." But it's my job to take you there. So, let's go back to Fitz's scenario. We expend our vaccines and we now have some outbreaks in the city and we have zero left in the vault. And I am still not quite clear why we have to quarantine people who have no sign of illness. We are in the phase where they are not yet contagious, but they have the severe flu-warning symptoms. Why do we have to take anybody else but these people and invite them to our beach?

FM: Those people are clearly sick. What you have, however, is a 12- to 17-day latent period, during which time people who may be infected show no symptoms.

AE: But during this period they are not contagious. So say that person who has been exposed and has no symptoms runs from Chicago to

Philadelphia. And now if she shows symptoms in Philadelphia, she'll be invited from there to go to the beach. So why do we want to stop people who have no symptoms? Why is it not enough to quarantine those who have symptoms in the pre-contagious stage?

FM: As a hypothetical matter I think that makes reasonable sense. The question of when symptoms are identified and who reports them and whether there is forthcomingness on the part of individuals, that becomes, I think, very difficult. I mean, hypothetically, if you had a point where they go from being non-infectious to being infectious or non-symptomatic to being symptomatic infectious, you'd need to move them to the Etzioni Hilton at that point, that would be convenient. Theoretically, that would make sense. I think practically, that would be very difficult.

AK: Essentially, it's an issue of reporting.

Drastic Times, Drastic Measures

AE: Let's move to the ultimate now. When our vaccine ring no longer exists, we'll have to throw walls around cities so we do not have to go into sorting and reporting. Should we let the plague get out of control in order not to do that?

AK: My answer would be no. You can't let the plague get out of control. At that point, the broader public health of the society, the country, the very survival of the society is at stake, and there is a good argument to be made for imposing laws and using force if necessary. The strictest quarantine possible must be imposed.

AE: You are not agreeing?

FM: I quickly confess to running out of tactical and ethical insight. I mean this is medieval. I mean that was the notion during those times, and our terminology recently slipped to plague rather than smallpox. This was the way plague was handled. People were confined to this town or that area. The vector plague was not understood then, but people knew they were going to die—and large numbers of people as well—because they were being forced to stay where it was until it effectively burned itself out. And whole towns in some cases in the 14th century expired that way. Trying to do that with Chicago today tests the limits of anything I can conceive of.

RR: I think coercion, in the communitarian terminology, is most effective at the beginning. If uniformly and quickly implemented, it can be implemented on the smallest possible scale. So, get in there and get in there quick and use coercion, but use it quickly and modestly.

AE: Now let's change direction a little and let's talk about the agencies and the players who could participate and what difference it makes. Who does the early warning? Who does the education? Who does the quarantining? And one place maybe to start is to say that maybe this is the time to make Americans less individualistic.

AK: Well that's easy to say, hard to do. You can change all kinds of things about the situation and the society, but changing the fundamental values of Americans—values with which they've been edu-

cated and raised and taught because of a democratic heritage—that's hard to do. Their individualism is the bedrock of their national character. Re-education sounds far and away like the most humane and proper way to do it. But how could you do something like that when we have difficulty with Americans accepting that there might be limits on who could get a kidney dialysis and accepting that kind of a triage situation? How much more difficult would it be in an atmosphere of panic to get people to accept the sacrifice of their freedom of choice voluntarily?

FM: I would disagree with that. Understanding Alan's premises, I would concur on his historical interpretation. We talk about the closing of the frontier, which was an important historical concept, speaking of the Western frontier. But the notion that we were an island nation and we were essentially protected, naturally quarantined from malevolent forces in the world—I think September 11, etc., etc. is going to bring that notion of frontier to a close for many of us who thought otherwise. It seems to me that an important adaptive feature of America in the future is going to have to be a sense of being part of the globe and being part of a community that has to defend itself. But this has to be more of a collective enterprise. The specter of biological disaster is like the Blitz in World War II in London. Nationwide, we're going to have to pull together. I don't think we can be the same country after this.

AE: I just want to take one second and switch my hat from just provoking and prodding to being a communitarian witness. First of all, the good news is, and I think I'm correct and certainly not alone, in reading American history, there has always been a tension between the Lockean notion of rights and individualism and the kind of communitarian, civic republican virtues and civility commitments. The very fact that the preamble talks about how we came together to form a more perfect union seems to be speaking to the other half of that struggle. But to go back to what happened after 9/11, that may change one more time. But at the moment, a lot of public opinion polls show a really dramatic shift in the willingness to care for each other, from blood donations to volunteering, and to trust our institutions and such. Now I'm not willing to predict how long it's going to last, but I don't want to leave it that we have no communitarian bone in our body.

AK: We do have a communitarian bone in our body during wartime and crisis situations, but one has to observe that those tend to be fairly short-term situations and they've always been somewhat limited before. And there have been violations of that communitarian spirit, whether we're talking about draft dodging or we're talking about buying oneself out of the service during the Civil War. In the aftermath of September 11 there is a lot of display of heartfelt communitarian spirit and spirit of cooperation and self-sacrifice, but I'm wondering in a sustained kind of conflict how long that lasts on a broad level. And faced with the kind of scenarios that we've been talking about, to what extent do people revert?

RR: Not only that, I think that the individualism has been expressed in institutional individualism, where everybody is competing and nobody's cooperating. And that's private-public; that's state, federal, and local; that's public health, hospitals, and physicians. If there's going to be a community, it's not just the individual behavior, it's institutional behavior that I think we need to focus on.

A Better Future?

AE: It's time now to let our imaginations really roam free. Can we use the threat of bioterrorism and the need to deal with it to build a better society and one in which there'll be more attention paid to public health?

AK: I would say yes. I would say that every war that the United States has ever fought has had indirect dividends in terms of what we've done medically, what we've done organizationally, creating new relationships between different parts of the government, different relationships between federal and state governments. And this current crisis is no exception. I think we're going to see out of this terrible situation, this national crisis, a set of new relationships. Some of it may have to do with different funding for the CDC, different balance of funding between different branches of the Public Health Service. A lot of it, I suspect, will have to do with the coordination between federal, state, and local. I think the kinds of chaos that we've been seeing, that we've been witnessing on almost a daily basis over who has jurisdiction over what and who ought to go to the microphone and who ought to be communicating with the White House—that's a lesson from a

lack of preparedness and a lack of sound organizational practice. It probably will be corrected out of what we're seeing.

RR: I think we're going to see things that we knew we should have done for years now be done. This morning's news says that influenza has to be prevented now because it looks like anthrax. We're going to have the best immunization against influenza that we've ever had, and that's just hopefully the beginning. We're going to be applying our technology to put vaccines on the map. AIDS vaccines were never at the top of anybody's financing stream until recently, and the technology has to be applied, we have to use the most modern technology. We have had no surveillance system that comprehensibly looks for disease. We're going to have that now because we need it and hopefully it will have all kinds of spinoff effects that will improve our ability to monitor, detect, and rapidly react to new problems.

FM: I think Alan's point is a very good one, that crisis makes for opportunity. And both realigning what you have and creating new things will come out of this crisis as it's come out of others. So, I don't feel fatalistic about that. There are two specific things that occur to me. One is that as we consider massive new funding in this area, there is an instinct to buy vaccines and to stockpile immediate antibioterror implements—drugs, vaccines, etc. And that is as it should be. But if we don't invest at the same time in the infrastructure, the personnel, the communications capabilities, we will have lost that opportunity. So, to take this from the theoretical to the real, the design of the legislation and the funding of the legislation that we'll see coming forth very quickly here needs to take that into account. And there is an agenda ready to be funded. This is not a field that has gone unexamined. And the second thing is that I would hope that young people in the health sciences—in medicine and nursing, in public health, etc.—think about their careers and weather the challenges, the tribulations, and the excitement of working in the public domain as doctors, nurses, and public health professionals more focused on and trained in these kinds of community-wide, population-wide, collectivist and communitarian issues. I hope many more will elect those kinds of careers.

AE: Well this is extremely helpful. So I'm taking away from this that we better prevent, and better be prepared before we are hit, and that

we are much better off to the extent that we can rely on education. But we have no illusions that that will suffice, and we would, beyond that, if push comes to shove, rely on having vaccinations ready so that we can surround those who are ill with vaccination to prevent its spread. And we would resort to other voluntary means, which include putting pressures on those people who are not willing to line up and be vaccinated because they are individualistic or free riders or fearful. But we also realize that we may have to engage in full-blown quarantining. And, finally and maybe most importantly, out of these terrible tragedies some good may arise if we use this challenge to reinstitutionalize this—temporary, I grant—very community-minded spirit.

I also take one more thing away from this: that we can have a reasoned dialogue without hardball. Without interrupting each other or attacking each other, we had what I thought was an excellent, productive conversation. Dr. Kraut, Dr. Riegelman, Dr. Mullan—thank you very, very much for participating in this communitarian dialogue.

THE COMMUNITY BOOKSHELF

Class Dismissed

Dennis Wrong

Paul W. Kingston, *The Classless Society* (Stanford: Stanford University Press), 258 pp.

Paul Kingston's title is meant to be provocative—less to Marxists, who popularized the idea of a classless society as the utopian end of history, than to American sociologists who equate economic and status inequalities with the existence of classes in order to debunk the creedal myth of equal opportunity. Far from affirming that myth, Kingston denies neither the marked, indeed recently increasing, inequalities in the distribution of the three “p”s—privilege, prestige, and power—nor the advantages of being born into a family amply endowed with any of them. He also recognizes such conceptually class-defining attributes as subjective identifications, liberal or conservative political orientations (especially as expressed in voting behavior), aesthetic tastes, so-called lifestyles (including consumption habits), and residential neighborhoods. Nonetheless, his argument is that these varying attributes do not create a coherent hierarchical system of two or more classes with clear-cut boundaries dividing them.

Kingston takes Hemingway's side in his famous exchange with Fitzgerald: the rich have more money but do not form a distinctive ingrown social group. Nor is there an “underclass” permanently

mired in a “culture of poverty” that contains more than at most a tiny fraction of the population. Kingston also finds no convincing evidence supporting the neoconservative idea of a “new class” of “knowledge workers” hostile to modern capitalism.

Mobility between and within generations is the major factor blurring class lines in that it reduces the self-reproduction of all major occupational groups, with the partial exception of the professions and some skilled crafts. All the most widely used class categories—upper, middle, or lower, however defined or further subdivided—contain large numbers of persons of different class origins. The movement of individuals has largely been upwards, not primarily because effort and achievement have been duly rewarded but as a result of technological changes reducing the proportionate size of the lower strata. “Classes exist,” Kingston insists, “only if you can empirically demonstrate that there are relatively discrete, hierarchically ordered social groups, each with distinctive common experiences.” The “relatively” indicates his recognition that class and classlessness are matters of degree.

Kingston opts for a “realist” definition of classes that combines objective identifying attributes with subjective presence in the consciousness of their members. He rejects many researchers’ practice of grouping their findings into class categories of their own making, thus defining classes “nominally” by drawing artificial divisions across the vertical scales of inequality. He most fully reviews American research, but also reports British and European data refuting the tenacious belief in American exceptionalism: only “to a modest extent,” he reports, does “class reproduction tend[s] to be lower in the United States than in France and Germany.” Sweden exhibits the sharpest class division, the United States and Canada the least, but Sweden is also the most egalitarian of the seven societies for which data are presented.

Kingston does not evade the “crucible of ideology.” He sees the left as “emotionally” committed to the existence of a subordinate class—a precondition for political struggle for progressive reform; he sees the right as ready to treat an absence of classes as evidence of distributional justice. We are urged “to keep in mind that the absence of class doesn’t mean we have an equal or just society,” nor does it

mean “the end of social conflict.” The 20th century has experienced technological changes increasing the complexity of the division of labor, the rates of inter-and intra-generational mobility, and the reach of new transportation and communication media reducing the isolation of localities—all of which have broken down class distinctions. Political contention over cultural issues has become more common, but distributional economic issues have not vanished, though they now chiefly engage groups such as the elderly or women rather than social classes.

My only criticism is that Kingston seems to overestimate the novelty of his major claims. He denies that classlessness necessarily rules out popular mobilization, but he refutes the theory that class conflict is the primary motor of social change—a Marxist-tinged belief that reemerged in the wake of the radicalism of the late '60s and early '70s. This is not the first occurrence of this intellectual sequence.

Kingston cites an article of mine reprinted in a 1988 reader to support his realist definition of class, yet he ignores that the article was first published in 1964 and its major subject was the growing dissociation between inequality and class, precisely his thesis in the present book. My very title, “Social Inequality without Stratification,” makes this clear. (I used “stratification” synonymously with class structure, whereas for Kingston it denotes only the multiple unequal distributions of the good things in life, but the difference is solely verbal.) I cited such major sociologists as the Americans Arnold Rose, Wilbert Moore, and Robert Nisbet, the British T.H. Marshall, and the Polish Stanislaw Ossowski as having contended that social classes were declining despite the survival of economic and other inequalities. I relied in particular on Ossowski, who, in a courageous book first published in Polish in 1956 when Poland was still under Communist control, used the phrase “nonegalitarian classlessness” to describe both the United States and the Soviet Union. All these sociologists were writing some years after the radical upsurge of the 1930s and '40s, just as Kingston writes in the wake of the '60s and '70s. Nisbet is the only one of them whom Kingston cites.

Kingston alone, however, grounds his case for classlessness in a meticulous assessment of the empirical data reported in a wide range of studies. One may hope that with the turn of the millennium, social

class will become a concept of mainly historical relevance to democratic capitalist societies at the same time that efforts to rectify their persisting inequalities continue.

Origins and Transformations

Adam B. Seligman

Hans Joas, *The Genesis of Values* (Chicago: The University of Chicago Press, 2000), 250 pp.

Hans Joas's recent book, *The Genesis of Values*, presents a thoughtful meditation on the modern attempt to understand the origin of values. Of course, and as Joas brilliantly explains in his analysis of Nietzsche's thought, modernity's own origins lie to a great extent in the rejection of the Jewish (or what we so commonly, and mistakenly, term the Judeo-Christian) model and in the various modes of rearticulating the ancient, Hellenistic values of the hero. Indeed, when Joas defines his own project as providing an answer to the origin of values "in experiences of self-formation and self-transcendence," one cannot but think of the model of Odysseus, who continually reformed and remade himself on his journey home to Ithaca. Not the Abrahamic covenant with God or the binding of Isaac in response to heteronomous commands, nor Paul's unalterable conversion. Not the force of ineluctable, transcendent otherness, but self-formation and self-transcendence have more often than not provided the modern world with its understanding of values and their origin.

The first to articulate this as a modern vision was indeed Nietzsche, who struggled mightily to posit true values as beyond the need for any justification or legitimizing framework. The good was its own justification when posited as the will of superior individuals and not as handed down to us through the lenses of Jewish, and later Christian, *ressentiment*. From his deeply insightful presentation of Nietzsche's thought, Joas's study diverges across two traditions—binding together his own intellectual sources in, on the one hand, American

pragmatism (most especially that of William James and John Dewey) and, on the other, the European cultural (and sociological) tradition of Emile Durkheim, Georg Simmel, and Max Scheler. In juxtaposing these thinkers and bringing their thought into a dialogue with one another, Joas makes clear just what options are and are not open in the modernist inquiry into values and their origin. Especially enlightening is his analysis of how the thought of Immanuel Kant served both to frame these options and to throw down a continual challenge in the dual calls of duty and inclination.

Each reader will have his or her own areas of expertise and thus their own quibbles with Joas's interpretive framework. I, for example, think that he somewhat misrepresents Durkheim's thought, centering it (and his analysis) on the idea of "collective ecstasy" (that effervescence of the collective conscience), slighting the highly normative and rule-bound aspects of Durkheim's understanding of society and of the constitution of the self by collective injunctions. For example, Joas recognizes Durkheim's great insight that norms (critical in this inquiry as the social expression of values) are both desirable *and* obligatory, but he weighs it in a very particular reading, as when he notes: "For Durkheim, as for James, the truly religious is not imperative, obligatory and restrictive, but rather attractive, empowering and motivating." Well, the very brilliance (and I dare say challenge) of Durkheim's thought is that it is *both*, and to begrudge that dual moment is to lose the very unique contribution of Durkheim to social thought. It is then to impale Durkheim on one pole of the Kantian dichotomy rather than to understand his attempt to overcome it in sociological analysis.

Here perhaps it is important to note that *The Genesis of Values* is not a sustained thesis, arguing and developing in a methodic manner the claim that Joas initially presents on the origin of values in self-transformation. Rather, it is a penetrating and highly original selection and analysis of those thinkers noted above, a weaving together of their thoughts and finally their juxtaposition to more contemporary thinkers such as Charles Taylor, Jurgen Habermas, and Richard Rorty. All three are philosophers whose writings have framed most of the theoretical and meta-theoretical debates in the social sciences for more than a decade. About midway through the book, Joas claims to be interested in the "explanatory force of the answers given to the

question of the genesis of values”—which is, admittedly, a bit of a different project than presenting an explanation of their genesis. In itself it is a very informative and thoughtful project. Left unsaid, however, is if that “explanatory force” informs the explanation of values or of society—any answer to which begs many of the issues raised in the book.

One final note. Throughout the book there is an interesting “default” position: that values follow from some form of intentionality (recall “self-transformation, self-transcendence”). The notion of a subjective or “achieved” religion—which one can find in the tradition of James and Dewey, and with which Joas so clearly identifies—carries with it certain unmistakable Christian assumptions on man, society, and values. After all, one is not born a Christian but must *become* a Christian (regardless of all theological disputes on infant baptism). I would in fact wonder if the endless search for origins is itself not tied to this very particular way of understanding values and related to its Hellenistic precursors.

In Book XIX of the *Odyssey*, Penelope blesses the beggar (who is Odysseus in disguise), telling him: “When a man is blameless himself, and his thoughts are blameless, the friends he has entertained carry his fame widely to all mankind, and many are they who call him excellent.” The good life, the hero’s life, indeed the very definition of the hero is one whose deeds are told abroad—even by strangers. The Greek texts seem to be endlessly concerned with origins and with homecomings: of Jason, of Agamemnon, of Oedipus, of Odysseus. All, however, are blood-filled and almost all are tragic. The idea of a transcendent Deity was one (unsuccessful, perhaps) attempt to overcome this tragic search. But the verdict on modernity would not seem much better.

THE COMMUNITY'S PULSE

In Washington We Trust?¹

The percentage of Americans who trust the government to do what is right just about always or most of the time.

	<u>June, 2000</u>	<u>November, 2001</u>
All Americans	29%	60%
Republicans	18%	75%
Democrats	40%	53%
Independents	31%	50%

The percentage of Americans who think that the USA Patriot Act . . .

Increases their security.	66%
Threatens their rights and freedoms.	32%

In order to curb terrorism in this country, do you think it will be necessary for the average person to give up some rights and liberties?

	<u>Yes</u>	<u>No</u>	<u>DK</u>
September, 2001 ²	61%	33%	6%
November, 2001	51%	46%	3%

Percentage of Americans who favor . . .

Military tribunals for noncitizens suspected of terrorism.	64%
Information sharing between government agencies without a court order.	70%
Allowing the government to listen in on conversations between terrorist suspects and their lawyers.	68%

Sources: 1. Survey conducted of 1,208 adult Americans by National Public Radio News, the Kaiser Family Foundation, and Harvard University's Kennedy School of Government, October 31-November 12, 2001

2. Poll conducted of 1,561 adult Americans by the *Los Angeles Times*, September 13-15, 2001.

Government vs. the Press¹

What is more important . . .

The government's ability to censor news it believes a threat to national security . . .	53%
Or the media's ability to report news it believes is in the national interest?	39%
Both/DK	8%

How much confidence do you have that the government is giving the public an accurate picture of how efforts to deal with terrorism in the U.S. are going?




A great deal of confidence	19%
A fair amount of confidence	61%
Not too much confidence	15%
No confidence	3%

Which is better?




Pro-American news coverage	20%
Coverage that shows all points of view	73%

Heads Out of the Sand²

Average percentage of Americans following all news stories very closely.

2000		24%
2001, Pre-9/11		23%
2001, Post-9/11		48%

Percentage of Americans who have been following violence in the Middle East very or fairly closely.

April, 2001		56%
Early September, 2001		54%
December, 2001		71%

Compiled by Jason Marsh

Sources: 1. Survey of 1,500 adult Americans by the Pew Research Center for the People and the Press, November 13-19, 2001

2. The Pew Research Center for the People and the Press, December 10-16

COMMUNITY NEWS

Rethinking Privatization

Yochi Dreazen and Andrew Caffrey

For the past three years, New Orleans has been lurching toward hiring private contractors to upgrade and operate its municipal water and sewer system. The plan was to open bids after Christmas and award a 20-year, \$1 billion contract by February.

Until September 11.

Since then, one candidate in the city's mayoral race persuaded the city council to call for delaying privatization because it "may pose a serious threat to the security" of the city water supply. Another candidate pushed a referendum that would allow voters to veto this and other big outsourcing contracts. "September 11," says Councilman James Singleton, the referendum backer, "caused people to pause and ask themselves, 'Wait! Is this something we want to do now? Turn our water over to private concerns?'"

Over the past 25 years, the pendulum in economies all over the world has swung away from government and toward the market, competition, and private operation of what once were deemed "public services." By the end of the 1990s, world governments had sold more than \$1 trillion in assets to private investors. And a growing number of state and local governments had turned to private operators to run prisons, parking lots, ambulance services, public schools, and social-services operations.

Even before the terrorists struck, the beginnings of a backlash were stirring. Since September 11, the forward march of the market is stalling and, in some places, shifting into reverse.

If the shift endures, that Tuesday may prove to be a turning point in the relationship between business and government, comparable to the elections of Margaret Thatcher and Ronald Reagan that began a wave of privatizations and an era of market ascendancy. This in turn raises questions about whether the prosperity of the 1990s—so intertwined with the unleashing of market forces nearly everywhere—will resume when the global economy recovers.

The price of security, in short, may be tolerating more of the inefficiency of government and settling for slightly slower economic growth.

The clearest sign of change came when President George W. Bush acquiesced to those in Congress, many of them Republicans, who argued that air travel would be safer if passengers were screened by 28,000 government employees instead of private contractors.

This wasn't an isolated event. Talk of turning the U.S. Postal Service and Amtrak into shareholder-owned private corporations appears dead for now.

The Pentagon has temporarily shelved plans to farm out the back-office operations of its high-tech mapping unit. An antiterrorism commission headed by the former chairman of the Republican National Committee, Virginia Governor James Gilmore, says the federal government should build and own a plant to make vaccines for anthrax, smallpox, and other diseases. "There's no market for it normally," he says. "Why would a private manufacturer want to go through the expense?"

The expansion of market forces into areas once seen as the domain of government was clearly helped along by a thriving economy. But the end of the 1990s expansion alone doesn't explain the public's embrace of a bigger role for government.

In the wake of September 11, the very definition of national security is being expanded. Now, it includes getting to work safely and even shopping at the mall without fear of a terrorist attack.

What's more, government workers, once caricatured for inefficiency, are being praised as heroes for their sacrifices on September 11 and during the anthrax mail scare.

The economic advantages of competition, privatization, and profit-driven management weren't undone when terrorists steered airplanes into the World Trade Center. Several cities and states are proceeding with plans to turn government functions over to the private sector. Nashville, which relies on private firms for garbage collection and emergency medical service, is pondering the privatization of emergency communications and maintenance of its 2,500-vehicle fleet. Three years after contracting out drinking-water operations, Atlanta is considering doing the same for waste water.

Even some Democratic politicians scoff at the new attitude. "Have you ever met most government employees?" asks Chicago Mayor Richard Daley. "Just because you're a federal or civil-service employee doesn't mean that you're guaranteed to be a better employee than if you work for a private company."

But Americans, shaken to discover the U.S. is far less safe than it appeared, seem less eager to turn over government functions to business than they were a year ago. Gary, Indiana, is still pleased that it turned its water-treatment facilities over to United Water Resources Inc., in 1998, but Mayor Scott King says such a move would be far more difficult today. "It was primarily done on an economic basis. It costs X and we could save Y," he says. "Post the 11th, you now have all of these other issues beyond simply the economics."

Saving money and improving worker productivity aren't as high on the public priority list as they were. If productivity grows more slowly, so too will living standards, as conventionally measured by wages, material possessions, and other economic data. That may be offset, though, by the benefits of living with less fear of terrorism, an issue obviously important to ordinary citizens but hard to factor into economic cost-benefit analyses that drive governments to privatize.

The change produced by September 11 came abruptly to the world of national security, where the market has been making slow, steady advances on the periphery.

Consider a U.S. Defense Department unit called the National Imagery and Mapping Agency that employs 8,000 workers turning satellite data into maps. To save money, the Pentagon has been planning since 1999 to shift the unit's telecommunications, printing, and information technology work to companies owned by Alaskan natives. It planned to sign a 15-year contract by the end of September, cutting about 600 jobs and shifting many government employees onto private payrolls. On September 18, however, the agency said it would delay the deal because of the "current crisis situation."

In the heyday of privatization, Presidents George H.W. Bush and Bill Clinton waved off warnings about national security and agreed to sell the government's uranium-enrichment operation. The business, now a publicly held company called U.S. Enrichment Corp., makes fuel for commercial nuclear power plants. It also acts as the U.S. government's agent for buying uranium from Russia to keep the material from being used for military or terrorism purposes.

Critics—most loudly Joseph Stiglitz, chairman of President Clinton's Council of Economic Advisers—warned of conflict between the U.S. goal of getting uranium out of Russia quickly and U.S. Enrichment's goal of finding the cheapest source. For the past three months, the current Bush administration has been considering altering the company's status as the government's exclusive agent in buying Russian enriched uranium. The review, which follows pressure from other firms that want a piece of the business, is being led by Harvard University economist Richard Falkenrath, a longtime U.S. Enrichment critic now serving on the National Security Council staff.

In New Orleans, the lure of privatization was the government's inability to finance \$500 million in sorely needed improvements to a water and sewer system that routinely leaks untreated waste into Lake Pontchartrain.

Private water companies say they can cut the cost of operations and maintenance of the 1,225-worker system by between 10 and 40 percent. The cuts would free funds to pay back new bonds for infrastructure improvements, the companies argue. "There was a fiscal problem before [September 11], and it doesn't get better now," says Andrew Seidel, chief executive of U.S. Filter Corp., one of the

likely bidders. “So my view is: Everybody take a deep breath. We need to introduce some big savings into the system. Privatization will free up economic resources to be used in other ways.”

One issue with political punch: three likely bidders are affiliates of foreign companies. U.S. Filter is owned by Vivendi Environnement, a New York Stock Exchange-listed company that is 63 percent owned by France’s Vivendi Universal SA. Another bidder, United Water Resources, is wholly owned by French conglomerate Suez. A third is a joint venture between the British unit of a German utility, RWE AG, and a U.S. engineering firm, CH2M HILL, of Greenwood, Colorado.

The foreign-ownership issue adds resonance to the appeal of a group of city employees who are offering their own bid to run the utility. The foreign companies “have other allegiances,” says John Wilson, chairman of the employee group. “These companies are being bought up by other companies. We are not going to know who we’re dealing with one month to the next.”

Private water companies take umbrage at the questioning of their loyalty. Nearly all of the 2,300 employees of Suez’s U.S. operations are American, James Creedon, vice president of United Water Resources, says in an interview. “I think they would be a little bit insulted by the questioning of their patriotism, just because we’re owned by a French company.”

Kerry Watson, a quality-control specialist for a local engineering firm and a Sunday school teacher, says he knows that the private sector can deliver services more efficiently than government. But he worries that private companies may not place as high a priority on public safety.

“They have shareholders. Is it going to cut into their profit margins?” he wondered aloud. “Before September 11, I wouldn’t have given that a second thought.”

LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

From the Libertarian Side

Lights, Cameras . . . Big Brother?

As the cause of about 260,000 annual car crashes, resulting in 150,000 injuries and more than 800 fatalities, red light running has long been a widespread public safety hazard. But a recent report from the office of House Majority Leader Dick Armey warns of an even greater danger than the “so-called red light running crisis”: red light cameras.

Red light cameras—which 19 states currently use or plan to use, according to the U.S. Department of Transportation—record the license plate number of cars that run red lights. Police then trace the license number, and a citation is mailed to the violator. According to Advocates for Highway and Auto Safety, fatalities are dropping at intersections where cameras operate.

Yet the majority leader’s report, “The Red Light Running Crisis: Is It Intentional?” claims that the cameras are part of a “scam” that poses an “Orwellian threat to our privacy.” The installation of red light cameras, it says, has been accompanied by shorter yellow light signal times at certain intersections, increasing the odds that motorists will run red lights and, in effect, be forced to pay a “hidden tax.”

If all of the report’s accusations are true, some municipalities are misusing the cameras—a fault that could be remedied rather easily by

lengthening the yellow light. The report, however, maintains that the cameras' flaws run deeper than this. It asserts that the cameras require Americans to give up their "cherished freedoms" and "constitutional protections" for an "empty promise" of safety.

"We should never have allowed the personal privacy of our citizens to be undermined by these Big Brother devices," it claims. "In return, we are less safe." The report does not say when the need to save lives would actually outweigh the need for an inviolable right to privacy.

From the Authoritarian Side

The Return of Forgotten Laws

To some, Chicago's old ordinance that barred the wearing of masks in public might have seemed quaint and, at worst, a bit archaic. Others, however, found that authorities used the ordinance as an excuse to violate their civil liberties.

After they were arrested under this ordinance for wearing black bandannas during a protest against labor practices outside a Niketown store, demonstrators filed a lawsuit against the city, charging that the measure was unconstitutional. The suit was joined by Muslim men who said police officers had ordered them to remove head scarves during a Palestinian protest, and Muslim women who said officers had harassed them about their head coverings. In response, reports the *New York Times*, the city proposed to drop the ordinance, and Mayor Richard M. Daley ordered a comprehensive review of city statutes, asking the city council to repeal similarly outdated measures.

Among the obsolete laws uncovered by the city is an ordinance that outlaws anyone from accepting a fee to "promote a marriage between a man and a woman," and a ban on holding a meeting or

“seance of any kind in the name of spiritualism, or of any other religious body, society, cult, or denomination.”

Particular historical circumstances can explain why many of the laws were once passed—the ban on masks, for instance, was passed in 1922 to curtail a rise in Ku Klux Klan activity. Still, some saw contemporary implementation of these laws as being improper and biased. “This is not just a funny little old ordinance,” said Nancy Gerrity, a lawyer for the protestors. “This is an ordinance they were using to violate people’s rights.”

Sticklers for the Rules

Though it has been nearly three years since two students murdered 12 of their classmates and one teacher at Columbine High School, the tragic events of April 20, 1999 continue to affect the Columbine community. But the latest repercussions of the tragedy involve a standoff between local school administrators and families of victims.

After school officials asked families to design commemorative tiles for a memorial project, two families of victims chose to include religious expressions in their designs. Because school authorities feared they could be sued for displaying religious messages on school property, they rejected these contributions to the memorial. The two families themselves then took the school to court. Yet even after a federal court decided that it could display the religiously themed tiles, the school district still refused to do so and appealed this decision.

As *Denver Post* columnist Chuck Green explains, “You might think the school district would be happy to have the ruling go against it, since it cleared the way for all victims of the Columbine tragedy to be represented in the memorial, and it absolved the authorities of concerns about violating the separation of church and state.” Instead, school administrators have maintained that “the district has to have control over what’s mounted on its walls.” As a result, the community continues to be divided.

From the Community

A City on the Same Page

While many Americans overtly displayed a sense of unity and fellowship this past fall, residents of Chicago found a quieter, less noticeable way of joining together: by reading the same book at the same time.

As part of its inaugural “One Book, One Chicago” program, the Chicago Public Library and the City of Chicago asked every adult and adolescent in the city to read a copy of Harper Lee’s novel, *To Kill a Mockingbird*, which won a Pulitzer Prize in 1961. After stocking up on thousands of extra copies of the novel in August, reports the *Chicago Sun-Times*, city officials and librarians helped orchestrate events and discussion groups to encourage people to participate. Librarians distributed thousands of discussion guides, organized Internet chat rooms, and scheduled scores of formal discussion groups. The city distributed 25,000 lapel ribbons with mockingbird logos in the hope of promoting spontaneous discussions between participants. Some private businesses, including Starbucks and Barnes & Noble, organized study groups around the book. The program culminated in a week of special events from October 8-14.

“One Book, One Chicago” borrowed its premise from a similar program in Seattle. The founder of that program, Seattle librarian Nancy Pearl, told the *New York Times* that her original idea was “based on the noble idea of community . . . that people would come together who would never come together any other way.”

In Chicago, says the city’s public library commissioner, Mary Dempsey, the program “cultivates a culture of reading and discussion . . . by bringing our diverse city together around one great book.”

According to the *Times*, the reclusive Harper Lee, now 75, declined an invitation to come participate in Chicago’s program; however, she did send a brief message saying that “there is no greater honor the novel could receive.”

Similar programs have been planned for Syracuse, Boise, and Springfield, Illinois.

Jury or Jail?

Last year, only about 15 to 20 percent of Washington, D.C. residents summoned for jury duty actually reported to court. But beginning last August, D.C. Superior Court Judge Rufus King III gave them a new reason to show up: staying out of jail.

“Jury duty is every citizen’s responsibility,” King told the *Washington Post*. “Our Constitution provides that every person is considered innocent until proven guilty by a jury of their peers. That system won’t work unless each and every one of us takes our civil responsibility seriously.”

Acting on this belief, King announced that the court would start enforcing a law that says those who do not heed a warning letter can face seven days in jail and a fine of as much as \$300. Between the time this announcement was made in August and the end of 2001, 187 warrants were issued, eight D.C. residents were arrested, and one spent a night in jail.

Arthur Spitzer, legal director of the ACLU of the National Capital Area, says that King’s plan is fair. “It’s a court order,” says Spitzer. “It’s like if you get a traffic ticket and do nothing about it. Basically, you become a scofflaw.”

Jason Marsh

COMMENTARY

Against Statistical Morality

Can we, should we, must we legislate morality? The answer, of course, is “of course.” To be regarded as legitimate, law must be regarded as just, and justice cannot be assessed independent of morality. At any given moment, many if not most of the more contentious political debates revolve around the legislation of morality. Should the government support research on fetal stem cells? How about partner benefits for homosexuals? Euthanasia? Abortion? A “living” wage? I favor the legalization of same-sex marriage. Many other people oppose it. I think they are wrong, and they think I am wrong, but both sides understand that either choice makes a moral statement, and that neutrality is not an option.

Most people, including many people who say you can’t (or shouldn’t) legislate morality, understand that in fact you can’t *not* legislate morality. What they really have in mind is a cautionary rule of thumb—something not unlike the guidelines offered by Christopher Beem, R. Bruce Douglass, Thomas A. Spragens, Jr., and Amitai Etzioni [“A Symposium on Legislating Morality,” Fall 2001]. They may, for instance, mean, “You can legislate morality, but it’s unwise to do so in the absence of a pretty broad consensus.” Or they may mean, “You can legislate morality, but it’s unwise to legislate against actions that cause no demonstrable harm to others.”

Both those rules of thumb are good ones. But they leave plenty of room for argument. I want to devote the remainder of this note to

admonishing communitarians against too readily legislating morality in cases where the victims—the people harmed—are primarily *statistical*.

Plainly, Joe Blow should not be allowed to poke his children in the eyes with sharp sticks. Plainly, also, he may have reason to keep rotisserie skewers around the house. But what if someone can show that a home containing rotisserie skewers is statistically more likely to send children to the hospital with eye injuries? Here, surely, is harm. So why not ban rotisserie skewers, or require that they be locked up or equipped with safety features, or require their owners to take safety courses?

Spragens takes a dim view of this sort of law; he prefers sanctions against irresponsible or harmful conduct (brandishing skewers, perhaps). Many libertarians would agree with him on rights-based grounds. Etzioni, by contrast, speaks (I think) for many communitarians when he favors, for example, bans on smoking in public places (including, I assume, workplaces, restaurants, stores, and other private places that are open to the public or where employees' attendance is mandatory). "A communitarian masterpiece," he calls this idea. Similarly, he endorses mandatory gun locks, laws against "abusive marketing," and so on.

I am the first to agree that there are some things that are too dangerous to allow even responsible people to do—driving drunk, for example. I also certainly agree that there are some sorts of direct harm that must be quantified statistically rather than individually, and that can be mitigated only by means of broad mandates—air pollution is a classic case. But second-hand smoke in public places is an annoyance. All of the physical harms it is alleged to cause are statistical, and even those are tenuous. Since I hate the smell of cigarette smoke myself, I'm grateful for no-smoking sections in restaurants. But Etzioni would go further and—if I understand him correctly—ban, for example, "cigar bars," where people who like to smoke together can do so.

Libertarians, of course, will object to such laws. But I think communitarians also should be more skeptical than they often are. Legislating statistical morality seems to me not reliably in the interests

of building and supporting real, as opposed to statistical, communities. Communities are constellations of people who make moral choices with an eye toward how each affects others. Take away the choices, and you take away the communities. If you ban smoking outside the home, you dam up the subtle eddies of interpersonal negotiation as people work out where it is and isn't appropriate to smoke, and as they learn who does and doesn't object to smoking. You thus squelch the sort of moral probing and bargaining that makes a community a much more deeply and intimately linked association than is, say, a polity.

Communities also require their members to think about others and to make moral judgments accordingly. Take away the thinking, and you take away the communities. Many responsible people use and store guns safely and believe—with some reason—that a trigger lock would impair their ability to use the gun in the one situation where it matters most, namely when threatened by a surprise intruder. In fact, quite a few responsible gun owners believe that mandatory trigger locks will endanger their children. There is a real trade-off here, and a healthy community will require its members to think about it rather than passing laws that do people's thinking for them. Requiring that guns be sold with trigger locks and that gun owners be informed of the risks of accidents may make sense; requiring that everyone handle his gun the same way disengages not only triggers but brains.

Pretty much all kinds of behavior have statistical implications that can be teased out by virtuosic regression analyses and then spun into horrific projections of statistical lives lost. Doesn't sodomy lend itself to the spread of HIV? Doesn't fast-food advertising lead to unhealthy eating and heart attacks? Come to think of it, 50 percent more children under age 10 drown in bathtubs than are killed in gun accidents. Wouldn't banning bathtubs serve the community's interest?

Often such questions are complex. Sometimes legislating statistical morality may be justified. I don't suggest otherwise. I do suggest, however, that communitarians' knees should jerk in the other direction, lest the door be flung open to communitarianism's opposite—

collectivism, under which all people are statistics and community is smothered by politics.

*Jonathan Rauch
Brookings Institution*

Law and Morality

The symposium introduced by Christopher Beem raises in an interesting way the question of whether we can legislate morality without sacrificing freedom. I suppose that the received view in Western democracies has been the one advanced by J.S. Mill in *On Liberty*, that the law should be used to forbid actions which threaten harm to others, but not to forbid actions which harm no one but the agent, however immoral they may be.

The problem is, however, that we just don't know whether any particular form of life really does threaten harm to others. If I understand the communitarian idea correctly, it is that we are social beings, whose happiness depends upon living in communities, and that the liberal emphasis on individuals and their rights is an insufficient basis for social policy. I endorse that idea, but believe that it has an awkward implication, namely that we are all of us harmed by those freedoms which have the breakdown of community as their inevitable, normal, or natural result. In which case, by Mill's principle, the law is entitled to curtail them. And if that looks like legislating morality, then so be it: the hoped-for distinction between law and morality has proved to be untenable.

I think we have many clear cases of this in modern democracies and that we ought to confront them rationally if we can. The obvious examples concern sexual conduct. We are used to the view that the law should tolerate all kinds of sexual relations between consenting adults, since sex is nobody's business but our own. This does not mean that there is no such thing as immoral sexual behavior, but it does mean that sexual behavior is no business of the law. On the other

hand, communities depend upon the maintenance of sexual norms, and when those norms are openly flouted, the sense of community dwindles. In a community where sex outside marriage, easy divorce, illegitimacy, abortion on demand, adultery, promiscuity, and so on are all regarded as equally legitimate choices that the law can do nothing to condemn, then within a generation or two there just won't *be* any community, over and above the aggregate of individuals. This is what we have been discovering in our inner cities. And when this happens everybody is harmed, since everybody loses something that is necessary for happiness. So should the law interfere, imposing sexual norms as civic duties? We in the West recoil from the suggestion as a radical threat to our freedoms. And indeed it is.

The standard conservative response to that difficulty is to argue that sexual norms emerge from the experience of society and are not to be imposed by legislation. Nevertheless, the law should respect those norms, should do nothing to disrupt them, and certainly should not reward those who violate them. American law is, from this conservative perspective, extremely defective. It grants legal protection to pornography as "free speech," it has endorsed welfare programs that reward young women for their illegitimate offspring, and it penalizes as discriminatory the attempt to promote heterosexual marriage as a norm. Liberals tend to welcome these developments—though many of them have qualms about pornography. Conservatives tend to deplore them. But both recognize that the law cannot be used to reverse them.

There is another way in which liberal democracies violate Mill's principle. As well as permitting activities which harm the community, our laws forbid activities which harm no one but the agent. Antismoking legislation, legislation against illicit drugs or mandating seatbelts—R. Bruce Douglass, for one, endorses them all on the grounds that these activities are injurious to our physical well-being. But this obscures a fundamental distinction. Nobody has ever killed, maimed, or abused another "under the influence of tobacco"; what harm is done by this substance is confined strictly to its user. Indeed, the origins of tobacco use in the Native-American "pipe of peace" suggest that tobacco is a healer of communities and that the attempt to forbid its use is just another blow against the few social resources that remain to us. Yet the frenzy of anti-tobacco legislation in the U.S. proceeds

unabated. Illicit drugs, by contrast, do not merely harm the users; they alter their behavior for the worse, and may even cause a kind of moral degeneracy that renders them a living threat to their fellows. In Europe the pressure to ban smoking now goes hand in hand with pressure to “liberalize” the use of cannabis. In other words, the pressure is to forbid what is harmless to the community and to permit what threatens it. And I suppose that’s what we mean, or ought to mean, by decadence.

The example of tobacco leads me to endorse what Mill had in mind: the kind of busybody legislation that democratic governments have, since the time of Prohibition, increasingly engaged in seems to me to be a violation of the democratic mandate and an abuse of individual rights. The example of sexual conduct, however, leads me to reject Mill’s approach as giving no clear guidance in the most difficult cases. Nor do I find a more plausible criterion in Rawls’s theory of justice, with its attempt to privatize morality as a “conception of the good.” It seems to me that the liberal desire to disentangle morality and law, however commendable in its motives, is doomed to failure.

Should this disturb us? I don’t think so. We have received a wake-up call from the fanatics who have declared war on us, and the meaning of the call is this: What do we believe in? On what shared values are our communities built? If we have shared values, then they should be enshrined in and protected by the law. If we have no shared values, we are doomed. And we *do* have shared values—this, surely, is the communitarian message. Freedom is one of them; but in legislating freedom, we should not destroy the other goods on which our communities depend: love, loyalty, responsibility, and the innocence of children. Legislate to protect those things, and you will be legislating morality. But only the sinners would mind.

Roger Scruton

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