
The Responsive Community

Volume 14, Issue 2/3, Spring/Summer 2004

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After 12 years, the Communitarian Platform is again open for endorsement. The text of the platform, a list of previous endorsers (which includes leading intellectuals and public leaders), and a form to sign the platform are available at www.comunitariannetwork.org.

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The Responsive Community

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To join the communitarian dialogue online, please visit www.amitai-notes.com, and contribute your thoughts. Send in comments to the editors at aeblog@gwu.edu.

LAST WORDS

A Tribute to *The Responsive Community*: 13 Years of Rights and Responsibilities

Amitai Etzioni

For the last 13 years *The Responsive Community* has provided an opportunity for a large number of communitarian thinkers to participate in a forum to develop communitarian theory, philosophy, and policies, as well as a place to publish descriptive accounts of communitarian ideas at work in one community or another. Adapting to the electronic age, we have decided to shift the conversation, albeit in a more modest format, to our blog, at www.amitai-notes.com.

When the first issue of *The Responsive Community* was published in 1990, our subtitle, “Rights and Responsibilities,” was a novel idea. Before that, reference was often made to rights only. Since then, the idea that strong rights presume strong responsibilities has become almost clichéd. Many hundreds of associations and institutions have adopted statements of rights and responsibilities, ranging from Cornell University to the Learning Disabilities Association of America and from the American Psychological Association to Cambridge International. Our efforts to identify the foundations of a good, communitarian society—one based on a carefully crafted balance between autonomy and social order, and an order based largely on moral suasion rather than coercion—have not traveled nearly as far. *The Responsive Community* did, though, provide a forum to chart communitarian

policies suitable for such a society, including policies that seek to foster marriage rather than ban divorce; favor character education over both value indoctrination and normative neutrality; voluntary community service rather than a mandatory one; organ donations based on a moral culture rather than market incentives; and much more. Most recently, the pages were opened to a discussion of the application of communitarian thinking to international relations. Articles published in *The Responsive Community* were reprinted with fair regularity and cited by others, giving our ideas more of a reach than they found on these pages. They are also the source of two volumes: *The Essential Communitarian Reader*, published in 1998, and *The Communitarian Reader: Beyond the Essentials*, forthcoming in fall 2004. All in all, not too shabby a record for a small publication. I am sorry to see it lose its printed format, and hope many will join us in the online space. I also have some measure of satisfaction that we dedicated these pages to good dialogue and purpose.

As the editor of *The Responsive Community* since its inception, I am most grateful to the co-editors, especially to Bruce Douglass, William A. Galston, and Tom Spragens, for their many years of service. They reviewed all essays that were published and the many more that did not see the light of day, while providing invaluable comments and suggestions. Many thanks are also due to those who served as book review editors, especially Edward W. Lehman. A special joy of serving in the capacity of editor was gaining the opportunity to work with an outstanding group of young managing editors and researchers, most of whom have already moved on to make significant contributions in a variety of public services. Their names adorn the front pages of past issues. Finally, many thanks to our readers and supporters who made *The Responsive Community* possible.

Despite the end of *The Responsive Community* as a hard copy publication, the communitarian conversation is still going strong, and will continue. I invite you one and all to join the dialogues online, at www.amitai-notes.com, and contribute your thoughts. You can reach the editors of the electronic forum at aeblog@gwu.edu.

One administrative note: readers whose subscriptions have not expired will begin receiving *Greater Good*, a new magazine published by the Center for the Development of Peace and Well-Being at the University of California, Berkeley. They also have the choice to treat what's remaining in their account as a donation to the Communitarian Network or receive an equivalent value in the form of communitarian books.

Communitarianism: Epitaph for a Monument to a Successful Reminder

Thomas Spragens, Jr.

In 1961, the political scientist Robert Dahl published an essay entitled "The Behavioral Approach in Political Science: Epitaph for a Monument to a Successful Protest." The subject of this essay was the status of a program of methodological innovation within the discipline of political science commonly referred to as "the behavioral movement." His thesis was that behavioralism as a distinctive orientation would lose its salience and seem to "slowly decay" as a protest movement. But this loss of salience would be the result not of its failure but of its success: its most important claims and concerns were becoming incorporated into the main body of the work of the discipline. My title reflects my strong sense that the communitarian movement is on a similar path and for the same reasons: it will become less visible as a distinctive movement and orientation because it has succeeded in reminding all of us not only about the correlativity of rights and responsibilities but also about the importance and fragility of the institutions of civil society within a well-ordered democracy.

The institutions of civil society are those informal and voluntary associations people form in order to address the social needs of themselves and others. Civil society comprises groupings such as

families, neighborhood associations, churches, PTA's, civic associations such as the Rotary Club and the VFW, youth soccer leagues, community choirs and Alcoholics Anonymous. Civil society provides us with the organizational basis for us to meet, learn, recreate, raise children, and worship. Some have called it the "third leg" of a democratic society, the other two legs being the market and the state.

The principal impetus for the distinguished sociologist Amitai Etzioni's call some 15 years ago to form what he called a "communitarian" movement was the increasingly apparent deterioration and disrepair of many of these core institutions of civil society. It was a time in which it seemed that, as Senator Bill Bradley put it in a speech to the National Press Club, "the fragile ecology of our social environments is as threatened as that of our natural environment." As Bradley noted in addressing some specifics to support his general claim: "consider the plague of violence, guns, and drugs; the racial tensions that afflict so many communities; the turmoil in public education; the deterioration of America's families." He went on to lament that Americans increasingly seemed "disconnected from one another," that "the network of voluntary associations in America seem to be dying," and that "when I left Missouri for college in 1961 the number of children in St. Louis born to a single parent was 13 percent; now it is 68 percent." This was a time when some of these same concerns led another U.S. senator and social scientist, Daniel Pat Moynihan, to worry out loud that perhaps we were on the way to becoming the first society in human history to forget how to socialize our young.

As it happens, the two dominant American public philosophies are arguably singularly ill-equipped even to perceive, much less understand and deal with, such problems. The classical liberal or libertarian orientation common on the right insists upon collapsing any conceptual distinction between the economic transactions of the marketplace and the social associations of civil society. For libertarians, the only significant distinction is that between social behaviors produced by the force-backed mandates of government and behaviors that occur voluntarily. This dichotomous categorization has the epistemic effect—and for libertarians the tactical virtue—of focusing upon the distinction between voluntary and compulsory actions to

the exclusion of all other distinctions. The problem, however, is that this dichotomous framework blinds its adherents to the important differences between things done for money and things done for other reasons. And as a consequence, they lose sight of both the importance and the fragility (because it is driven by less imperative motivations than economic survival) of the non-economically driven associations of civil society.

In a formally similar but substantively different way, contemporary democratic egalitarians tend to emphasize the core distinction between private self-interested behavior and public-spirited actions. In this dichotomous framework, it is the differences between collective action through state institutions and communal achievement through voluntary civic affiliations that tend to disappear from sight. Despite their ideological contestation with each other, then, both the political left and the political right in this country could be said to have in common a failure to grasp the importance of the third leg of civil society, because neither of them adequately appreciates the distinctiveness of the sphere of the "voluntary public" domain in the politics of a well-ordered democratic society.

Moreover, the privileged norms and preferred policies of both the libertarian right and the egalitarian left tend to undermine the health of the institutions of civil society. The norms they privilege have this destructive impact on civil society because both are "rights based" theories. They differ with respect to the specific rights they recognize and with respect to the justificatory arguments and moral institutions from which they are derived. But in both instances the right is prioritized to the good, rights are prioritized over responsibilities, and the putative entitlements of individuals are accorded priority over the needs of communities.

In terms of their preferred social policies, the libertarian right always wants to "privatize" in the sense of maximizing reliance upon the self-interest driven mechanisms of the market. Alternatively or supplementally, some libertarians such as Hayek and Charles Murray, borrowing from Hume and Burke, anticipate in excessively optimistic fashion a "spontaneous order" of "little platoons" that will emerge to address social needs. The egalitarian left, on the other hand, reflexively looks to governmental interventions to be carried out by

bureaucratic institutions whenever some currently unmet social need or difficulty seems to present itself. The problem here is that, as Alan Wolfe among others has memorably brought to our awareness, both state and market have a strong tendency when relied upon too extensively to colonize and ultimately cannibalize previously healthy instrumentalities of civil society. Taken in tandem, then, an exclusive or dominant reliance on market and state can have the consequence of fostering the different but by no means mutually exclusive maladies that Alexis de Tocqueville famously worried about as structural threats to democratic societies. Avid marketization encourages the tendencies toward individualistic privatism and materialistic commodification Tocqueville saw as potentially endemic in a free and non-hierarchical society. The proliferation of bureaucratic social service agencies pushes us toward the enervating paternalism of the nanny state that Tocqueville saw as the shadow of a previously unencountered form of "soft despotism." Neither market nor state, moreover, can somehow make good the damage their hypertrophy inflicts upon civil society, because the cultural and social requisites of a healthy civil society are beyond their capacity to create or repair.

Against the backdrop of these contemporary threats to the overall health of contemporary democratic societies and the general incapacity of the dominant ideological orientations to confront them with any real hope of success, Amitai Etzioni's coining of the designation "communitarianism" and his tireless campaigning on its behalf has functioned over the past 15 years as, to borrow Thomas Jefferson's phrase in reaction to the threats portended by the Missouri Compromise, a fire bell in the night. Thanks in part to his efforts to get the disrepair of and structural threats to the institutions of civil society within contemporary democracies recognized and placed high on the theoretical agenda of social scientists and on the practical agenda of political and social leaders, it seems clear that this alarm has been heard and its message received. By comparison with the state of affairs in the 1980s, it is safe to say that social scientists today exhibit a widespread awareness of the role and importance of civil society to the functioning of democratic societies. Indeed, the virtues of a healthy civil society are now so widely recognized that one commentator recently complained that civil society had become the "chicken

soup" of social analysis: something seen as good for whatever ailment may come along.

Not only is there broad recognition of the specific functions performed by this "voluntary public sphere," but we also have been led to understand that the other two legs of these societies, the market and the state, are importantly dependent upon this third leg for their own vitality. Francis Fukuyama has recently argued quite persuasively, for example, that effective economic enterprises and an efficient marketplace rely heavily upon social virtues such as trust and the capacity for cooperative endeavor. Low-trust or atomistically individualistic societies have great difficulty organizing economic corporations, delegating work authority in ways necessary for organizational flexibility, and making economic transactions work smoothly. Optimum economic performance is "not necessarily achieved by rational self-interested individuals but rather by groups of individuals who, because of a preexisting moral community, are able to work together effectively." The same social virtues and civic competencies, created and nurtured within healthy communal associations, also seem crucial to the successful functioning of political and governmental institutions – especially democratic ones. As Robert Putnam concluded as a result of his inquiry into the contrasting political performance of different regions in Italy, the claim that "civil associations contribute to the effectiveness and stability of democratic government both because of their internal effects on individual members and because of their external effects on the wider polity" was strongly borne out by his empirical findings. He continues, "by far the most important factor in explaining good government is the degree to which social and political life in a region approximates the ideal of a civic community." Regions where the bonds and associations of the civic community are strong produce political institutions that are broadly cooperative, deliberative, egalitarian, and effective. Conversely, in less civic regions, government becomes both more heavy-handed and more ineffectual at the same time.

In the area of political theory, moreover, it is now more widely appreciated—thanks to work by people such as Peter Berkowitz and Richard Dagger—that liberalism as a political philosophy incorporates and depends upon certain social virtues that the civic culture

needs to sustain. Indeed, in his later work, John Rawls also acknowledged the importance of what he called the “political virtues” to even his relatively individualistic and rights-oriented liberalism. Additionally, in the areas of history and political sociology, people such as Robert Bellah and Barry Shain have made the case that “liberal” America is not and never has been so individualistic in its social patterns as the prevalent mythology tends to suppose.

As a consequence of these various findings and recognitions, “the liberal-communitarian debate”—possibly a bit of a misnomer from the outset—has lost its edge and become less salient. Correlatively, “communitarianism” seems to have lost some of its distinctive identity. But the reason is not that the movement has failed. Instead, its major claims and concerns have largely become incorporated into an improved, broader, and more complex understanding of the requisites and dynamics of well-ordered democratic societies. Much work remains to be done by those who have been involved in this movement and the debates it initiated, of course. The proper balance between individual rights and social responsibilities will always be a subject for important debate, and changing political and social circumstances will bring new specific issues to be contested. Moreover, social policies conducive to healthy civic institutions will always need devising, discussing, testing, and evaluating. But communitarianism and the communitarian movement will become increasingly less visible as distinctive entities in the future. And as that happens we can say with some confidence that they will have faded precisely because of their notable success in reminding us all of two very important truths: morally healthy and practically successful democratic societies require a vital public sphere of voluntary civic associations; and a vital civil society depends upon a strong civic culture that acknowledges and encourages an ethos of social responsibility, because neither market incentives nor government mandates can create the moral bonds of civic friendship.

Seymour Mandelbaum

Virtually everything I have written has dealt with the design and redesign of communities and the moral orders they sustain. I have, however, only occasionally and very reluctantly joined in the contest between communitarian and deontological ethical claims. I have, instead, focused my attention on the cultivation of a “communitarian sensibility” that does not require the resolution of the classic philosophic disputes. The range of voices in *The Responsive Community* has encouraged that sensibility. Communitarians and deontologists alike share an instrumental appreciation of the social arrangements that make it possible to cultivate a moral order. Deontologists who affirm the authority of a transcendental reason must socialize new recruits and sustain the commitments and practices of members. Pragmatic communitarians justifying policies and practices spin a web of reasons that transforms traditions into principles. Theorists on both sides of the philosophic argument must deal with the rights and obligations of both members and strangers.

Thanks for the gift of *The Responsive Community*.

Communitarian Influence Abroad

Daniel A. Bell

In the late 1980s, I spent several years as a graduate student learning about the philosophy of communitarianism. I settled upon the conclusion that the philosophical debate had just about reached its end point, that communitarian critics of liberalism may have been motivated by pressing political concerns—the negative social and psychological effects of the atomistic tendencies in modern liberal societies—and that it was time to think about the practical political terrain of promoting a sense of community in the modern world. At the time, I thought I was very fortunate to obtain my first teaching job

in Singapore. In 1991, the ruling People's Action Party had officially declared that "communitarianism" was one of the five "shared values" that bind, or ought to bind, Singaporeans, and I was hoping to discover "communitarianism in action." After a few years, however, my initial expectations were somewhat dampened. I was still hoping for some sort of alternative to liberal individualism, but Singapore-style communitarianism too easily became conflated with authoritarianism. So one day, I stumbled upon a copy of *The Responsive Community* in the National University of Singapore library. Imagine my surprise, a new periodical had been created that put my political intuitions into words! Here were concrete proposals for emphasizing social responsibilities and promoting the common good that sought to steer the middle ground between individualism and authoritarianism. Naturally, I became a big fan of *The Responsive Community*. In retrospect, I wish it had come out earlier, before I went to Singapore. And now, the sad news is that it will come to an end as a print quarterly. It came out too late, and it is ending too early. Nonetheless, I am confident that its vision will continue to survive in other ways.

Ernst M.H. Hirsch Ballin and Thijs Jansen

The Responsive Community is not only the title of a quarterly, but also a border-crossing reality. The transnational responsive community spans active members of the society, politicians, and scholars. In political debates communitarianism has proved to be a source of inspiration across institutionalized political borders, transcending ideological separations between left and right. In European politics Amitai Etzioni's communitarianism hasn't had an exclusive relation with one specific political orientation. Some political theorists have therefore argued that the political color of Etzioni's communitarianism lacks clarity. Bovens described it as a "catch-all" current. Accord-

ing to Cahoone, communitarianism “is simply a kinder and gentler name for conservatism.” Empirical studies, however, show that it would be perhaps more appropriate to conclude that Etzioni has had his most visible affinity with the renewal of the “left” in Europe, especially within social-democratic parties. He has been an advisor to Prime Minister Tony Blair and contributed an essay to the transatlantic debate on redirecting the left ideologically: “The Third Way to a Good Society” was published by Demos, Tony Blair’s think tank. These impressions are apparently consistent with Etzioni’s White House years as an advisor to President Jimmy Carter. In Germany, Etzioni has been associated with the third-way aspirations of Rudolf Scharping and Gerhard Schröder. There, however, members of the responsive community can also be found in Christian-democratic circles: Etzioni has also developed a special relationship with the prominent Christian democrat Kurt Biedenkopf.

In the Netherlands things seem to be different. Etzioni has been read and studied for many years. However, it is striking that Dutch intellectuals and politicians in the social-democratic party have hardly been interested in communitarian thinking. How come? Which parties feel affinity with communitarian thinking? Before answering these questions it is important to note beforehand that our political system is very much different from the American one. We have a multiparty system. Even if the opposition between left and right is becoming somewhat obsolete, many observers still use it to sketch a map of the Dutch political landscape. We have several (small) political parties on the far left, a large social-democratic party (center left), and two parties on the center-right, the liberals and the Christian democrats (the Christian Democratic Appeal, CDA). And we have two small Christian parties: one on the far right and one on the center-left.

The political landscape is also much more fragmented than in the United States. A more sensible approach than the left/right dichotomy would be to discern political parties according to the value they place on government, market, and society, respectively. From this point of view each of the larger parties has a characteristic preference pattern guided by tradition and ideology. What is striking is that there are political parties on the far left—especially the party

GreenLeft—which have some affinity with communitarian thinking in connection with the wish for a strong government; and on the center right there is the Christian-democratic party, which is commonly characterized as communitarian with a greater emphasis on freedom and personal responsibility. The social-democrats have kept their distance. This can be partly explained by the dominant influence of individualistic undercurrents in the past 40 years, but also because communitarian theory does not see the function of the government and politics as valuable in its own right. The social-democratic intellectual and politician Jet Bussemaker was somewhat disappointed that in Etzioni's essay on the third way, politics and government don't have any role to play.

Why have the Christian democrats been so interested in communitarian thinking? It is striking that in the past ten years American communitarian thinking has been more and more referred to in the CDA. The Christian democratic theory finds a natural ally in communitarian thinking, because it has—at least since the end of the seventies—promoted the “responsive society” as a political goal. Responsibility has been one of the focal concepts for the Christian democratic party from the beginning. This was a modern translation of older principles: the catholic principle of subsidiarity and the Calvinist principle of “sphere-sovereignty.” Since the end of the 19th century the Christian democratic tradition has linked responsibility with community.

Recently the Christian-democratic prime minister Jan Peter Balkenende visited Etzioni. Balkenende is known in the Netherlands as a politician very much inspired by Etzioni's work. In his book *Anders en beter*, which he published during the elections in 2002, Balkenende wrote that for the reorientation of the CDA—since the major defeat of 1994—the compass has been *communitarian thinking*. The magazine *Christian Democratic Explorations* (CDV, *Christen Democratische Verkenningen*) has played a prominent role in this process, first as a monthly and since 2003 as a quarterly. Since the second half of the nineties it was directed by the authors of this contribution. Before that we were already inspired by communitarian thinking.

In recent years, we have seen a renewal of interest in Dutch politics for “values and norms.” Prime minister Balkenende has put

this issue high on the political agenda and tries to maximize moral dialogue. Dutch citizens regard this project as an extremely important one and have high expectations. The project has led to many local initiatives in Dutch civil society, sometimes stimulated and supported by local government. The debate on “values and norms” focuses on the insight that compliance with legal rules will not come close to the desirable level if it isn’t in any way connected with the moral dialogues going on in society. Many politicians however feel embarrassed when they are asked about the nature of these values. Being familiar with communitarianism and the roots of Christian democratic thinking will point in the direction of the nature of human relations, i.e., living in communities. A communitarian approach to “norms and values” will also depart from an often extremely abstract debate. The decisive point is to have an open attitude vis-à-vis the members of our societies, and their interests and aspirations. The articles published in *The Responsive Community* have often showed us the way on a variety of subjects.

Reflections of a Former Managing Editor

Jason Marsh

For the past 14 years, *The Responsive Community* has provided readers with insightful analysis of pressing social, moral, and legal issues. To authors it provided a means for new ideas to reach a broad audience. But for nine people over the years, the journal provided something else: a dream job. These lucky few, myself included, served as *The Responsive Community*'s managing editors.

As its only full-time staff member, the managing editor was the person responsible for shepherding the journal through every stage of its publication process. The people who held the job had different backgrounds and different aspirations. But they were all attracted to the position because they believed in the power of good ideas to effect

positive social change. On the pages of *The Responsive Community*, these good ideas found a home in a thoughtful and far-ranging dialogue. To be at the center of this dialogue, to help shape and be shaped by it, is an extraordinary privilege for a recent college graduate. It is also a unique learning experience, like getting paid to be a student (under the tutelage of Amitai Etzioni and the journal's other editors, of course).

Most of all, perhaps, the job nurtured the communitarian impulses of young thinkers dedicated to advancing the common good rather than satisfying an ideological agenda. In a media world increasingly fueled by conflict and partisanship, *The Responsive Community* demonstrated to its managing editors—and to its readers—that an honest, civil exchange of ideas could still be engaging and rewarding. What's more, it showed that there were policymakers, authors, and activists committed to finding common ground from which to attack social problems; they cared more about constructive solutions than winning an argument.

For idealistic men and women just a few years out of college and not quite sure what they wanted to do with their lives, this was extremely encouraging. I would guess that their experiences at *The Responsive Community* emboldened the managing editors in their subsequent careers, whether they were in government, academia, journalism, or elsewhere. This has certainly been the case for me. *The Responsive Community*, with its vivid illustrations of how theory and action can intertwine, served as the inspiration for *Greater Good*, the semi-annual magazine of which I am now the founding editor at the University of California, Berkeley. All of the former managing editors may not trace their professional or intellectual development so directly back to the journal. But I like to think that in addition to the essays it published and the ideas it advanced, the careers of these nine people truly are a legacy of *The Responsive Community*.

UP FRONT

Civil Conflict and Same-Sex Civil Unions

Andrew Koppelman

“Civil unions,” which give same-sex couples all the rights of marriage but not the name, are a response to the same-sex marriage controversy that pleases nobody. Gay rights advocates think that civil unions represent a second-class status, whose nominal equivalent is as bogus as the “separate but equal” fiction of racial segregation. Conservatives hate the idea of giving any legal recognition at all to homosexual relationships. I don’t like civil unions much myself: they are an unstable solution, which is likely within a few decades to self-destruct. Nonetheless, I come to praise civil unions, not to bury them. In the short- and medium-term, they are the best compromise we can hope for.

The controversy over same-sex marriage is a battle between two competing moral visions. Each entails a single, unified national solution to the marriage question, which has no room for the other. Neither vision is likely to prevail in the near future. We have already begun a period of stalemate that is likely to persist for some time. Nobody is likely to be especially happy with this stalemate, and it cannot last forever, but it is, at least for now, a resolution that everyone can live with.

The stakes are very high, because the word “marriage” has religious connotations. This is true even when the word refers to a

state institution. In part this is because, during the Reformation, marriage stopped being a sacrament and was therefore handed over to the state, but never lost its quasi-mystical associations. The state thus found itself in the peculiar business of administering a sacrament. Moreover, America has always thought of itself in religious terms, as “a city on a hill,” and this idea survives in modern American civil religion. The First Amendment notwithstanding, religion of a peculiar kind has been an integral part of American identity.

Unsurprisingly, then, both sides are pushing for total victory. Gay rights advocates (myself among them) have long argued that the denial of marriage rights to same-sex couples violates the U.S. Constitution, both because discrimination against gays is as invidious as racial discrimination and because the heterosexuality requirement discriminates on the basis of gender: men, but not women, can marry women. Were courts to accept this argument, same-sex marriages would have to be recognized throughout the United States. President Bush has responded, at the insistence of his allies on the religious right, by proposing an equally uniform solution: a constitutional amendment that would *ban* same-sex marriage anywhere in the United States.

A compromise position has emerged: “civil unions,” which have all the benefits of marriage without the name. The idea was originated by the Vermont Supreme Court, which in 1999 responded to a lawsuit by ordering the legislature to provide same-sex couples with the benefits of marriage, but not necessarily the name. The legislature complied and Governor Howard Dean signed the bill, which remains the law in Vermont. A similar measure, in the form of a proposed amendment to the state constitution, has been offered as the moderate compromise response to the Massachusetts Supreme Court’s recent decision mandating same-sex marriage in that state.

This position has considerable political attractions. Americans oppose same-sex marriage by overwhelming margins, typically two to one against. But polls also show that the label of “marriage” is all that many really care about. So long as that line isn’t crossed, they are quite willing to let the law recognize same-sex relationships. One recent poll found that health insurance for gay partners was supported by 58 percent of Americans, and 54 percent thought (contrary

to the federal Defense of Marriage Act) that partners should get Social Security benefits. (Only 34 percent of those polled thought there should be legally sanctioned same-sex marriages.) When people are asked about giving gay couples *all* the same legal rights as married couples, another poll found, the split is a third in favor, a third against, and a third who don't care.

On the other hand, if the word "marriage" is used, not only do the numbers shift, but passions suddenly run very high. Richard Viguerie, the most experienced conservative direct-mail fundraiser in the country, told the *New York Times* after the Massachusetts decision legalizing same-sex marriage in that state that same-sex marriage will be a better fundraising issue than abortion. "I have never seen anything that has energized and provoked our grass roots like this issue, including *Roe v. Wade*," said Richard Land, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, which has 16 million members. This raises a puzzle. According to what view of the world could same-sex marriage possibly be a more severe problem than abortion, when it is stipulated that abortion involves the killing of millions of babies?

If the legal issue of same-sex marriage is actually a religious one, then the puzzle can be solved. Abortion may be thought of a great moral evil, but it is not one that the state participates in. The state merely tolerates it. If marriage is a state-administered sacrament, on the other hand, then state recognition of the wrong kind of marriage is a kind of sacrilege, a profaning of the temple. It is easy to see why that would raise the blood pressure of conservatives.

So why not just compromise and enact an equivalent without the label? In Vermont, and shortly in California as a result of recent legislation, "civil unions" and "domestic partnerships" give same-sex couples nearly all the legal benefits of marriage. When California enacted its law, with no prodding from any court, the national press hardly even picked up the story.

There are two reasons why gay rights advocates resist the "civil unions" compromise. First, they also buy into the sanctification narrative, and they want their relationships sanctified, too. Jonathan Rauch thus writes that "marriage is society's most fundamental institution. To bar any class of people from marrying as they choose

is an extraordinary deprivation.” Andrew Sullivan describes marriage as “the social institution that defines for many people the most meaningful part of their lives.” More is at issue here than legal benefits.

The second objection to civil unions is that gays don’t want second class status, and that’s what civil unions amount to. The Massachusetts Supreme Court rejected such unions, because they “would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits.” Here gays can draw on a second American redemption narrative: the long struggle for equality. The gay struggle for equality in many ways resembles the struggle against racism. Both narratives prominently feature vicious, irrational prejudice, gang violence met with official indifference, pervasive discrimination, and an unresponsive political system. Separate but equal has an unattractive history.

Civil unions are no more popular with the religious right. Such unions give state recognition to same-sex relationships as such, implying that such relationships are in some way legitimate. Once those relationships are thus legitimated, religious conservatives fear, the cultural trend toward their acceptance will be reinforced, making it more likely that same-sex marriage will eventually be legalized.

Nonetheless, such unions now represent the political center. They are the safest territory to occupy, which is why John Kerry, for example, has rushed to embrace them. At least some of those opposed to same-sex marriage evidently think that civil unions provide a safe stopping point, which buys off the gays and preserves marriage’s character as an exclusively heterosexual institution. And some supporters of same-sex marriage, myself among them, agree with the religious right that this is a step on the slippery slope to full marriage recognition. Consider the generational divide over same-sex marriage: while most Americans oppose it, most 18-to-29-year-olds are in favor. Perhaps this is why two-thirds of Americans think that same-sex marriage will eventually be legal in the United States.

Another avenue to compromise is federalism. As this is written, Massachusetts is on the verge of recognizing same-sex marriage. This has produced panic in some quarters. President Bush, for example, responded by predicting that, if the federal Defense of Marriage Act

were invalidated by the courts, “every state would be forced to recognize any relationship that judges in Boston or officials in San Francisco choose to call a marriage.” But Bush, who can be presumed to have competent legal advisers, is just lying. No state has ever been held to be constitutionally required to recognize out-of-state marriages that are contrary to its own public policies. The resolution here is likely to be the one America had for many years with respect to interracial marriage: a patchwork of different laws in different states. This inconsistency is likely to be hard on same-sex couples who want to move or travel. Once more, my own view is that this state of affairs would be unjust. But a federalist solution does lower the stakes.

This federalist solution has lately been attacked from the right by Maggie Gallagher, who argues in the March 29, 2004, *Weekly Standard* that “[l]eaving the matter to the states amounts to conceding that marriage is not a key social institution.” But she, too, has difficulty explaining what bad thing will happen unless we amend the Constitution to ban same-sex marriage. Elsewhere she argues that same-sex marriage “affirms that children do not need mothers and fathers, and that marriage has nothing to do with babies,” and claims that if the state endorses this message, there will be an increase in “poverty and trauma caused by widespread fatherlessness.” There is no way to disprove this kind of claim, in which the causal chain runs through the unobservable consciousnesses of millions of people. But there’s not much reason to believe it, either. It’s hard to imagine how legal recognition of same-sex marriage would affect even one father’s deliberations about whether to stay with his children. Stanley Kurtz, who makes essentially the same argument as Gallagher, writes that “[t]he association between marriage and parenthood is partly a mystique.” But this seems unduly pessimistic. I have three kids, and I don’t think I stick around because I’m mystified or confused.

Civil unions and local options for recognition are both unstable compromises. They represent what the philosopher John Rawls disapprovingly called a “mere modus vivendi”—a compromise based not on principle, but on a contingent balance of political forces, which will be abandoned whenever those political forces happen to shift. Rawls is right to be unhappy about such compromises. It would be better to live in a society that is united at least on matters of political

principle, if not on religion or the nature of the good life. But it is hard to see how that can happen any time soon with respect to same-sex marriage.

The same-sex marriage debate reveals the limits of community in modern America. Not only is it impossible for us to agree about marriage, we can't even agree on the principles that ought to govern the debate. Under these circumstances, the best hope for civil peace is to lower the stakes. Balkanization, and a variety of solutions in different states, is the best hope in the short run.

Not only is civil peace good in itself, but the warring factions may have other goals that are thwarted by the ongoing struggle over sexual morality. Large political stakes may turn on the amelioration of the culture war over homosexuality. For example, many on both sides of the homosexuality debate are uncomfortable with the prospect of a regime in which the corporate colossi that wield increasing power over Americans' daily lives are able to operate unconstrained by government regulation. The groups most inclined to resist corporate power, the neo-socialist left and the religious right, will probably never be able to resist that power effectively until they are able to work together, at least for limited purposes. Large elements of both sides, therefore, have good reasons to want a truce, if terms acceptable to both can be devised.

In the long run, of course, civil unions can't be the solution. The resistance to them, particularly among the activists on both sides, is too great. But we live in the short run. Civil unions are the most politically stable answer for the next decade or so. Given the depth of our moral disagreement, that is saying a lot.

The Political Life of the Internet

Grant Reeher and Steve Davis

There is no doubt that the Internet has changed American political life, and is continuing to change it. The real questions now are what, precisely, is changing; whether the Internet is improving or somehow further degrading our political life; and what the Internet's likely future impact on politics will be.

The Internet's role in politics gets more attention with each election cycle. The focus typically is on the candidates and the campaigns, and the ways they use the Internet to win office. But we believe that when looking at campaigns and elections, consideration of the Internet's political use must be refocused from notions of an "Internet candidate" or an "Internet campaign" to more probing and subtle examinations of the "Internet electorate."

Media attention paid to the Internet and politics skyrocketed in late 2003 and early 2004, as Howard Dean's campaign for the Democratic presidential nomination began to look like a sure bet. The attention arguably reached its high-water mark on January 11, 2004, when blogging was discussed at length on a broadcast of *Meet the Press*.

Although the Internet has not been an integral source of their fund-raising successes (or excesses) to date, both John Kerry and George W. Bush have significant Internet components in their campaigns. As the campaign continues to heat up (we write in March of 2004), we will no doubt hear more about them.

Until Dean's campaign, notions of the Internet's political role were mostly limited to a few narrowly defined, traditional uses. In the mind's eye of most observers writing about the Internet and most political actors attempting to employ it, a campaign's website or a political story sat at the hub of the political wheel, and individual citizens logged on as spokes, received the broadcasted information, and occasionally sent back financial contributions through cyberspace. These contributions could be significant, as they were for John McCain in 2000.

But this vision constricted the approach toward using the Internet and the analysis of its use. In both endeavors, the principal focus was on the Internet as an effective, efficient, flexible, and low-cost substitute for traditional, one-to-many mass communication efforts and political activities. This assumption restricted the consideration of the role of the Internet in many different aspects of political life. In electoral politics, for example, the Internet was primarily viewed as an alternative vehicle for broadcasting information, raising money, and publicizing a highly focused message. In public administration, the attention was centered on analogous efforts by government, such as communicating agency information and regulations or enrolling clients on-line. In each case, the one-to-many broadcast frame dominated the consideration.

Typical studies of the Internet's political use followed from these assumptions, and tended to focus, for example, on content analyses of candidate and government agency web pages, studies of user-friendliness and participation rates for candidate pages and on-line government forms and applications, or qualitative evaluations of on-line services. While useful to researchers and some political practitioners, these works were rather dry affairs, which failed to capture much of the Internet's true political value, and which were unlikely to inspire readers to greater civic engagement.

With Dean, this has begun to change. The Dean campaign understood the value of, and encouraged, virtually based communication and connections among the citizens initially drawn to the campaign's message, and a few media stories picked up on the difference. There is now greater recognition of the more interconnective and community-building ways in which the Internet contributes to politics. But the examinations continue to glide along at the surface of Internet activity.

What is now needed for a better understanding of the Internet's political value are deeper but also more broadly accessible treatments that consider the ways that political institutions and citizens might employ the Internet to enhance political connections, communication, and mutual action. If these connections become rich enough, they can lead to either wholly virtual or blended virtual-real communities, which in turn can help to replace at least part of our declining

stock of social capital. This is arguably the Internet's greatest potential to enhance democratic governance and political life, and to contribute toward the activist, communitarian goals that have animated this journal.

Our own efforts in this regard began with a book we published with fellow Syracuse professor Larry Elin in the fall of 2002 based on a study of the use of the Internet in the 2000 elections, titled *Click on Democracy: The Internet's Power to Change Political Apathy into Civic Action*. That book drew on empirically tested theories of social capital development and civic engagement, and on observations of how a variety of formal and informal political organizations creatively used the Internet to generate political communities and further their own political aims—and also how some of them failed. Its central argument was that the Internet made its most constructive and effective contribution to politics—and held its greatest future promise—as a facilitator of political community building and multiple-way communication, rather than as a one-to-many broadcast device employed to capture viewers, money, and votes.

What needs better understanding this time around is exactly *how* the process of effectively employing the Internet occurs, and the particular mechanisms at work in the way it becomes interwoven with other more traditional political activities in helping to knit together communities. What are the early returns from 2004? Thanks to the Internet, the electorate has evolved and matured in some likely immutable ways. Consider the following milestones in the ever-so-short political life-span of online campaigns.

- The electorate has organized online—primarily via meet-ups—by the tens of thousands. Included among them are many who have never participated before. It is the candidates, the causes, and the issues, and not the medium, which have inspired the electorate.
- That said, the Internet has also enabled the rank-and-file to organize with no direction from the top, with little more than encouragement and a few software tools downloaded from the candidates' websites.

- Americans are meeting virtually via meet-ups and have moved that energy off-line and in-person to the physical world. They don't just talk online. They do things. They meet at bars and restaurants and churches. They plot strategy and carpool to other states to do hands-on canvassing. They await orders from no one.

Top-down communication from campaign headquarters, those one-way pass-along e-mails that were the hallmark of the election in 2000, have been replaced by side-to-side and face-to-face communication among the partisans.

- The electorate has contributed “new” millions of dollars, many donated by first-time-ever donors and many in small amounts, primarily but certainly not exclusively to Dean.
- Many of these people are young, many have never given before, and many are not just giving but volunteering. Some are “impulse givers,” a new and exclusively Internet phenomenon. They donate small gifts multiple times, all online. They are the true pioneers of campaign fund-raising.
- The electorate has migrated into grass-roots interest groups of citizens who have coalesced in online knots of partisans, later coming together under the candidates’ bigger online umbrellas. Witness “Firefighters for Dean,” “Veterans for Kerry,” and dozens of others. In 2000, these included a group called “Young Professionals for Bush.” In addition, some of these include groups and interests previously thought to be mutually exclusive.
- The Internet has made possible the creation of a new category of political organizers and fund-raisers. Computer salesmen, teachers, grocery store cashiers, stay-at-home parents, and others created their own web pages, set fund-raising goals and even “bundled” their neighbors’ \$25 or \$50 contributions, sending them off to the national candidates. This enabled Dean to smash Bill Clinton’s record for Democratic fund-raising in the 12 months before an election year.
- At the same time, however, the Internet has also created tensions for the candidates—there is an uneasy relationship between the Internet’s promise and some of their traditional needs. Candi-

dates and campaigns are still trying to figure out the Internet, and struggling over whether—and how—to tame the technology.

All of these changes have countered much of the initial skepticism over the Internet's role in politics—which was only fueled by the high-profile virtual failures during Election 2000—that the Internet would not amount to much of value in politics, or that it was not yet “ready.” Now, in the aftermath of Dean, there is a new skepticism beginning to surface, that the community-building and communication aspects of Internet political activity are, in the end, “just people talking.”

But as we have argued, it is not only talking. And more importantly, this talking, this connecting, is essential. It goes beyond the electoral moment and a particular candidate, and it has a direct effect on political alienation, inefficacy, and disengagement. The feelings are important. Furthermore, there is an essential difference between simply expressing oneself politically on the Internet, through, say, a blog (though the efficacy-enhancing effects of this could prove critical for a citizen's later political involvement), and communicating and connecting with others through the medium. It will take time, as well as the further spread of Internet-based political activity, for these trends to fully develop, be recognized, and be appreciated. But the seeds are there.

There are other hopeful signs for the future. One concerns young adults. Politically, they are the least engaged group of potential voters. But according to Harvard University's Kennedy School Vanishing Voter Project, many more young adults in 2004 are paying attention to politics and are talking about politics than at similar points in the election cycle during 2000. Also note that one-quarter of Dean's individual contributors were under the age of 30. And in the Iowa caucuses, entrance polling showed that four times as many young voters turned out as in 2000. Much of this difference is no doubt due to the war in Iraq, but it is likely that it is also related to the Internet.

And it may not stop at voting. A March 16, 2004, web-only story in *The Nation* by Anya Kamenetz supplies evidence suggesting that the young adults who were particularly inspired by the Dean cam-

paign and its Internet-related political activism “are unbowed by their hero’s crushing defeat and ready to stay involved in politics. They’re already developing plans to use the grassroots organizing skills and personal networks they developed over the past year to help elect Democrats locally, unseat Bush, and advance a progressive youth agenda.” Other stories have found similarly inspired young adults. Of course, we will have to see.

Another hopeful sign is that the digital divide is continuing to close. This divide has dogged those who want to see the Internet aid civic engagement. If the nation is split roughly in half in terms of access to the Internet, will increased virtual political activity simply reinforce the socioeconomic stratification that already separates us in the real world? The good news here is that the most recent Nielsen NetRatings, which measure home access to the Internet (*home* access to the Internet is key to building connections and communities) indicate that across the nation, Internet access penetration is now at 75 percent of the entire population (over the age of 2). Last year, it stood at 66 percent. In recent years, the trend toward almost-universal access shows no signs of slowing down.

But the bottom line remains the same as it was in 2000: if the Internet is going to be truly central to our political life in 2004 and beyond, it will be about the citizens and the political communities that they create with the aid of the technology, not about the candidates themselves or a particular issue, even one like the war. The big political institutions would do well to listen, watch, learn, and facilitate.

On the Immigration Proposal

James K. Galbraith

And so now comes George W. Bush, with another proposal to get the country moving again. It’s immigration reform, all dressed up to play to the Hispanic vote. The proposal promises minor

conveniences, such as an identity card, to the estimated eight million undocumented workers in this country. Its main feature, however, is a new temporary worker program that would, in the president's words, "match willing foreign workers with willing American employers."

But at what price?

The new class of migrants would have to leave when their permits are up, unless renewed. They would have to leave if fired from their jobs. Forget labor rights. Forget unions. Also forget family, home, neighborhood, and things like that. Anyone wanting to protect those things will stay out of sight.

Few in the new class would ever become citizens. They would never get to vote. No one will speak for their schools, their clinics, and their wages. No one will stand in their defense when they are abused on the job, hurt, sacked, blacklisted, and sent home.

But Bush made clear that this program is not just for workers presently here. It is not just for those who may soon arrive. It is far broader than that. Here's a quote from the president's speech:

"If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job."

This program will permit any employer to admit any worker. From any country. At any time. It is easy to create jobs that Americans are not willing to take. Cut wages. Lengthen the hours. Speed up the lines. Chicken farmers have known this for years.

Bush says that he expects those whose permits expire to go home. But who will make them? Will the government organize mass round-ups and deportations? Or will the workers just quietly disappear back into the sub-underground of the truly illegal?

And notice who comes next—another cohort of strangers. And not just Mexicans, incidentally: temp agencies will look for Chinese, Indians with their good English, and many others. This is a program to create a rotating foreign underclass, which will never assimilate to American values. It's hard to imagine anything worse for our social life, more productive of petty crime—or riskier for national security.

For millions of citizen workers (and those who have become permanent residents the legal way), what would happen? Bad bosses drive out the good. Good bosses will turn bad under pressure. The terms of our jobs will get worse and worse. Who will want a citizen worker? A bracero will be so much cheaper, more loyal, and under control. And who among us, in our right mind, will want to look for work? Unless, of course, we needed to eat. Or pay the mortgage.

You can see why the Democrats propose an alternative. They would limit the number of legal guest workers to 350,000 per year. They would let those workers apply for green cards in two years. They would let illegal immigrants now in the country earn legalization and eventually citizenship. They ought to strengthen that process by cracking down (much harder than they propose to do) on those who continue to live here illegally once the avenue to legalization opens up.

The Democrats offer a different philosophy—one of inclusion and participation, rather than contingency and transience. For those who believe, as I do, that the American community should consist mainly of people who live here permanently and who take part in our civic and political life, the choice is clear.

The Culture Wars

Alan Wolfe

Although Americans tend not to like culture wars, political activists invariably do. Issues such as abortion, affirmative action, and prayer in public places mobilize political bases, help raise money, and inspire political passion. We ought to recognize, though, that there are two different kinds of cultural issues in American politics. Let me call them top-down and bottom-up cultural issues.

Top-down cultural issues rarely emerge from the lives and concerns of ordinary people but they are of deep importance to political,

ideological, legal, theological, and fund-raising elites. Affirmative action is the quintessential top-down cultural issue. Most Americans are not sympathetic to quotas. This even includes African-Americans, as political scientists Paul Sniderman and Thomas Piazza have demonstrated. Their study showed that, “forced to make a choice between two applications for college, one black and one white, blacks overwhelmingly believe that the one who did better on the admission test should be the one that is admitted.”

But university admissions officers, African-American politicians, and liberal foundations, while denying that affirmative action involves quotas, are in favor of admissions procedures that allow colleges to accept African-American applicants whose grades and SAT scores are lower than those of many white applicants who are rejected. Hence, there exists a gap between elite opinion and popular sentiment.

Yet affirmative action will not be an issue in 2004, thanks to the U.S. Supreme Court generally and Justice Sandra Day O'Connor specifically. In *Grutter vs. Bollinger* and *Gratz vs. Bollinger*, the court rejected mathematical quotas but allowed race to be a factor in college admissions, thereby discovering the common ground on affirmative action that political elites have been unable to find.

The political importance of this fact can hardly be exaggerated. Race, after all, was the first wedge issue of contemporary politics, the one that could—and did—swing voters from one party to the other. Now that both mainstream political parties appeal to diversity, neither will engage in racial demagoguery in the 2004 presidential election.

As the courts take away, however, the courts also give. While matters involving race are unlikely to be wedge issues in 2004, those involving gays inevitably will be. The Supreme Judicial Court of Massachusetts recently ruled that the state is barred by its constitution from prohibiting marriage between homosexuals. There is no question of the importance of this issue and the role it will play in the upcoming elections and beyond.

Whatever the legal and constitutional merits of the court's decision—I find its reasoning compelling, even eloquent—there are at

least three ways this issue can benefit the Republican Party. The first is that it enables Republicans to mobilize conservative religious believers. Even while national leaders like Bush will avoid language that reeks of intolerance in reacting to the Massachusetts decision, the Republican influence industry of talk shows, magazines, and Christian commentators will claim that the decision threatens the future of Western civilization.

Second, the issue of gay rights enables Republicans to appeal to culturally conservative minority groups, especially African-Americans and Latinos. The former not only tends to register strong opposition to homosexuality, it also often resents comparisons between the struggles for civil rights and the arguments made on behalf of gay rights. And Latinos, overwhelmingly Catholic, may be inclined to follow the Church's teachings on homosexuality, which unambiguously condemn gay marriage.

Third, the fact that it was a Massachusetts court that issued this ruling will remind both parties of the red state/blue state divide in the 2000 presidential election. Massachusetts has an all-Democratic congressional delegation, is the home state of Sen. Ted Kennedy, and is the only state that voted for George McGovern for president in 1972. (McGovern also won the District of Columbia.) Republicans will be sure to tell the country that a state so liberal cannot be allowed to make policy for the rest of America, especially if other states find themselves forced to recognize homosexual marriages conducted in gay-friendly Provincetown.

The opposition to marriage between homosexuals forces those who use the issue to argue against marriage for those who want it, oppose the right of states to experiment in matters of public policy, defend governmental interference with private decisions, and allow others to raise the specter of intolerance. Still, the issue reminds us that top-down cultural concerns still matter. (Not only will gay rights be an issue in 2004, abortion may be one as well, given the passage of a bill outlawing "partial-birth" abortions.)

At the same time, however, alongside the old issues in the culture war has arisen a set of concerns that do not easily fit into the political patterns with which we have become familiar. Bottom-up issues, as I

call them, touch on matters individuals care about greatly: their faith, their families, their country.

Consider families first. Unease with President Clinton's adulterous behavior certainly helped Republicans appeal to family values in the 2000 election. But in the past year or so, we have seen enough examples of Republicans engaging in less than perfect moral behavior to undermine any lingering sentiment that one party is more moral in its choice of leaders than the other. Charges of improper behavior toward women did not hurt Arnold Schwarzenegger's campaign for California governor, but having a Republican governor of the country's largest state whose views on hot-button moral issues are moderate and even liberal will make it difficult to charge Democrats with abandoning traditional values.

And the fact that William Bennett and Rush Limbaugh experienced problems with gambling and drugs led a number of conservatives to argue that we should be tolerant and understanding toward them. Perhaps we should, but once the language of forgiveness enters politics, the language of finger-pointing blame exits. Bush himself, no doubt, will continue to be perceived as a good family man in 2004. But assuming that the Democrats also nominate a man who loves his wife and cares for his children, it is hard to imagine anything like the 2000 Clinton subplot repeating itself in 2004.

Americans worry that widespread divorce and a decline in the authority of parents make it difficult to bring up children. They are right to worry. But a lack of jobs, the pervasive appeal to sex and violence in the mass media, widespread gambling, and easy access to drugs, including abuse of the pharmaceutical variety, also increase the difficulty of parenting. Republican policies that give tax breaks to the wealthy at far greater rates than the middle class, that allow the media free rein to dominate the airways as they choose, and that weaken the ability of government to engage in responsible regulation are not family-friendly.

Much the same is true of issues involving faith. Americans, compared to the citizens of any other wealthy liberal democracy, believe in God in overwhelming numbers. As writer Amy Sullivan has persuasively argued, the failure of Democrats to honor the faith

commitments of Americans often puts them at a disadvantage. At the same time, however, the God in whom most Americans believe is not in exclusive possession of the truth, is tolerant toward people of other faiths, and is rarely severe in his condemnation of sinners. Not even evangelical Protestants, who form the core of Bush's electoral base, resemble these days the ignorant and dogmatic Christians portrayed in a film like "Inherit the Wind."

Alas, American society has in recent months witnessed public figures who act as if they had just stepped out of the script of that movie. None is more important than Lt. General William Boykin, deputy undersecretary of defense for intelligence, who denounced Muslims for their belief in a false God. Although Boykin's intolerance is clearly harmful to U.S. efforts to win friends in the Muslim world, Bush, while criticizing his remarks, refused to remove him from his sensitive and important position.

Just as Democratic politicians in the past worried about negative reaction from pro-choice groups like NARAL, Bush has to be concerned that doing the right thing for our foreign policy would cost him support among those ideological extremist interest groups or newspaper columnists that claim (often without evidence) to represent the views of ordinary church-going evangelicals.

Boykin's extremism, and the failure of Republican politicians to distance themselves meaningfully from his bigotry, will undermine efforts by the Republicans to appeal to Muslim voters, whose support they generally won in 2000. Such extremism, however, can and should increase Republican vulnerability among all people of faith.

Although many liberal Democrats tend to forget it, evangelicals, even very conservative ones, believe in the separation of church and state; among Baptists, for example, such separation is a founding doctrine of the faith. It is, moreover, a crucial feature of the ways evangelicals evangelize that one can never force another person to discover the joy of Jesus; conversion must, to be authentic, also be voluntary. Democrats should remember that we live in a nation under God, not a nation under Jesus, or any other specific deity. They should use the 2004 election as an opportunity to bring religion into politics and to kick intolerance out.

Finally there is, as there has to be, the question of country. After September 11, Americans are unlikely to vote for a presidential candidate they perceive as insufficiently patriotic and unwilling to deploy American troops in defense of their security. But Americans are also mature enough in their patriotism to recognize that wars can be costly, both in terms of lives lost and in terms of money spent. There is no question that, whatever the costs, Americans do not want their leaders to cut and run from a place like Iraq.

The deep cultural divisions in our country can be troubling, especially when they are shrilly aired on cable television and in books with inflammatory titles. When our cultural issues were put on the table from the top down, there was all too little national debate. Knowing that their positions on affirmative action or abortion were unpopular among wide swatches of the electorate, liberals relied on the courts to achieve what they were unable to win in the court of public opinion. Gay marriage fits snugly into this pattern.

In retrospect, it is a mistake to rely on the courts to make policy, as the fine art of convincing voters through the democratic process of the validity of their beliefs is lost. Fortunately for the future of American politics, "bottom up" cultural issues, unlike gay marriage and abortion, do not generally present themselves in ways amenable to legislation by judicial action. Instead they get decided as Americans and their policy makers think hard about what they expect from families, faith, and country. We are likely to have two different visions of how these issues will be resolved facing the electorate in 2004. On these kinds of matters, the people have a voice, and it will be fascinating to see how they use it.

Community Is the Key

William Raspberry

You already knew it, of course—just as you already knew most of the important social-behavior insights. Just as you knew, for example, that “fixing broken windows” could curtail neighborhood deterioration, long before James Q. Wilson ever coined the phrase.

And so it is with this newest insight of Felton Earls, the Harvard psychiatrist, professor, and researcher who has been studying the roots of inner-city crime. The conclusion from his long-term study, based in Chicago, is that neighborliness—a willingness to help when help is needed and especially to look out for one another’s children—has more to do with crime (or its relative absence) than income, race, or family social status.

Didn’t you know that?

At some level, of course, we all know it. People of a certain age are forever telling stories about how wonderful their childhoods were despite the fact that their families had no money, because everybody looked out for everybody else, every adult was parent to every child.

Liberals look for neighborhoods where people cooperate politically and socially across lines of race and class. Conservatives look at crime-ridden neighborhoods and are certain that the victims of crime could drastically reduce its incidence if they’d only bestir themselves to behave as neighbors should. Effective community is the key.

At other levels, though, we have missed the insight almost totally. We try to fix the problem of crime with jobs and recreational programs, if we are liberal, or with better policing and tougher sentencing, if we are conservative. Virtually all of us spend some of our time thinking that we could reduce the problem of crime if we could change the situation on the ground: improve the schools, bring back the fathers, drive out the drug dealers, or fix broken windows. We believe, at least some of the time, that we need to take some of the pressure off childhood.

Earls has reached a different conclusion: “It is not stressful circumstances as such that do harm to children,” he has said. “Rather, it

is the quality of their interpersonal relationships and their transactions with the wider social and material environment that lead to behavioral, emotional, and physical health problems. If stress matters, it is in terms of how it influences the relationships that are important to the child."

Earls, whose Project on Human Development in Chicago Neighborhoods is funded by the National Institute of Justice, an arm of the Department of Justice, says the impetus of what is done can be more important than the content.

"If you get a crew to clean up the mess," he explained to a reporter for the New York Times, "it would last for two weeks and go back to where it was. The point of [our] intervention is not to clean up the neighborhood but to work on its collective efficacy."

And you knew that. Perhaps you knew it because you heard about groups like the Alliance of Concerned Men, which helped transform what had been a Washington killing field by embracing the young men who had been doing the killing. Maybe you read "Hardwired to Connect," a study whose conclusion is that the weakening of connections between children and their communities is the source of a virtual epidemic of emotional and behavioral problems. Or maybe you've figured out on your own that the secret of successful transformation lies not in recipes but in relationships.

But the fact that other people keep discovering what, at some level, we already know doesn't diminish the importance of Earls's insight on the need for effective community. As with most of our recurring discoveries, it probably has something to do with the tension between our built-in attraction for the new and the bungee-like pull of the eternal verities.

You knew that, of course.

ESSAYS

COMMUNITARIAN THEORY

Toleration: The Lost Virtue

Richard A. Epstein

From Liberty to Community

In the 1950s, this most indifferent Sunday School student in New York heard his full ration of pleas for toleration. The crux of the argument was that Christians of all denominations who did not believe and share in our Jewish beliefs should nonetheless allow us to conduct our lives as we deemed appropriate, with the full range of practices, beliefs, rituals, and symbols. Toleration was thought of as a nonutopian virtue requiring self-discipline from the dominant group whose toleration we sought. The key subtext of our claim was, and is, that toleration isn't required for those practices of which you approve and respect. Rather, you have to find the inner strength to tolerate only those practices that you reject or find offensive. At root, toleration is a principle of live-and-let-live. The offset is that this demand for toleration requires at most indifference. There is of course no need to welcome tolerated individuals into your heart or your home; it is possible to speak out against tolerated practices, and to urge others to abandon them. Nor is it necessary to tolerate those practices that constitute a direct threat to your ability to conduct your own lives as you see fit: human sacrifice, physical attacks, and verbal abuse are not

proper objects of toleration. What is required is that the dominant group does not place any special burden, tax, or disability that impedes one's ability to engage in the tolerated practice. Even in this modest form, the toleration motif offered a minimalist defense against religious persecution. As Jews, we were, of course, required to "tolerate" the dominant Christian faith, but that ersatz toleration did not count because, as a minority group, we did not have the political clout to impose our will on them. In that setting, toleration was a one-way virtue. It is only when two groups have roughly equal political power that mutual toleration becomes a social necessity.

The traditional Jewish concern with toleration was closely tied to the then-recent past history of virulent anti-Semitism in the United States, not to mention the atrocities of the Holocaust. But the theme sounded dated to my young ears in the relatively good times of the 1950s. It is hard to demand toleration when you think that you enjoy widespread social acceptance. Today we are in the midst of a wide set of culture wars, precipitated, only in part, by recent Supreme Court decisions that touch on issues of marriage and morals, and that have helped fuel the firestorm over same-sex marriages. In dealing with such issues, once tired pleas for toleration become more urgent if our national political community is to hold together. In addressing this issue, it is commonly urged that large political and social communities can only stay together if their members share a set of common values on the good life that allows them to cooperate on matters of public importance. The point is correct insofar as it reminds us that our ability to reach consensus on social issues depends heavily on the existence of a shared set of values and norms from which further deliberation can proceed. People who share common values do not have to argue about ultimate goals to make any concrete decision: indeed they don't even have to have very good reasons to believe what they believe. They will usually find it sufficient to resolve instrumental differences on the best means to a common goal, or factual questions surrounding any particular problem. These technical and empirical questions do not open up new areas for moral dispute.

But the existence of an elusive set of common values is not a necessary given from which all subsequent collective deliberation proceeds. Quite the contrary, the set of common values is more likely

to shrink as the size of a political community expands and as the number of groups defined by race, creed, religion, or values increases. Personal and ethnic identities are thick; they are not exhaustively described by name, rank, and serial number. These communities are distinctive precisely because they do not accept the same sources as moral authority and because each carries forward a distinctive culture whose values may not be widely shared by other groups within the polity. To demand a strong and comprehensive set of common values counts as an open invitation to factional struggles because the choice of one rich set of values necessarily entails the rejection of many others. The wiser communitarian looks for more modest efforts in which there is some agreement about the rules of the game even if there is no strong agreement on matters of political choice and personal conduct. There is some good sense in the Rawlsian notion of an "overlapping consensus," so long as we do not push a good idea too far, by insisting that people share certain common views about, say, relations between the races and sexes in order to be eligible to participate in public debate. In the search for some large social consensus, it is critical to remember that moral arguments sufficient to guide one's own conduct are not necessarily sufficient to coerce similar conduct in others. If there is one value that stands out, it is the need to respect the *right* of other individuals to make choices in their own lives even if we do not respect, or even if we condemn, the choices that they make.

The better approach therefore is to turn again to thoughts of toleration in the effort to develop a society in which live-and-let-live gains an ever higher priority. The skepticism about common political values has in large measure accounted for the success of our own political institutions. I think that the success of our constitutional scheme for the protection of freedom of speech and religion rests on a deep suspicion that any one code of personal conduct is so superior to all its rivals that it is entitled to state preference or public allegiance. The nub of the argument is that the only way to advance community is to resort to the small-state limited government view that has been associated with various strands of libertarian thought. It is somewhat mythical to think that huge numbers of diverse individuals can aspire to more than some form of live-and-let-live with people who are total strangers to their own lives, and from whom they are separated by

deep philosophical differences that could easily become more pronounced with intense discussion and debate. Yet it is not necessary to have some overarching sense of community for people to lead rich and textured lives. All individuals are far more likely to achieve some abiding sense of community through an array of voluntary arrangements in which affiliations are matters of choice and not necessity. Stated otherwise, the road to community lies through liberty, and the political precondition for liberty is, ultimately, toleration.

Two Generations of Flag Salute Cases

One object lesson for this view is the flag-salute cases that confronted the Supreme Court during World War II. Dispute then swirled over whether members of the Jehovah's Witnesses could be required to salute the flag in public schools, when that practice was in violation of their own religious prohibition against the worship of graven images. That public act of fealty was required under a statute whose preamble stated that "conscientious scruples have not in the course of the long struggle for religious toleration relieved the individual from obedience to the general law not aimed at the promotion or restriction of the religious beliefs"; and further that "national unity is the basis of national security; [and] that the flag of our Nation is the symbol of our national unity transcending all internal differences, however large within the framework of the Constitution." The emphasis here was exclusively on the neutral form and secular motivation for the law, not its differential impact on the dissenters. In *Minersville School District v. Gobitis* (1940), Justice Frankfurter upheld the statute, writing:

The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. We live by symbols. The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution.

Yet this homily to national identity proved, even in its own time, to be subversive of its stated ends. The specter of forcing children to engage in actions contrary to their religious beliefs in public settings

conveys just the wrong image for a nation soon to be at war with totalitarian enemies. The law took out our collective insecurity on defenseless people who just wanted to be left alone. If the law had asked whether the Jehovah's Witnesses had to pay taxes to support the war effort, then they should be, and are, bound like everyone else by the collective decision to fight a foreign war. If the case had asked whether they had to do military service, which cuts closer to the bone, then a program for conscientious objectors might have offered a way to respect religious beliefs without allowing an easy out from the obligations of citizenship. But in the flag-salute case, the only state interest was symbolic. Precisely because those symbols are so freighted with social meanings, the collective "we" in a free society should not force them down the throats of dissenters.

Thankfully, three years later, *West Virginia State Board of Education v. Barnette* (1943) overruled *Gobitis*. Justice Jackson penned one of the Court's more memorable lines: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." Justice Frankfurter in dissent protested that courts should override democratic deliberation. In a telling remark, he attacked *Barnette's* majority for hewing to "libertarian" views in striking down general laws with secular purposes. But his argument gets it exactly backwards: when the only interest behind a law is symbolic, then every effort should be made to insulate individuals from actions that are inconsistent with their deepest beliefs. In the long run, the only form of allegiance that matters is that which is voluntary in origin, and those who are convinced that the Jehovah's Witnesses are profoundly misguided need only strengthen their own resolve. They do not have to browbeat others. The conclusion: only liberty and the minimalist view of state power works in the interest of community and security.

The decision in *Barnette* rested in large measure on the free exercise of religion. Its purpose was to allow dissenters to stand aside from collective rituals that violated their beliefs. The issue of the pledge of allegiance came before the Supreme Court in *Newdow v. Elk Grove Unified School District*. The substantive issue in that case was whether the words "under God" in the Pledge of Allegiance consti-

tuted an establishment of religion, at least within the context of public schools. If the case had followed the lead of *Barnette*, then the only substantive question would have been whether young Newdow should be allowed to refuse to say the pledge. But aggressively, Newdow claimed a violation of the establishment clause on the ground that the words “under God” breached the wall of separation between church and state in this context. The basic argument was that impressionable school children are subject to the state endorsement of religious ideals that could easily be read as a form of subtle coercion that could exert disproportionate impact on students. In light of *Barnette*, these school children should be allowed to stand aside from the pledge whether their objections stem from religious or secular motives. In so doing, they communicate a clear message that they (and possibly their parents) disagree with the import of the collective measure.

What made *Newdow* so difficult on the merits is that the remedy sought was to ban the pledge in school for *all* students so that even those who think that it embodies this nation’s highest ideals cannot say it. *Newdow* thus presented the mirror image of *Barnette*: can the protest of a single outlier dictate the way in which our collective institutions conduct their operations? Under the current law, the establishment clause argument has real power. For its part, the Supreme Court held as early as 1962 in *Engel v. Vitale* that explicit religious prayers in school count as an establishment even if other students have been able to stand to one side. Later in *Lee v. Weisman* (1992), it held that religious leaders, even on a rotating basis, cannot participate in high school graduation services on the grounds that this injects religion into public life. If the wall of separation is absolute, then this smaller but more frequent encroachment of religion into public schools must be resisted. So within the public school context, at least, the words could be forcibly removed from the Pledge 50 years after their insertion, which is what the Ninth Circuit held in a lengthy decision that led to widespread political consternation.

Now my first instinct on this matter, recently vindicated, was to wish that this case would go away so that a long-standing practice does not become the focal point of an acrimonious political dispute between religious and secular groups who already regard each other with deep suspicion. Even if the words to be removed from the

Pledge, at least within the schoolhouse, were just adopted today, on this heavily symbolic issue, it is probably best to think of their use as validated through long use—an argument that could never be invoked, for example, to justify the continuation of segregation in the 1950s, with its odious concrete effects. Indeed, technical doctrine of “standing” (which Neal Katyal and I urged successfully in an amicus curiae brief) lead a majority of the Court to the conclusion that Michael Newdow does not have standing to challenge the Pledge when his daughter’s mother, whom he had never married, had legal custody over their daughter and thus was the sole person who represents her interests.

My objections to Newdow’s lawsuit, however, go deeper and should lead ultimately to its dismissal if its ultimate reason is decided on its merits. In running the schools, the state is not acting in its role of enforcer of the civil peace, but as the operator of a complex social institution that has positive obligations toward the education of all children. In principle, one strong reason *not* to have public schools is that it puts the state in the position of making collective decisions on issues in which different groups hold different views. The question of whether evolution or religious theories of creationism should be taught in public schools is but one evidence of the gulf in question. A decentralized set of private institutions allows for people to sort themselves in accordance with their own views so as to diffuse the public tensions on these divisive issues.

Unfortunately, that alternative is not practical in this case, requiring some collective decision. We need therefore some guide that indicates the relative positions of the majority and the minority. The best frame of reference is the full range of private educational institutions that constantly have to face the question of how much religious activity has to be injected into the overall educational setting. There have been pitched battles about the extent to which religious matters should be introduced into private education: does the lobby holiday sing-a-long include Christmas Carols, Chanukah candles, Kwanzaa, and, more recently, Islamic materials. Who is to say? But amidst all this confusion, I doubt very much that any more than a tiny minority of private schools would refuse to say the Pledge of Allegiance because it contains the words “under God,” especially on the ground that it is coercive to school children who in many instances are wilful

and indifferent, rather than compliant. The honest revelation of sentiments is about as much as we can hope for on this controversy. Here in the long run, with regard to the Pledge, greater social peace will come if the majority has its way so long as the dissenter can stand aside. The alternative is that the majority cannot engage in the practices that it wants, a far greater sacrifice. It is only when the state moves toward systematically injecting religion into the educational experience that the balance changes and the establishment clause claims become more credible, which is why *Engel* is a far closer case. Yet at that point in the political process, Newdow no longer stands alone, for the overall political sentiment shifts as well, so that some limits remain on state religious activity even if one person no longer dictates the common agenda. But for Newdow to strike out the words “under God” on the Establishment Clause claim risks turning the Constitution into a weapon of intolerance: that dislikes of a tiny minority trump the will of a strong majority.

Affirmative Action and Same-Sex Marriages

This approach does not only apply to religious challenges but it also carries over to other social issues. For better or for worse, there is a strong social consensus in favor of affirmative action programs in higher education. The absolutist reading of the equal protection clause insists that all public institutions must be run on a color-blind basis. That principle is imperative when the question is how the state uses its coercive powers in administering its criminal and civil law. It is not acceptable to have affirmative action for minority burglars, nor to insist that members of disadvantaged groups can drive faster on public highways than other people. But in running public universities, the state does not act as a legal enforcer or the operator of a network facility that is open to all on a nondiscriminating basis. Instead it has undertaken the role of *manager* of a complex business, which has to make choices and trade-offs like those found in other businesses. It is evident that most private universities are committed in varying degrees to affirmative action programs, which in my view is their choice because of the preeminence of freedom of association in organizing social life. The root difficulty here is that public institutions are crosses between ordinary businesses and state institutions, so that the principle of freedom of association has to be reconciled

with the need for state impartiality. On this matter, I think that the former is the more important consideration, so that it becomes inappropriate to apply the unyielding standard of strict scrutiny appropriate to traditional government functions. Rather, it should be sufficient to make sure that public institutions are in rough conformity without private benchmarks. As there is, thankfully, no strong private pressure for old-line race segregation, that option for public institutions can be ruled therefore out of bounds on constitutional grounds. (The same argument does not apply in reverse when segregation was the norm because the entire system was maintained by an unholy mix of public and private forces that made it impossible to use private behavior as a baseline for public choices.) Accordingly, it does make a difference that huge sectors of public life champion the use of affirmative action programs of the sort that the University of Michigan adopts. But the same limit set out above applies. Any private institution that wants to follow a set of color-blind rules, or indeed grant explicit preferences on grounds of race, creed, religion, or national origin, should be free to do what it pleases. The rest of us should remember the importance of toleration, and withhold the enforcement of state norms against any private group that wants to buck the trend. Stated more bluntly, the antidiscrimination rules as applied to private institutions are often justified on the grounds that these are necessary to rid American life of bias and prejudice against various individuals. But the public enforcement of one view on right and wrong violates the minimum condition of toleration and rightly breeds strong resentment in those who want to order their own lives. It is, of course, no accident that it is often religious institutions that bear the brunt of the collective power of the state. How easy it is to forget the sense of toleration that made *Barnette* such an important landmark in the law.

We face this same issue today in connection with the contentious issue of gay marriage, which has been forced on the public at large by the recent Supreme Court decision in *Lawrence v. Texas* (2003), which struck down the state antisodomy law as a general infringement of liberty in terms so broad that it is hard to see how, its pious disclaimers notwithstanding, it could let stand the current definitional limitation on marriage as a union between one man and one woman. But the higher level of judicial scrutiny is warranted because the state

wishes to limit the freedom of association between two people. In this context, the confrontation between tradition and liberty is at its highest, and whether the matter is resolved by political or constitutional devices, the latter should prevail. The claims of tradition are never as strong as those on behalf of an industry custom. The latter are never binding, and those parties who wish to adopt other terms in their own agreement are free to do so. In contrast, traditions are said to bind individuals who disagree with their content.

The point is especially clear here because the state claims for itself the sole power to issue marriage licenses. In an age of consensus, the restriction of one man and one woman would not grate because few people would have the desire to deviate from it. The change in social mores has completely undone that consensus, and thus calls this use of monopoly power into question. Here the license should be withheld only if the conduct it seeks to prevent is wrongful to some third party. Yet in this instance, no such individualized harm is at issue. Rather, those who want to make sure that state monopoly power serves their own end thus invoke arguments that should prove as unavailing as the arguments made by the state in *Gobitis* and *Barnette*. Those with genuine religious fervor argue that they need "protection" from "anarchy." But the issuance of marriage licenses to others will not force them to participate in gay marriages, nor alter the religious content of their own marriages. The opponents of gay marriage also claim that the structure of society depends on the strength of the family, which in large measure it does. But no one here requires them to alter anything that they do with their own lives. And it is hard to see why efforts to imitate traditional family structure should be regarded as a repudiation of it. There is scarcely anything more destructive to communal harmony than the proposed amendment to the United States Constitution that would ban gay marriages, for it would convert a document whose great achievement lies in its commitment to ordered liberty into a document that bespeaks intolerance. The operative principle should remain that two individuals can form whatever associations they choose unless one can show harm (beyond offense) to third parties, and this cannot be done in this case.

Unfortunately, the tragedy deepens because the virtue of toleration in these authoritarian times is too often rejected by the propo-

nents of gay marriage. They are so confident in their own moral judgments that they often violate the second principle of liberty, namely, that individuals should not be forced into any associations with individuals with whom they have fundamental disagreements. This position manifestly requires the rejection of any comprehensive antidiscrimination law based on sexual orientation or anything else for ordinary social relations. Only through voluntary unions is it possible to form relations of trust that will be able to withstand the pounding of ordinary events. The operative principle should remain live-and-let-live, and both sides should pull back on their demands for the correct behavior of the other.

Light at the End of the Tunnel?

Admittedly, this overall story is not a pretty picture of social organization, because it contemplates two separate groups that warily circle each other, without a hint of cooperation. But this portrait overstates the grimness of the situation. The key here is that ordinary individuals enter into multiple overlapping forms of association on everything from dance to soccer that do not necessarily require them to thrash out their strong differences on gay rights or affirmative action. So long as those associations are voluntary, then we can count on the most sensible individuals on both sides to reach out to the other in the effort to find some limited areas of compromise and cooperation. If that critical element of trust can be established on some limited grounds, then the seeds are planted for its expansion over time into other areas. But this program will only work through voluntary interaction that takes place with the prospect of mutual advantage, and it cannot work when moral overconfidence breeds social intolerance. Forced associations will only compound the presently high level of distrust and make matters worse. But if cooler heads are allowed to prevail, then our nation should be able to weather this storm as it has so many others, and put together the levels of goodwill that are truly necessary to hold a nation together in the face of external peril or natural disaster. There is no way to force-feed a viable social community. It has to be the outgrowth of voluntary interactions by free and responsible men and women.

The Proper Motives of Corporate Directors

Lynn A. Stout

Introduction

One of the most important questions we face in approaching corporate governance reform today is the question of how directors of public corporations can be motivated to do a good job of serving shareholders and firms. Directors frequently receive only a flat fee for their services and hold only small stakes in the companies they manage. Moreover, legal rules, contractual arrangements, and insurance largely insulate them from any liability for business failure. Why then should we expect directors to put much effort into governing firms?

Modern legal scholarship has great difficulty wrestling with this question, in large part because it usually adopts the economist's assumption that directors are rational actors motivated purely by self-interest. This approach can lead to a good deal of pessimistic head-shaking, not to mention a very cynical view of whether directors do anything at all. Nevertheless, there is reason to suspect that the *homo economicus* model may be fundamentally misleading when applied to corporate directors: the very institution of the corporate board is premised on the expectation and the experience of director altruism, in the form of a sense of obligation to the firm and its shareholders. Corporate directors, after all, are entrusted with controlling *tens of trillions* of dollars of what is mostly other people's money. They have for the most part lived up to that trust. At least, they have lived up to it well enough that the U. S. system of corporate

governance is often held up as a model for the rest of the world, and board failures of the sort observed at Enron and Worldcom are still the highly publicized exceptions, rather than the rule.

To properly understand the role and conduct of corporate directors, then, we must take director altruism seriously. After all, if corporate directors always behaved as if they were purely selfish, the institution of the board would never have evolved the way it has, and likely never would have evolved at all. If we want to understand how boards work—and if we want to figure out how to make them work better—we need to develop a better understanding of altruism in general, and director altruism in particular.

One potential starting point for this project is the extensive evidence social scientists have produced over the past four decades on altruistic, “other-regarding” behavior among strangers in experimental games. This evidence offers two very useful lessons. First, altruistic behavior is in fact quite common. Second and perhaps more important, altruistic behavior is predictable. A variety of factors can reliably increase or decrease the incidence of cooperative, altruistic behavior among strangers in experimental games. These findings may offer a foundation for building a model of human behavior that is more accurate and more useful than the *homo economicus* model. They also carry important implications for how we select, educate, regulate, and compensate corporate directors.

Evidence of Other-Regarding Behavior in Social Dilemma Games

One of the most important sources of empirical evidence on altruistic behavior can be found in experiments that place subjects in situations called *social dilemmas*. A typical example of a social dilemma experiment is the “Give Something” game. In the Give Something game, a group of subjects (say, four people) are brought together, and each subject is given a certain amount of money as an initial stake (say, \$10). The subjects are then told that they must choose between either keeping their \$10 for themselves, or contributing some or all of it to a common pool. They are also told that any money donated into the common pool will be multiplied by some factor—for example, doubled—and then redistributed back to the group. However, the money in the pool will be distributed back in

equal shares to each of the four subjects in the game, whether or not they chose to donate in the first place.

How would *homo economicus* play the Give Something game? He would say to himself: “No matter what the others do, I should keep my \$10. After all, if I donate it, it will be doubled to \$20, but I will get only one-fourth of that back, which is \$5. So I will keep my \$10, and hope to share as well in one-fourth of any amount that ends up in the pool if my fellow players are foolish enough to donate.” Of course, if everyone thinks like this, everyone keeps his or her \$10. No money goes into the pool and no money gets doubled. Conversely, if everyone behaves altruistically and donates his or her money, the pool of \$40 will become a pool of \$80, and each of the four subjects will get \$20 back—a considerably better payoff. Unfortunately, if the players are rational and selfish, this will never happen. This is because, while cooperation produces a better outcome for the group, refusing to cooperate—game theorists call this “defecting”—always produces the best result for the individual player. (As readers familiar with game theory may suspect, the social dilemma game is based on and named after the famous Prisoner’s Dilemma.)

Homo economicus accordingly would never cooperate and donate to the common pool in a one-shot social dilemma. What, however, do real people do? Social scientists have shown an enduring fascination with social dilemma studies; there have been literally hundreds of experiments reported in the literature. With remarkable consistency they find that real people cooperate, and they cooperate a lot. On average, participants in social dilemmas contribute about 50 percent of their initial stakes to the common pool.

The first thing this tells us is that people frequently behave *as if* they care about others’ payoffs, and not just about their own. Researchers have gone to rather extraordinary lengths to ensure that the subjects in a social dilemma understand that they will receive no extrinsic reward or recognition for cooperating, including eliminating any fear of social disapproval or retaliation. Experimenters have also “debriefed” subjects after the game is played and found that they did in fact recognize that cooperation reduced their own payoffs. Social dilemma experiments accordingly demonstrate rather conclusively that people often behave altruistically.

This is not to say they necessarily *feel* altruistic. One can imagine any number of psychological mechanisms that might lead someone to conclude that she is better off, subjectively, if she sacrifices to help others. For example, altruistic behavior might be motivated by a desire to avoid unpleasant feelings of guilt, by a desire to conform to some internalized notion of proper role or deportment, or by the fear of divine retribution. The point is that, whatever these subjective motivations are, they are subjective. Objectively speaking, when one makes a sacrifice to make others better off, one makes oneself worse off. Indeed, this is the very definition of sacrifice.

Social dilemma studies thus do not prove *psychological* altruism (that people truly care about others' welfare). They do, however, offer compelling evidence of *behavioral* altruism (people often act as if they care about others). A variety of theories can be advanced to explain why people sacrifice for others, and each may be correct for some people, and some circumstances. Luckily, we do not need to understand what motivates altruistic behavior to observe the behavior itself. Even more luckily, we do not need to understand what motivates altruistic behavior to encourage it.

This is because a second important lesson of the social dilemma literature is that altruistic behavior is not only common, it is highly manipulable. Experimenters have found they enjoy a remarkable degree of control over whether or not people cooperate in such games. By changing certain variables, social scientists have been able to produce cooperation rates in social dilemmas as low as 5 percent (an almost complete absence of altruism) and cooperation rates as high as 97 percent (nearly universal altruism). In all of these games, the external payoffs favored defection.

If we can understand the factors and variables that tend to promote other-regarding behavior among experimental subjects in the laboratory, perhaps we can harness the phenomenon of other-regarding behavior, and encourage directors of public corporations to behave even more altruistically than they already do in looking after the firm's interests.

Social Context as a Determinant of Altruistic Behavior

Thus it is worth taking a look at what does and does not encourage altruism in the lab. Even a cursory review of the social dilemma literature quickly reveals an interesting pattern—one of the most important determinants of whether people choose to cooperate or defect is something we might call “social context.” This term refers to the amalgam of signals that the experimental subjects receive about such things as what *other* people expect, what *other* people need, and what *other* people are likely to do. *Homo economicus* would be utterly indifferent to such matters if they did not change his personal payoffs. *Homo sapiens*, in contrast, seem to find social variables compelling. Judging from our behavior, we are exquisitely sensitive to the signals we receive about the expectations, needs, attitudes, identities, and likely behavior of the people around us. For example, researchers have found that cooperation rates are influenced by subjects’ perceptions of how much their cooperation benefits others (the greater the perceived benefit to others, the greater the incidence of cooperation); by whether the subjects feel a sense of common social identity with each other (players divided into random groups cooperate more with members of their “in-group” than with members of their “out-group”); and by whether the subjects expect their fellow players to cooperate or defect (players who believe their fellows are going to cooperate are far more likely to cooperate themselves).

One of the most important social factors in encouraging cooperative behavior, however—and one with important implications for corporate directors—is, quite simply, the experimenters’ requests. In some social dilemma games, researchers have not only presented the subjects with a choice of cooperating or defecting, they also have requested that the subjects adopt one strategy or the other. Readers will probably not be shocked to learn that, when the experimenter in a social dilemma game asks subjects to cooperate, subjects are more likely to cooperate. This result is only puzzling when one remembers that purely self-interested players always maximize their personal payoffs by defecting, regardless of what the experimenter asks them to do. Real subjects in social dilemma games nevertheless pay very close attention to the experimenters’ desires, to the point where they will change their behavior in response to mere hints about what the experimenter wants.

These results imply that you do not always need to threaten directors with sticks or bribe them with carrots to get them to behave like careful and loyal fiduciaries. To the contrary, directors might be inclined to behave in an other-regarding fashion simply because a respected authority, such as a court, asks them to. This view provides support for legal scholars who argue that corporate law plays an important “expressive” function, and channels director behavior as much by telling directors what they should or should not do, as it does by promising rewards or threatening punishments.

This human sensitivity to social signals about appropriate behavior also suggests that we should be troubled by a recent development that has often been assumed to promote better director performance. This development is the trend toward paying directors’ fees not in cash, but in the form of stock or stock options. On one hand, this compensation scheme gives directors an economic interest in the price of the company’s shares, and so a personal motive to increase share price. This selfish motive is likely to be weak, however, given the disconnect between any individual director’s efforts and overall stock performance. And by emphasizing self-interest, share-based compensation schemes may inevitably send a signal that we *expect* directors to behave self-interestedly in the boardroom. This signal could become a self-fulfilling prophesy. By treating directors as entirely self-interested, we may increase the odds they will actually behave this way. The net result might be an overall decline in the quality of directors’ performance, if their altruistic motivations are undermined more than their selfish motivations are reinforced.

If this possibility seems far-fetched, consider the results of a recent field study undertaken at six day care centers. In this study, the experimenters set out to determine what would happen if the day care centers announced that parents who arrived late to pick up their children were, for the first time, subject to a fine. The *homo economicus* model would predict that imposing a fine would decrease the incidence of late arrivals, because it increases the personal cost of tardiness. Yet the experimenters observed exactly the opposite result. After the fine was announced, parents began arriving later, more frequently than before. One possible explanation is that the fine signaled that it was socially acceptable and possibly expected that parents would arrive late. This encouraged parents to adopt a more

self-interested calculus that did not include the cost, in terms of inconvenience, their tardiness imposed on the childcare providers at the center. The net result was a lower perceived “cost of lateness,” despite the new fine.

Personal Cost as a Determinant of Altruistic Behavior

Such empirical results are obviously inconsistent with the *homo economicus* model of purely self-interested behavior. Fans of rational choice analysis need not despair, however. In addition to social context, a second variable has also proven highly significant in predicting cooperation rates in social dilemmas that are far more “economic” in flavor. This second variable is the personal cost of altruistic behavior to the actor.

It is a common finding in the social dilemma literature that, as the cost of cooperation to the individual player rises, the incidence of cooperative behavior tends to fall. In other words, people are more inclined to be “nice” when it does not cost them too much. In considering the significance of this finding, it is important to bear in mind that *any* degree of altruistic cooperation in a social dilemma is contrary to the *homo economicus* model. Thus social dilemma studies demonstrate that people are far more altruistic than neoclassical economic theory assumes. Nevertheless, self-interest plays an ongoing role in explaining behavior.

This important result tells us that if we want directors to do a good job of looking out for the interests of firms and shareholders, it is important to make sure that “doing a good job” is not too personally costly to directors. For example, we want to keep a close eye on the opportunity costs associated with being a director, and make sure those costs do not become too large. Serving as a director takes time, and time is a valuable resource. The director who sits on the boards of multiple companies, or the director who is also CEO of another firm, may find time such a valuable and scarce resource that she becomes reluctant to sacrifice much of it to serving the shareholders’ interests. Thus we might expect individuals who have fewer pressing obligations to be more willing to altruistically devote time and attention to overseeing their firms’ affairs. This is not to deny that busy executives and “promiscuous” directors can bring to the boardroom skills,

information, and contacts that might be quite valuable. But such contributions carry a price, in the form of a risk that the busy director will spend less time, and pay less attention, than a director with fewer demands on her time.

For related reasons, we should be careful about asking directors, especially outside directors, to take too great a role in managing the firm. If we want directors to do a good job, we do not want to ask them to take on too many tasks. This observation is consistent with the way corporate governance is actually practiced in most large firms. Directors do not run the business on a day-to-day basis (this job is delegated to executives and employees) but instead they serve an oversight or monitoring role. In effect, directors select senior managers and then step aside, intervening only in times of crisis, or on big issues like a merger or major refinancing.

This pattern of relative uninvolvedness is sometimes offered as proof that directors are not working as hard as they should. Such critiques misunderstand the director's role. Because directors' rewards and punishments are only very loosely tied to their performance, we must inevitably rely on directors' internalized sense of responsibility as their primary if not their sole motive for exercising judgment and care. The empirical evidence suggests that if we place too heavy a burden on such altruistic motivations, they can crumble under the weight.

It thus makes sense for large corporations to rely on professional managers for most decisions, and to limit directors' responsibilities primarily to monitoring. Monitoring is not nearly as demanding or as time-consuming as managing. Yet it can be every bit as important. Just as a smoke detector may seem an idle lump of plastic and metal until an actual fire, a board of directors that appears passive most of the time can save shareholders billions of dollars if it notices and reacts when things go wrong. For example, the directors of Ford Motor Company may have saved the firm's shareholders from much greater losses when, in the wake of falling sales and rising controversy over the safety of the once-popular Ford Explorer, they ousted former CEO Jacques Nasser. Conversely, Enron—which suffered from what has been described as “an almost total collapse in board oversight”—disintegrated from unchecked managerial excess.

It is also essential that we do not rely too heavily on director altruism in situations where a director has a substantial personal interest adverse to the firm. Put differently, when conflicts of interest loom large, director altruism is likely to flounder on the rock of self-interest. This suggests, for example, that the traditional distinction between “inside” directors who are employees of the firm, and “outside” or “independent” directors who are not, makes sense. This is not because inside directors are incapable of altruism. Rather, it is because inside directors, as employees, may often have a personal stake in how the board runs the firm, and so are subject to pressures of self-interest that outside directors do not face. For similar reasons, if we want to rely on outside directors to curb the predictably self-interested behavior of inside directors whose prospects for substantial personal loss or gain undermine their altruistic motivations, outside directors must be truly independent. They should not, for example, be allowed to use their corporate positions to extract from their firms consulting fees, jobs for relatives, or subsidized access to a private jet.

Finally, recognizing the threat that self-interest poses to director altruism suggests yet another difficulty associated with the modern practice of compensating directors with shares of company stock. If directors are permitted to sell such shares, a conflict of interest is created between the directors and the firm’s long-term shareholders, by giving the directors a personal interest in raising today’s stock price at the risk of long-term value. The result may be a board that is tempted to “look the other way” as corporate managers push the envelope in accounting, or even, in the extreme, engage in fraudulent accounting practices. Indeed, it has been suggested that stock-based compensation is partly to blame for recent board failures. Thus stock-based compensation is again revealed to be a two-edged sword. It gives directors selfish incentives, but in the process undermines their altruistic motivations.

Character as a Determinant of Altruistic Behavior

No analysis of the role of other-regarding behavior in promoting good corporate governance would be complete without mentioning a third factor that has proven important in determining cooperation rates in experimental games. This third factor is something a psy-

chologist might call “personality type.” Laypersons might call it “character.”

Let us return, for a moment, to the general finding that cooperation rates among U.S. subjects playing social dilemma games average 50 percent. This average cooperation rate turns out to reflect a blend of two common strategies: subjects tend to either donate all their money to the common pool or they donate none of it. In other words, subjects tend to divide into two groups, the “cooperators,” who give everything, and the “defectors,” who give nothing.

Social scientists have investigated whether these patterns of behavior somehow reflect basic personality characteristics. They have concluded that the answer, to some extent, is yes. Although cooperation rates in social dilemmas are highly dependent on social context and considerations of personal cost, people also seem to bring to the experiments a predisposition to either cooperate or defect.

The source of such differences in predisposition is an interesting question. Although genetic causes cannot be ruled out, there is considerable evidence to support the claim that a predisposition to behave in a cooperative, other-regarding fashion is something largely acquired through experience. In other words, a sense of responsibility or obligation toward others is learned. But whether a product of nature or nurture, the finding that some people have a greater propensity toward altruistic behavior than others carries straightforward implications for corporate governance. In brief, if we want directors of public corporations to act like faithful fiduciaries—if we want them to serve the interests of the firm and its shareholders, even in situations where it’s hard to reward them sufficiently when they do or punish them adequately when they do not—it is vital that we carefully select those who serve as directors.

As noted earlier, social dilemma experiments suggest that almost anyone can be induced to cooperate altruistically, *if* the social context is structured to support altruism, and *if* payoffs are arranged so that altruistic behavior is not too personally costly. Yet the evidence also suggests that some people are more inclined toward other-regarding behavior than others. These “cooperators” behave altruistically even in situations where the social signals they receive are somewhat mixed, and altruism requires more than a nominal personal sacrifice.

In everyday business life, directors often face such situations. Thus, if we want directors to serve an other-regarding role, we should select individuals who are more inclined toward other-regarding behavior in the first place.

This is not to say that a sense of honor or responsibility is the only quality one should look for in a director. A willingness to serve the interests of others does not, alone, guarantee that a particular individual will do a good job in the boardroom. Knowledge, experience, and business sophistication are also useful. In some cases, an individual can bring to the board business or political contacts that may prove of great value to the firm. In such situations, it may make sense to consider a trade-off between altruistic sensibilities, and other desirable director attributes.

Nor does the idea that directors ought to behave in an other-regarding fashion address the difficult issue of who, exactly, is the “other” whom directors ought to serve. One of the most fundamental questions in corporate law is what courts mean when they say that directors, as fiduciaries, ought to serve the interests of “the firm and its shareholders.” Does this mean that the shareholders *are* the firm—that they are the only group whose interests directors should care about? Or does the notion of the firm encompass something bigger, so that directors should sometimes consider the interests of managers, employees, creditors, even the broader community? The debate between the “shareholder primacy” view and “stakeholder” models of the corporation dates back at least 70 years, and it remains unresolved today. The debate does not need to be resolved, however, to appreciate the importance of an altruistic temperament to a fiduciary role. Whatever interests are encompassed in the idea of “the firm,” it remains the firm, and not themselves, whom directors are supposed to serve.

So long as this is true, an inclination toward other-regarding behavior—whether described as a sense of honor, a feeling of responsibility, or the desire to “do the right thing”—will remain a desirable quality in a corporate director. To borrow a metaphor from an experienced corporate director, in order to do a good job on a board, an individual needs an “internal gyroscope” that will keep her steady on her course despite outside pressures to stray. If we want effective

boards, it is essential to find the individuals who have that internal gyroscope.

How can we find these directors? There are a number of possibilities, but one of the most obvious is to look at a person's history as evidence of her character. Has she lived up to her commitments, even in situations where she did not have to? Has she undertaken activities that demonstrate that she can care about something other than her own payoffs? Has she given evidence, in the past, of a desire and an ability to do the right thing, even when doing the right thing was not personally advantageous, or particularly popular? If the answers to these questions are "yes," then it is this type of person—and not *homo economicus*—whom you want to invite to join your board.

Conclusion

We remain at an early stage of our understanding of the determinants of human altruism. One should accordingly be careful in offering concrete proposals for changing corporate law or policy based solely on the results of experimental studies. After all, one of the foremost lessons of such studies is that other-regarding behavior often depends on social context. Social context in turn is a complex phenomenon. Until the experiment is run, one cannot really know whether parents will be more tardy, or less tardy, when the day care center decides to impose a fine for lateness. Similarly, any proposal for reforming the corporate board should be "field tested" before it is imposed more broadly.

Nevertheless, we have made enough progress in our understanding of altruistic behavior that there are at least some lessons we should take into consideration in thinking about corporate governance. Most important, we have learned that if we want the social institution of the board of directors to be effective, we should do our best to accomplish three things. First, we should try to ensure that directors receive the sorts of social signals that will encourage them to adopt an other-regarding, rather than a purely self-interested, perspective—that will convince them that they ought to "do the right thing." Second, we should make sure that doing the right thing is not too personally costly. Third, we should make sure that we pick the sort of people who want to do the right thing in the first place.

Of course, these are lessons that most experienced business people, including most experienced business lawyers, have already learned. Most of us are sophisticated, if not always conscious, observers of human nature. The point here is simply that we should pay attention to what we already know. Personal payoffs count. But so do social context and the quality we call “character.”



"I'm making this decision on principle, just to see how it feels."

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Sprawl Debates: Community Activism in Local Land-Use Planning

Carol Hager

There is hardly an issue more apt to get people irritated these days than suburban sprawl. Everyone seems to hate the daily traffic jams, the cookie-cutter housing developments, and the ubiquitous strip malls and fast-food restaurants that have come to characterize the American built landscape. As uncontrolled development erodes their quality of life, many communities are taking up the battle against sprawl. This phenomenon is especially prevalent in New Jersey, the most densely populated state and one of the most heavily suburbanized. I am interested in sprawl as an issue of local democracy. This issue has prompted a rethinking of the very meaning of community, a public discussion of what kinds of obligations people should have to their neighbors and to future generations and what the role of public policy should be in meeting those obligations. As the small-town idyll of American life becomes largely a thing of the past, people begin to reflect on what about it is worth trying to preserve or restore by means of planning. The sprawl phenomenon has reawakened people to the value of community, and to their own responsibility for preserving its health, in a way that has positive implications for democracy. The activism spawned by this issue makes for a more inclusive political process and more representative policy choices. It is not yet clear whether it can be transformed into lasting enthusiasm for local political participation.

Why should it matter whether citizens are engaged in local politics? Ever since Alexis de Tocqueville's *Democracy in America*,

observers have commented on the necessity of a vibrant civil society for the health of democratic political systems. Participation in local self-governance, Tocqueville argued, helps reinforce civic virtue and thereby shore up the community against the eroding influences of individualism and dependency on the state. Robert Putnam and other contemporary democratic theorists claim that networks of social ties in a community form the "social capital" necessary for the smooth functioning of democratic society. But societal groups ranging from bowling leagues to the PTA, which used to bring people in contact with their neighbors, are declining in membership. As people withdraw from community life, their trust in government also drops, Putnam claims, and with it their political engagement in institutionalized forms of participation such as voting. There is evidence that the relentless suburbanization of America fosters political apathy, a sense of separation from one's fellow citizens. The evolution away from strong ties to a broader community is reflected in the physical pattern of suburban development. The low-density, single-use, automobile-dependent layout discourages the face-to-face interactions that Tocqueville and others found to be an important element of community spirit. Homeowners' associations devoted to enhancing property values take the place of local governments in burgeoning gated communities.

All the more striking, then, is the sizable backlash against sprawl, and against those market and political forces widely blamed for promoting it, that many suburban American towns are experiencing today. Those who oppose sprawl see themselves as fighting to preserve or resurrect community. The activism on this issue is overwhelmingly local, and in every case I have found where policies were changed to curb sprawl, direct citizen mobilization was their impetus. This activism may bring citizens into the process of local governance in a way that Tocqueville would find healthy, despite the decline in civic organizations that Putnam documents. Perpetual grassroots activism is a tall order, however. Citizens have tried to work on several fronts at once, embracing local participation while promoting policy guidance at the state and regional levels. Their challenge is to create a planning process that fosters local activism without worsening policy fragmentation and which allows regionally coherent government action without quashing local initiatives or

impinging unduly on private property. The following case study illustrates the ways in which New Jersey citizens are addressing this challenge.

The Sprawl Debate in New Jersey

New Jersey, notes William Shutkin, is widely characterized as “the nation’s largest, most densely populated toxic waste site.” Visitors to the region are most familiar with the heavily developed I-95 corridor between Philadelphia and New York, with its aging industrial cities, bedroom suburbs, heavy traffic, and polluted wetlands. As the metropolitan areas become more congested, New Jersey’s population is spreading into the interior parts of the state. Frustrated residents have begun to take matters into their own hands, staging revolts against local governments’ support of sprawl, passing an array of open-space tax referenda at municipal, county, and state levels, and attempting to “downzone” what undeveloped property is left so as to avoid further subdivisions. By the early 1990s, New Jersey had become the nationwide leader in the number of municipalities and counties in which voters had approved open-space taxes.

State leadership on the sprawl issue has been spotty. The state has delegated much of its constitutionally anchored land-use authority to municipal governments. State government has recently tried to take more of a supervisory role, however. Governor Christine Todd Whitman (R), after presiding over a period of heavy suburbanization, ended her tenure by championing a \$1 billion open space preservation measure. James McGreevey (D) campaigned on an anti-sprawl platform in 2002, but he has essentially abandoned his program in the face of a recalcitrant legislature under heavy pressure from builders. For its part, the legislature created the State Planning Commission in 1985, whose main charge was to compose and implement the State Development and Redevelopment Plan. Published in 1992 and updated regularly, the State Plan is a nonbinding blueprint for growth. It divides land into “planning areas,” seeking to channel development into denser “centers” while preserving large chunks of rural land. It is adopted and revised through a process of “cross-acceptance” with county and municipal planning boards. Cross-acceptance is an innovation of the New Jersey plan that allows the state to guide planning without violating home rule. The multistage process

creates substantial opportunities for communication between municipal, county, and state governments.

Critics claim that the State Plan's voluntary nature limits its usefulness as a planning tool. Commissioner Candace Ashmun points out that it is voluntary for state agencies as well as local governments. For the State Plan really to win support, she explains, "local government has to be able to say, 'I can do all the things in the State Plan, and then I can be guaranteed that the Department of Transportation won't build a highway through my town.'" Such coordinated adherence to the State Plan has yet to occur. State courts are beginning to cite the plan in their decisions, however, giving it force as an additional layer of support for local zoning decisions.

The New Jersey State Supreme Court has promoted sprawl indirectly through its judicial activism. Beginning in the 1970s, the "Mount Laurel decisions" established an innovative policy of requiring every municipality to provide affordable housing. The state legislature took over from the courts with the Fair Housing Act of 1985, which created a Council on Affordable Housing (COAH). COAH assumed the task of establishing "fair share" quotas for municipalities and certifying their affordable housing plans. The most controversial feature of the Mount Laurel decisions is the "builder's remedy," which was designed to use market forces to push recalcitrant townships into formulating affordable housing plans. A town that has not been granted substantive certification of its housing element and ordinances can be sued by a builder on grounds of exclusionary housing policies. If the court agrees, the builder is awarded permission to construct not only affordable housing, but also a much greater number of market-rate units (generally four to one but sometimes higher), regardless of local zoning. The builder's remedy is now pilloried by both political parties in New Jersey as a facilitator of sprawl. It makes the "zero option" of banning growth impossible, and it allows sometimes unsupportable levels of development in order to achieve the required number of affordable housing units.

The State of New Jersey thus provides a nonbinding framework for local land-use planning with some incentives for sprawl. The battle over sprawl is ultimately waged at the municipal level. Municipalities have the all-important power to zone. Municipal planning

boards also have the task of producing master plans to guide their development. Although a master plan itself lacks the force of law, local land-use ordinances must be consistent with it in order to withstand legal challenges. Market forces and policy choices preclude the option of halting growth altogether; shaping that growth is where citizen politics has been most important. Recent events in Hopewell Township illustrate the ways in which grassroots mobilization has been transformed into involvement in planning, and they demonstrate some of the pitfalls of relying on such mobilization.

Local Activism in Hopewell Township

Hopewell Township lies in the western corner of Mercer County in central New Jersey, along the I-95 corridor between Philadelphia and New York. Bordered by the Delaware River on one side and the Sourland Mountains on the other, its 58 square miles contain rolling hills and picturesque small farms punctuated by woodlands. With only 236 people per square mile, far below the state average of more than 1,000, Hopewell Township in the 1990s had the lowest population density in Mercer County. The census data from 1990 show that 80 percent of the township's population of 11,500 lived in an area classified as rural. 80 percent of township homes had private wells and septic systems instead of public water and sewers.

Like many out-of-the-way places, Hopewell had planned poorly for the development boom that would overtake it. Local government is led by the Hopewell Township Committee, which consists of five elected members, including the mayor. The township committee appoints the various boards, chief among them the planning board, that deal with local land use. In the 1970s, the township committee had joined the "ratables chase"—the quest to attract businesses that would broaden the local tax base—by zoning a large tract of farmland for industrial and office space. The State Plan, following the local authorities' vision, labeled the cornfield a "metropolitan" planning area, a designation usually reserved for the most densely developed urban sites. The stage was set for Merrill Lynch to buy the property for its headquarters complex. In 1998, the township planning board approved 3.5 million square feet of construction there. The project called for an eventual on-site workforce of about 10,000 people, close to the entire population of the township at that time. A deal was

struck with the Trenton Sewer Authority for a capacity of 2.5 million gallons/day, far more than the Merrill development would actually require and enough, by some estimates, to serve an additional 3,000 homes. If the expensive sewer project were built, the township would be forced to promote future hookups in order to afford the repayments. Merrill received a big subsidy package from the state and the avid support of the township committee for locating there. A lone township committee member voted no to the Trenton sewer plan on the basis that it would create an unwarranted amount of development.

The public backlash was explosive. Angry residents began to pack the public meetings. Local authorities were deluged with complaints from citizen groups like the Coalition to Save Hopewell Valley, the Stony Brook-Millstone Watershed Association, the Delaware Riverkeeper, the New Jersey chapters of the Sierra Club and the Audubon Society, and from hundreds of unaffiliated local residents. No Democrat had sat on the township committee in more than two decades. As the Merrill Lynch project won final approval, however, its opponents organized a sustained political campaign that, in the space of three years, ousted the all-Republican committee and replaced it with an all-Democratic, anti-sprawl one. The new committee scrapped the Trenton sewer plan. The one Republican who had opposed the sewer plan, ostracized by her party's leadership, was subsequently appointed mayor and switched parties. Citizens of the township had rejected the ratables chase and had spoken strongly for protecting their community. They tried to keep the public momentum alive by channeling participation into the many boards and ad hoc committees that would now be dealing with the sprawl issue.

The new anti-sprawl township committee voted in 1999 to fund a complete overhaul of the township's planning and zoning guidelines. They also commissioned a hydrogeologic evaluation of local water resources. The report concluded that lot sizes would have to be enlarged radically in order to ensure adequate recharge. The planning board responded with a 2002 master plan that rezoned much of the township into a Valley Resource Conservation area, with 6-acre minimum lot sizes, and a Mountain Resource Conservation area, with 14-acre minimum lot sizes. The master planning process included numerous public hearings and presentations, several of which

had to be moved to the local high school to accommodate the overflow crowds. The new zoning ordinance is consistent with the water report, the new township master plan, and the State Plan. The township has done everything possible to make its land-use choices hold up against the slew of lawsuits that followed their announcement. In addition, township voters have approved two open-space tax referenda. As of fall 2003, 760 acres of farmland, 1,314 acres of conservation easements, and 8,718 acres of open space had been preserved in the township.

These measures have been supported by continuous public activism over a period of years. Opponents of sprawl filled rejuvenated local boards and committees. The township committee revamped the planning board, the zoning board of adjustment, the environmental commission, and the historic sites preservation commission. The mayor created a citizens' master plan advisory committee. A new mayor's task force on trucking and traffic procured a ban on 102-inch wide trucks on all township roads. An agricultural advisory committee helped formulate a farmland preservation element for the master plan. The affordable housing committee devises ways to meet the township's increasing COAH obligations. The Friends of Hopewell Valley Open Space finds and procures properties to deed to the township. The township commissioned a study on ways to calm traffic and beautify busy State Route 31. Residents were invited to contribute their ideas. The final report met with enthusiastic public support. The planning board is currently researching the possibilities for a "traditional neighborhood development" using the same kind of participatory process. In short, a more inclusive political process has resulted in more broadly representative policy choices. A narrow focus on economic growth has given way to a wider focus on quality of life—on what residents most value in their community and want to see preserved. A combination of like-minded professionals and lay activists made the Hopewell project work. The dramatic party shift on the township committee notwithstanding, it has been largely a nonpartisan effort involving a wide cross-section of residents. Their ability to articulate a collective vision of community will be crucial for their sustained success.

Local participation has brought tangible results to Hopewell Township so far. It has empowered people to move from disgust with

local government to participation in it. It has done, in short, what Tocqueville believes makes American democracy function so well. There are ample signs now, though, that citizen voluntarism alone will not be able to achieve lasting results. It is difficult to sustain unity in the face of hard decisions about how and where to grow. "It really breaks down," says township planner Mike Bolan, "at making development happen where it's supposed to happen." The master plan aims to support development in areas where mass transit is a possibility, where residents could walk to services, and where public water and sewers currently exist. Those few areas, however, are already the most densely developed in the township, and their residents resist the idea of additional construction. Neighboring municipalities also oppose new development projects at their edges. Hopewell depends on traffic-calming measures, public transportation development, and anti-sprawl initiatives in surrounding townships in order to make its own planning work. Although a rail line exists in this area, the state has made no commitment to opening new passenger service. The DOT has rejected other townships' proposals for traffic-calming measures, such as roundabouts, on through roads. Without a planning framework that promotes the collaboration of township residents, adjacent municipalities, and state agencies, Hopewell's planning will be undermined.

Recent efforts to broaden the conversation over Hopewell's future may make ongoing planning more likely to succeed. Since the Merrill Lynch controversy, the township's corporate residents have taken pains to establish a more positive public profile. When the mayor and township engineer asked Janssen Pharmaceutica, Bristol-Myers Squibb, and Merrill to meet informally to discuss the corporations' contributions to local traffic and to help devise ways to reduce their impact, the Hopewell Valley Traffic Management Coalition was born. Before long the group included representatives of the mayor's task force on trucking and traffic, the planning board, the school district, the police force, and county traffic officials. The corporate participants financed a comprehensive traffic study that will aid future policy making. Perhaps most importantly, the coalition provides a forum in which economic and environmental aspects of quality of life can be discussed among a diverse group of participants who had previously met mainly in court. All show enthusiasm for the

“thinking outside the box” and the cooperative relationships that the coalition has brought to life. The coalition has not eliminated corporate suits against the new zoning nor produced binding commitments to traffic amelioration measures thus far. But if it and groups like it can help generate an atmosphere in which everyone feels included in creating a collective vision for the community, they may contribute to the search for alternatives to litigation.

Fostering Community in a Suburbanized Society—New Jersey and Beyond

Many commentators claim that the spatial characteristics of suburbia work against citizen involvement in public affairs or even recognition of a public interest. Recently, though, there has been a substantial local political backlash against these very characteristics. Hopewell Township’s political awakening is similar to that of many other communities beset by sprawl. Land-use issues often begin with protest, but the protest sometimes leads to more lasting citizen participation in local government. Local residents have shown that they can master the details of planning and can use them effectively to shape their communities. In Hopewell Township, the public discussion of quality of life crystallized around opposition to the Merrill Lynch project. When the project won approval despite their resistance, residents turned to electoral politics to make their voices heard. They voted in a new township committee that would institute a more open planning process, inviting the public to help articulate a vision for the township’s future and collaborating with local citizen groups. The new government appointed residents who had been active in the protest to the boards and commissions dealing with land use. The anti-development forces also reached out to their erstwhile corporate opponents through the Hopewell Valley Traffic Management Coalition. Land-use issues have inspired citizen activism in many New Jersey towns. Residents are learning to take responsibility for the future of their communities through their participation in local planning.

The New Jersey case also highlights the limitations of local-level participation. Two big goals of land-use policy seem to work against each other. Effective planning requires a regional approach and a long-term outlook; these would best be fostered at higher levels of

government. There, however, politics and institutional fragmentation often prevent concerted action. The demise of Governor McGreevey's anti-sprawl program is one example; the failure of state agencies to coordinate their planning efforts is another. Further, state or regional control may quash citizen participation at lower levels—COAH is often accused of undermining local anti-sprawl initiatives, for example—and prompt accusations of undemocratic behavior. We have seen how local activism gives added weight to noncommercial interests and thus makes local decision making more balanced than it otherwise would be. If citizens are to participate actively in politics, they have to see that what they are doing has an impact, and that their goals are best achieved locally, as Tocqueville reminds us. But the locals suffer from fragmentation both within the community and among neighboring communities. A planning framework is needed that institutionalizes cooperation and helps overcome the fragmentation.

In New Jersey, the State Plan might eventually provide an effective framework. Its iterative cross-acceptance process with local and county planning boards is a promising approach, but its voluntary nature, along with the lack of coordination among state-level agencies in its implementation, limit its effectiveness. Precedent does exist for binding regional planning. Oregon is acknowledged as one of few states that legislated to protect against sprawl before the problem got out of hand. Under the leadership of a progressive governor and a like-minded Portland mayor, the state created a Land Conservation and Development Commission in 1973 to guide counties in formulating their land-use plans. The LCDC's goals were developed through a series of statewide public meetings; according to social scientist Margaret Weir, the top goal was to require broad citizen participation in all planning. A major innovation of the LCDC is the creation of "urban growth boundaries," within which development is encouraged but outside of which the land is zoned for agriculture. The LCDC is able to provide a stronger regional framework than the New Jersey State Plan because it can reject local plans that fail to conform to its goals. The public is also involved more actively, not only in setting the goals, but in policing their implementation, through non-profit watchdog groups such as A Thousand Friends of Oregon, which mobilizes grassroots support, lobbies, conducts expert studies,

and helps localities formulate their land-use plans. Many believe that Oregon's policy succeeds because the LCDC has created an atmosphere in which cooperation between builders, local governments, and anti-sprawl activists can occur. Development and preservation interests both get some of what they want, and the commission provides the forum in which a broad range of participants can talk to each other. Nevertheless, Oregon's land-use policy has come under increasing pressure from development interests; it takes continuous citizen mobilization to keep it on the books.

New Jersey's situation is more difficult than Oregon's was at the time the LCDC was founded. Suburban sprawl is already widespread in New Jersey, and development interests are much stronger. Still, the Oregon model of a binding planning framework that promotes broad cooperation can be instructive. New Jersey does have some experience with regional governance in land use. The Pinelands Commission, created through state-federal collaboration in 1979, oversees the Pinelands National Preserve. Its territory covers 22 percent of the total land area of New Jersey. It includes parts of 7 counties and 53 municipalities. The commission, in a participatory process with the municipalities, formulated and still implements the Pinelands Comprehensive Management Plan. Any municipality refusing to structure its planning to conform to the Pinelands Plan effectively forfeits its planning authority to the Commission. Participants agree that only a binding plan can protect the sensitive ecology and crucial watershed of the Pinelands. The grassroots Pinelands Preservation Alliance has a watchdog function similar to A Thousand Friends of Oregon's. In both the Oregon and New Jersey Pinelands cases, it took political leadership at the state level, along with substantial public mobilization, to put a regional authority in place. It will take a similar push from both ends to give the State Plan the teeth to be an effective, legitimate framework for land-use planning.

Local action has only occasionally been able to thwart sprawl, but it has revitalized a discussion of community and what about it is important to preserve. In Hopewell, the master planning process, the Route 31 design study, and the Hopewell Valley Traffic Management Coalition provided settings in which residents with diverse backgrounds and interests could talk face to face. Such forums encourage people to articulate what ties them to their community. Besides

providing essential information for policymakers, these forums foster a more comprehensive, inclusive conception of quality of life. By putting the concept of community at the forefront, participants are forced to articulate a vision of a desired collective future and then plan in order to achieve it. Successful land-use planning, which produces good policy and fosters democratic citizenship, can only happen with direct and long-term citizen involvement at the local level. Municipal politics affords a close connection both to a concrete issue and to elected officials. As Tocqueville asserted, local, concrete issues make clear the ways in which affairs of state impinge on everyday life and make people think more about what the role of government should be. In the New Jersey case, they have raised a call for help from higher levels of government, not in the form of disempowering top-down regulation, but in supporting communities' efforts to shape themselves. Sprawl is one issue that may work in the direction of promoting both substantial government intervention and voluntarism.

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Law, Community, and Personal Injury

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In our recent book, *Law and Community: The Case of Torts*, we examine the tension between American law's emphasis on individual rights and its quieter, communitarian strain. The law of torts—i. e., the law pertaining to compensation for personal injury—may seem an odd choice for this analysis, as it tends to be particularly individualistic. Yet even here we have recognized a communitarian cadence underlying the drumbeat of individualism, for tort law includes rules designed to protect small communities such as families, religious congregations, voluntary associations, charities, and the community at large.

Tort law helps define the boundaries of human interaction: what is acceptable conduct; what are the limitations of one's rights; what responsibilities to others accompany those rights. Consequently, tort law has important ramifications for communitarians. Communitarianism's call for greater responsibility to one's fellow citizens might be seen as a rationale for the expansion of tort liability. The communitarian suggestion that we check the expansion of rights, however, could limit remedies for harm, both real and imagined.

The law of torts is a good area in which to explore our society's ideas about the extent to which its members owe duties to one another. Indeed, the law of negligence—the most significant body of tort law—is dominated by the concept of duty: whether a duty to others exists at all, the dimensions and limits of such duty, and the identity of those to whom any duty is owed. In the latter half of the 20th century, the protections furnished by the law of torts significantly

expanded, and with that expansion came an augmentation of the legal duties owed to one's fellow citizens. That expansion has been met with a reaction from those who have called for a slowing, or even a reversal, of that growth. It is fair to ask whether this reaction derives from a communitarian desire to require individuals to assume responsibility for their own welfare (and refrain from imposing an undue burden on others), or from a more selfish desire to create new areas of privilege for those whose conduct causes harm to others. Meanwhile, there remains those who would urge a greater expansion of duties to others—for example, through the imposition of a legal duty to rescue those in peril. For communitarians, the challenge is to determine rules of tort liability that strike a proper balance between the assertion of individual rights and the preservation of the community at large.

We say this while recognizing that law in general, and tort law in particular, cannot and should not be the sole source of obligation, nor can it be the only barometer of proper conduct. If law was the only source of norms governing relationships, we would not have a very pleasant society—either the law would have to expand to govern many more of the details of our lives, or individuals would not treat one another with much care. Nevertheless, law plays an important role in setting minimum standards for our interactions with one another. Legal sanctions may motivate conduct, but they cannot be the sole motivator. There are limits to the law's reach in compelling communitarian behavior. These limits emerge from the need to protect individual liberty, the desire to encourage individuals to exercise moral responsibility, the practical limits of legal compulsion, and the social space needed in a multicultural society.

Duty and its Limits

Notwithstanding the occasional intentional tort case and a few instances in which the courts have imposed liability without fault, negligence remains the prevailing legal theory on which tort liability is based. Underlying the negligence concept is the requirement that the defendant owe a duty of care to the plaintiff. Generally speaking, the duty of care requires one to behave in such a manner that one's conduct does not expose others to unreasonable risks. Inherent in that statement is a limitation on liability: one's conduct can expose others

to risks without giving rise to liability, so long as those risks are *reasonable*.

Yet the law of torts has traditionally limited duties owed to others short of even this paradigm of reasonableness. There is a long line of “no duty” cases in which no liability has been imposed, despite the fact that the defendant’s behavior appears to have imposed unreasonable risks on others. Prototypical is the immunity conferred by many states upon social hosts, sued by people who have been injured due to the intoxication of guests at events hosted by the defendants. The courts of most states have long held commercial vendors of alcohol liable for such injuries, and have imposed liability on those who have served alcohol to minors, but they have typically proclaimed that social hosts providing alcohol to intoxicated adults bear no responsibility to their ultimate, foreseeable victims. The social host owes “no duty” and is therefore not liable. Here, what passes for an explanation is no more than a conclusion. Why is there no duty? The social host who continues to lubricate her guests with intoxicants, knowing that they will shortly be taking to the streets in their automobiles, certainly has behaved in an irresponsible manner. The potential harm is imminently foreseeable, and there is little or no utility to the host’s conduct. Nevertheless, courts tend to view the imposition of liability as an unconscionable burden on an alcohol-infatuated public, as if one has a “right” to create a public hazard through the serving of alcohol in one’s home.

In her excellent book, *Rights Talk*, Professor Mary Ann Glendon derides, with good reason, the portrayal of rights as absolute, and the simultaneously shrill and naive assumption that rights are not subject to limitations, particularly when they clash with other rights. The social host cases, like many other tort cases, force us to consider the extent to which asserted rights are limited due to the external consequences of the exercise of those rights.

A Duty to Rescue

Some communitarians have suggested expanding the law of negligence to include an affirmative duty to render aid to those in peril, if such assistance can be provided at little risk to oneself. While such a duty would be at odds with the traditional absence of liability

for *inaction*, Professor Glendon has suggested that it would appeal to “[p]ersons who are interested generally in emphasizing the responsibility side of the rights coin.” In other countries that seem to emphasize social responsibility along with individual rights (e.g., in Scandinavia), a duty to rescue is more widely accepted. Most of us are appalled when bystanders fail to perform such a minor task as summoning help for victims of accidents or crimes. The question remains, however, whether the moral imperative to render assistance should give rise to a *legal* rule that imposes civil liability for inaction.

Some opponents of such a rule have attempted to draw a distinction between law and morality. But it is absurd to suggest that the law bears no relationship to morality. Who can deny that the criminalization of murder, along with different levels of culpability based on the defendant’s state of mind, is morally grounded? Clearly, the law is a reflection of our moral principles, and we should be neither ashamed nor embarrassed by this fact. “Tort”—the subject of this essay—is French for wrong, and suggests the imposition of liability for wrongful behavior.

It is equally clear, however, that the moral universe cannot be reduced to legal rules. Morality dictates that we do many things that are not legally required of us. Unfortunately, the tendency on the part of the public to equate law with morality, to assume that if something is legal then it is moral, may suggest the practical need for a rule requiring rescue when the potential rescuer is not in peril. Three states—Vermont, Minnesota, and Rhode Island—have codified such a rule, with explicit provision for sanctions in the form of modest fines. Under such circumstances, courts are likely to adopt the statutory rule as a tort duty. We have yet to hear howls that a police state has descended upon the citizenry of any of these jurisdictions. Compared to the burdens connected with the military draft or even the paying of taxes, it does not seem especially onerous to demand that citizens call the police when they see a neighbor being attacked, toss a life preserver to a drowning swimmer, or render first aid during a medical emergency when they are equipped to do so. A rule imposing tort liability on those unwilling to provide such aid may be a small price to pay for life in a society in which one may often have occasion to call upon the support of one’s fellow citizens.

It is not altogether clear, however, that fealty to communitarian principles requires government compulsion, through legal rules or otherwise, to encourage people to play an affirmative role for the good of the community. Short of a legal rule *requiring* rescue, we might enhance public awareness of already extant rules *encouraging* rescue. One such rule allows rescuers of those placed in harm's way to recover from the party whose negligence created the danger in the first place. Another rule relaxes the standard of care to which the rescuer is held if she causes injury in the process of rescue. This protection is limited to those who voluntarily, and without compensation, render emergency aid to others. (In Vermont, this rule appears in the statute also imposing a duty to rescue.) The rule (commonly set forth in a "Good Samaritan" statute) is intended to eliminate the reluctance of doctors and others who hesitate to render emergency aid out of fear of liability. Typically, the rescuer can be held liable only if she causes "willful and wanton" injury. This standard replaces the negligence standard, thereby creating a safe haven for rescue. Similar treatment now is granted to volunteer coaches in youth recreation activities in some states. Soccer moms and dads are thereby not discouraged from coaching their children's teams out of fear of liability. And in 1997, Congress enacted (and President Clinton signed) the Volunteer Protection Act, providing that no volunteer of a non-profit organization or governmental entity would be liable for harm if it "was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer."

A common theme underlies all of these measures: that by reducing the standard of care owed to strangers, we might encourage people to engage in voluntary activity beneficial to the community at large. These measures counteract the chilling effect of the traditional rule that while there is no duty to rescue (or, for that matter, to do any number of things that may be helpful to your neighbor), one who undertakes such action is thereafter liable for breaching the duty of reasonable care.

There are at least two shortcomings to these measures, the shoring up of which could greatly enhance their role in building community. First, the coverage of these statutes is not universal. Most Good Samaritan laws protect medical personnel only. Precise coverage

varies from state to state: some protect physicians only; some include nurses and paramedics; a few protect nonprofessionals trained in lifesaving or CPR. Second, the existence of these laws is not well known. Surveys of doctors show spotty knowledge of the existence of Good Samaritan laws, and it is doubtful that other citizens are aware of the immunity that protects other volunteer activities. The communitarian benefits of these measures, enacted to encourage rescue, will be nonexistent unless these measures are known.

Some Possible Limits on Tort Liability

The widespread perception that tort liability has run amok has produced many cries for limitations on liability. To some extent, this perception is unjustified, and stems from “man bites dog” cases—the odd cases that attract public attention because they are the exception to the rule. A prominent example is the \$2.9 million dollar verdict awarded in 1994 to a woman who had spilled hot McDonald’s coffee on her lap. The initial jury award became a widely reported heuristic that served as a poster-child for tort reform advocates. The court’s reduction of damages to \$480,000 went virtually unnoticed.

“Protect Me From Myself” Cases

There are, nevertheless, classes of cases in which liability has been too often imposed, with consequences that should be objectionable to communitarians. In one such class, the plaintiff demands that the defendant “protect me from myself.” Some obviously silly cases fall into this category. For example, one man sued the Purolator company for its negligence in allowing a sack of cash to fall out of an armored truck, resulting in the plaintiff’s theft of the cash and, ultimately, his conviction for a crime. In another case, a man’s estate sued the owner of a parking lot, the inadequate security of which enabled the plaintiff’s decedent to steal a car which he subsequently crashed, killing himself. Because these cases were quickly dismissed, they are less serious than those brought by adult trespassers against the owners of premises which had not been rendered safe for their use, or by drunks against providers of alcohol for the consequences of their *own* intoxication, or by nonusers of seat belts against automobile manufacturers who, after all, should have realized that automobile occupants could not be expected to take simple precautions for their

own safety. There is no shortage of people who could have protected themselves through simple, inexpensive measures but chose to expose themselves to injury and then sue others who arguably might have protected them through more complex, expensive measures.

“Blame it on City Hall” Cases

A second class of cases in which liability is problematic involves plaintiffs who view the government as the ultimate protector against all that may befall them. Some of these cases are downright silly, like that of the man who sued the State of Utah because he was attacked by a wild coyote while sleeping at a rest area on an interstate highway, or the woman who sued the Pennsylvania Lottery Commission, alleging that the Commission owed her \$1.5 million in compensation for ten years of losing tickets. Other cases, however, are a good deal more serious, like that of Linda Riss. Ms. Riss, a resident of New York City, repeatedly asked for police protection from a jilted suitor who had been threatening her. The police told her that they could not provide protection unless and until she was actually attacked. Indeed, after a thug hired by the suitor had thrown lye in Ms. Riss’s face, the police provided around-the-clock protection. By then, however, Ms. Riss had been scarred for life. Ms. Riss sued the city, but her case was not allowed to reach the jury. The New York Court of Appeals felt that the city could not be held responsible for the protection of all of its citizens, even those whom it knew were in peril.

The *Riss* case presented a sympathetic plaintiff against an institutional defendant which, despite reports of financial hardship, continues to have substantial but finite resources at its disposal. How easy it would have been to allow this suit to go forward and allow a jury blessed with 20/20 hindsight to determine that a reasonable police department would have provided the requested protection. Nevertheless, liability in this case would have had to rest on the premise that the City—simply by dint of establishing a police department—had a duty to protect its citizens from harm. A noble aspiration, to be sure, but it is not a duty to be imposed lightly through judicial decision. The court held that the executive and legislative branches of government, and not the judicial branch, were entitled to decide where to allocate the city’s resources.

Too many recent tort cases involve citizens imposing demands on beleaguered governmental units, insisting that the government do more, provide more, spend more. These demands are in part a product of our culture of complaint, and in part a reflection of our growing expectations of government—the latter probably being a function of the former. We seem to have abandoned responsible political decision making for squeaky-wheel-gets-the-grease adjudications, in which individuals line up to have their complaints addressed by the courts. The result, we fear, is a misallocation of public resources.

Medical Care, Perfection, and the American Dream

The expectation that government will protect us from all harm is mirrored in a very different type of case: the medical malpractice action based not so much on negligence on the part of the physician as on a result that fell short of the ideal. There is no doubt that some bad results are the product of serious medical malpractice, and that a system based on corrective justice and deterrence should provide appropriate compensation in such cases. (Recent studies indicate that only about one in ten cases of medical negligence results in a claim, but that only about one in five malpractice claims that are actually brought are valid ones. This strongly suggests that medical malpractice claims have missed the mark in terms of both corrective justice and deterrence.) But many medical malpractice claims are brought on the assumption that we are all entitled to lives unmarred by tragedy or even imperfection, and that when an unwanted result befalls us, someone must be to blame. This expectation, like that of those who sue government for failure to protect them from a host of bad occurrences, derives at least in part from the markedly American notion that we are entitled to lead lives free from tragedy, that it is our birthright to proceed through life without mishap, at home in a land where “seldom is heard a discouraging word and the skies are not cloudy all day.” In a way, this is a healthy attitude that reflects the American sense of optimism, of perfectability, of control over one’s environment and one’s future. In this sense, it may be preferable to the fatalism that pervades some other cultures and, at times, dooms them to passivity and economic stagnation.

At its best, however, the American notion of perfectability is the by-product of a “can-do” attitude that recognizes that we seek perfection largely through our own strivings. While the community might assist in those efforts, through services such as public education and the promulgation and enforcement of health, safety, and environmental standards, we leave it largely to individuals and the voluntary associations they form to formulate and advance their own images of the good life. The American ideal keeps us striving where others may have abandoned hope; the image is that of the upthrust chin, not the outstretched hand. Our finest social welfare institutions (some of which were advanced by the president who overcame physical disability and personified the upthrust chin) recognize that ideal.

Other cultures have seen it differently. Marxism, for example, envisions community responsibility for each individual’s prosperity, and in striving for this, imposes on everyone the *community’s* image of the good life. Americans have chosen a different course. And while communitarians like Amitai Etzioni have, with good reason, cautioned against attitudes and behavior that exalt individual maximization over community interests, we can see (and have seen, in totalitarian societies) the unfortunate consequences that often ensue when the community takes charge of everybody’s well-being.

Don’t Blame the Victim

A cautionary note is appropriate here. It is tempting to cast tort claimants as scapegoats for the widespread deficit in responsibility that plagues our nation. For too long, however, the law of torts has been rigged against those who have had to endure disproportionate harm for the sake of the “community.” In many of those cases, the “community” turned out to be corporate or government interests that were, in effect, being subsidized by the uncompensated harm inflicted upon citizens. An assortment of “no duty” rules, the doctrines of sovereign and official immunity, and the scant protection provided to whistleblowers reporting government or corporate wrongdoing have all resulted in the absorption of a disproportionate amount of loss by relatively small pockets of the community, presumably for the greater good. The negligence doctrine itself assumes that the community prospers when people engage in risk-generating activity; therefore one is held liable only for the creation of *unreasonable* risks.

The same negligence standard, however, also forces people to treat the interests of others as they treat their own interests. In that respect, it reflects a communitarian ideal as old as the Golden Rule.

Towards a Communitarian Tort System

The challenge for communitarians, then, is to mold liability rules that impose costs on those who are most responsible for harm, without coddling those who are in the best position to look out for themselves. Enforcement of the seat belt and motorcycle helmet defenses, for example, would be a way to underscore the need to take reasonable measures for one's own protection. The insistence that one has the "right" to have one's brains smashed to pieces through failure to exercise these simple precautions is the epitome of radical individualism. All too often, it is the community that has to pick up the pieces—through subsidized medical care, support for families, and other services—when this "right" comes to fruition in the form of greater accident costs.

Litigation places a significant burden on the community in the form of transaction costs. Tort litigation involves not only direct public expenditures to support the court system, but also expenditures to support the phalanx of lawyers, insurance adjusters, and experts who are directly or indirectly sustained by such litigation. That our government maintains a system of courts through which people may obtain compensation for injury, and that access to these courts is available to those with genuine claims, is a credit to the American legal system. Our concern, however, is that in our preoccupation with litigation, we have ignored other equally valid means to obtain redress for our problems. We should be able to craft creative responses to tort claims so as to serve the interests of all parties while healing the wounds of the community. Tort disputes are too readily transformed so as to shift the focus away from the parties' real interests into a stylized battle between proxies (i.e., lawyers and insurance companies) in an adversarial system. An injured party's desire to be restored to full participation in the community, an injurer's desire to make amends for a wrong, and the longing of both parties for reconciliation and healing, too often give way to a litigation dance played by a plaintiff's lawyer dependent upon a contingent fee and a defendant's insurer looking to minimize its exposure.

Because of the way in which we insist on doing legal battle, too many of our conflicts are settled but not resolved, and we part company all the more convinced of our victimhood, rather than being reconciled to a world populated by decent but erring individuals.

This phenomenon both contributes to and reflects the fraying of the communal fabric. That is why some of us see such promise in the alternative dispute resolution movement, and in mediation in particular. In mediation, the parties to a dispute (sometimes with their lawyers, sometimes without them) sit down with a mediator who helps them negotiate a settlement. Mediation is an attractive alternative not because it reduces transaction costs; indeed, sometimes it does not. Rather, the true virtue of mediation is the possibility that disputing parties might develop respect for each other's legitimate interests, and seek mutual accommodation.

The present state of personal injury litigation reflects a society that has become increasingly fragmented by the relentless pursuit of self-interest. At its best, the law of torts should be a mechanism for improving the overall quality of life in our society. It can perform this function by asking us to refrain from harming our neighbor; by holding accountable corporations that pollute the air, poison our bodies, and inflict carnage on the public; and by encouraging each one of us to be a little more responsible toward ourselves and toward each other.

At the same time, the law of torts must not exact such a toll on public resources, both through the duties it imposes on civic institutions and the transaction costs of operating the system, so as to impair the ability of public institutions to function for the community's benefit. While others see in communitarianism a basis for expanding tort duties and consequent liability, we also see in it a rationale for limiting the largess of the tort system. We see a need to give short shrift to marginal cases if we are to preserve the apparatus that gives meaning to important cases. A sense of community requires giving as well as taking, and generosity of spirit may, in some instances, require that we demand less rather than more from our fellow citizens.

This does not mean that we should all meekly tuck in our tails and forego our legal remedies. We should, however, fashion our legal

rules in a manner conducive to individual responsibility, recognizing that the public should give as well as get, and thereby play the role of citizens, not supplicants. We also should promote dispute resolution methods conducive to mutual understanding and accommodation, and the realization that we are not disparate entities looking only for self-aggrandizement, but interdependent beings in need of community.



“This next song is about love—that special kind of love between a man, his ex-wife, their delinquent children, her attorney, several stockbrokers, and the Internal Revenue Service.”

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THE COMMUNITY BOOKSHELF

Live and Let Eat?

Henry Tam

Steven Lukes, *Liberals & Cannibals: The Implications of Diversity* (London: Verso, 2003), 180pg.

A classic challenge for liberal-minded people is to explain why the freedom of others to behave in a repulsive manner should be curtailed. Conventional liberals stress that people should be free to pursue their own objectives in life, and no one has the legitimate authority to intervene in cases where no harm is inflicted on anyone other than the agent. But what is harmful? How can conflicting perspectives on the harmfulness and value of different activities be reconciled? What if, in the name of “cultural diversity,” some people defend, nay, celebrate, their behavior, however repulsive that may be to others, as an important part of their way of life?

In *Liberals & Cannibals: The Implications of Diversity*, 13 pieces which Steven Lukes has published and/or delivered as lectures in the last decade are brought together to illustrate how he tackles the many problems arising from the diversity of morals. His insightful analyses are brought to bear on the related issues of cultural differences, the nature of liberalism, the value of pluralism, and how it may differ from relativism. Lukes is scrupulous in identifying the potential weaknesses of liberal ideas. This in many ways is part of his strategy to direct his counterattack at those who seek to undermine the liberal ethos precisely where they appear to have the best chance of success.

"Should liberals not leave the cannibals to their way of life?" provides an interesting motif for Lukes's collection. But while his journey through the ideas of Martin Hollis, Michael Walzer, and Brian Barry never cease to be illuminating, he never quite finds his way out of the problem. There are hints that he is poised to tackle cultural relativism head-on.

"To what extent ..." he invites us to consider, "are the very ideas of culturally based 'difference,' 'otherness' and 'diversity' themselves (as the current jargon goes) 'socially constructed?' To what extent have these notions been promoted and exaggerated for a variety of reasons and in pursuit of a variety of interests, including group interests but also liberally minded generosity and compassion, perhaps inspired by post-colonial guilt and imperial self-exculpation."

If human beings are not after all so significantly different to make comparisons of their values and beliefs "incommensurable," then the shield of cultural difference may turn out to be no more than a mirage when it comes to keeping out criticisms of, and interventions against, illiberal behavior. Unfortunately, Lukes does not develop this line of argument much further. One wonders what he would have made of the contemporary case of cannibalism reported in Germany recently. It involved an individual announcing via the Internet his interest to meet someone who would be willing to be killed and eaten by him. As if to prove that life can indeed be stranger than philosophical thought experiments, a person made contact with him and the two met up at the would-be cannibal's home. After giving his consent to be killed and cannibalised, the visitor was stabbed in the throat, cut up, cooked, and eaten.

One type of liberal response to abhorrent behavior is to ask if it is part of another cultural practice within which it may have a place. Lukes suggests that such a move may be hiding the lack of relevant difference behind a vaguely defined sense of "otherness." To develop this critique, however, he would need to confront why certain behavior is deemed "abhorrent" or "unacceptable" in the first place. As we will see, this turns out not to be a "cultural" issue in any anthropologically significant sense of the term (as Lukes rightly suspected), but very much a question of human empathy which reflects the thickness/richness of the notion of humanity which individuals embrace (a question Lukes largely overlooked).

Progressive communitarians, and communitarian-minded liberals, have long maintained that ethics is not fixed by any single community, or sub-culture. There is not a multitude of equally valid, or incommensurable, moral systems each impervious to the criticisms of others. Instead, moral ideas and feelings are developed through the open, uncoerced interactions across all human societies, cultures, and exchanges. Underpinning these dialogues is an evolving conception of human potential, of how human life can flourish if given the opportunity, and be protected from harm and distortions. Far from being metaphysical speculation, this is grounded in developmental psychology, in the growing understanding of what differentiates between, for example, children being supported or hindered in developing in a mentally as well as physically healthy manner.

Returning to the case of cannibalism, what is abhorrent about the desire to invite someone to come forward, even on a genuinely voluntary basis, to be killed and eaten is that the development of such a desire is antipathetic to the cultivation of respect for and sensitivity to the dignity of other human beings. Some may spring to the defense of people acting on such desires: libertarians who champion the right to transact anything (your limbs, your organs, your life); post-modernist pluralists who refuse to criticize anyone except those who criticize abhorrent behavior; and imaginative writers who conjure up new forms of dignity in the most grotesque acts (as if they alone can see the grandeur in the minds of the most ruthless savages or psychopathic killers). But their indifference to how human beings develop is itself a moral issue deserving of greater scrutiny.

The problem with not being prepared to stand up and condemn outlooks and behavior that threaten or violate the norm of human respect and dignity, is that one thereby gives way to encroachments that undermine the moral standards by which one seeks to live. Against this standpoint, the cultural pluralists would argue that not everyone subscribes to the same standards, and there is nothing anyone can invoke to claim legitimacy in applying standards to those who do not accept them. This line of reasoning comes through particularly in Lukes's exposition of Isaiah Berlin. Berlin's brand of pluralism represents one of the most potent onslaughts on moral universalism (of which progressive communitarianism is one form)

because of his measured tone and his ever reasonable caution against placing excessive faith in reason.

Berlin's attempt to protect culturally based moral pluralism operates on two fronts. On the first, he points to the existence of diverse cultures as a fact. And here Lukes launches his subtle and effective attack with observations such as "[Berlin] never asked to what extent cultures are always clusters or assemblages of heterogeneous elements of varying origins, which differ from one another more as ecosystems or climatic regions than as nation-states divided by frontiers." In other words, the world we have is not in fact divided into these tightly defined, self-contained "cultures" with their own exclusive moral standards. People grow up with, partake in, and embrace different elements of a wide variety of traditions and practices. Instead of trying to project some unique "culture" which can provide people with a special sanctuary from moral criticisms, they should be seen for what they are: individuals who have from a range of sources, acquired their own moral outlook. This takes us to the second front of Berlin's pluralist campaign—namely, the incommensurability of different moral outlooks.

Lukes has a great deal of sympathy for Berlin's reservations about any attempt to posit a hierarchy of values with which one can determine how conflicting values are to be resolved. Consequently, despite his incisive assessment of anti-universalist views throughout this collection, he does not advance against Berlin's second front. But this is where anyone interested in the universalist-pluralist debate wants to see a decisive outcome. By default, however critical one is of particular brands of anti-universalism, if one does not give a cogent defense of any version of universalism, the anything-goes ethos prevails.

Interestingly, the mention of "anything goes" can often trigger off a notable reaction in the most ardent anti-universalists. Suddenly they would protest that it was never their intention to condone every conceivable form of outrageous behavior against humankind. Of course there are acts and practices that should not be tolerated and we should not hesitate to intervene and prevent their occurrence. It is just that beyond those cases where there is a "coincidence" of judgement, there is no universalist criterion that can take us any further. But is it

just a coincidence of judgment that characterizes what those cases have in common? And how should one proceed with the cases beyond them? To answer these questions, we must turn to one of the few, but in this context critical, flaws of Lukes's reflections on moral diversity.

Although Lukes surveys a range of universalist ideas, he does not appear to take seriously the pragmatist philosophy developed by William James and John Dewey. Unlike rationalist universalists who seek to underpin an objective system of morality with a set of *a priori* reasons and principles, pragmatists have long advocated that the experience of problem solving provides a proper basis on which the reliability of judgments—moral, physical, psychological, technical—can be ascertained. On this view, the commonality of moral judgments is not founded on a mere coincidence of attitudes, but on the ever-expanding horizon of shared human experience. The more human beings are able to learn about one another's experiences, reflect on the consequences of different practices over time, the more we can differentiate between the soundness of diverse judgments. Progressive communitarians have taken this approach forward by focusing on the shifting frontiers of this consensus, not as a sign that objective morality has a dubious foundation, but rather as a reminder that moral consensus needs to be built on the open exchange and critical appraisal of human experiences. This means that instead of encouraging the declaration of morally "independent" cultural enclaves (be they gangsters, pedophile rings, racial supremacists, fundamentalist extremists, or self-styled cannibals), we should break down barriers and promote a thicker/richer notion of our common understanding of human respect and dignity.

The widening of our moral understanding is not a mysterious process involving some Platonic grasp of "Reason" or "Ideas." It is a process of learning to appreciate the impact of different attitudes and practices on other human beings. Novelists from Fielding to Dickens to Orwell and on have done their considerable share in opening up minds to the injustice in what others had barely noticed in their times. Educators and community development workers have in their own ways helped to advance a shared conception of how life should be improved for our fellow citizens, regardless of their class, religious, or racial backgrounds. Together they give us greater confidence in

taking action to protect those vulnerable to oppression or exploitation by others driven by unacceptable “values.”

This does not mean that people must behave in exactly the same way in every sphere of life. Beyond what is deemed morally unacceptable, there is a vast realm of cultural, personal, and regional preferences which should properly be left to groups or individuals. What we cannot presume is whether something is inherently beyond moral appraisal, or what appraisal would be correct—irrespective of the impact on human experiences. The pluralism that liberal-minded people tend to support is the pluralism of parallel ways of life which do not undermine the core values of humanity. It is not the “pluralism” that leaves some to be free to oppress others within their “cultural sphere of influence” through inflicting physical harm or damaging their psychological development.

Given the scant attention he paid to the pragmatist and progressive communitarian line of thinking, it is not surprising that Lukes (in Chapter 11) is somewhat dismissive of Robert Bellah and other communitarian-minded thinkers who seek to advance moral understanding through a cultivation of deeper moral consensus, a richer public life, mutual trust, and civic responsibility. For Lukes, there is little scope for developing a thicker layer of moral values, and we have to make do with a thin set of guiding principles which most people can sign up to. But in the real world there is no escaping from the question of how these principles are to be interpreted and applied in practice. And for those who are not convinced they should follow the communitarian path of learning from our common experiences of what to promote and what to condemn in human practices, there is little to guide them through the jungle of moral anarchy.

The Journey of a True Communitarian

Wilson Carey McWilliams

Amitai Etzioni, *My Brother's Keeper: A Memoir and a Message* (Lanham, MD: Rowman and Littlefield, 2003), 460pg.

Toward the end of *My Brother's Keeper*, Amitai Etzioni expresses the wish that he had “worked harder.” Most of Etzioni’s readers will be inclined to smile, since by this time it is clear that Etzioni’s life includes enough adventure and accomplishment to fill several ordinary lives. Smuggled out of Nazi Germany as a child, Etzioni fought as a commando during Israel’s War of Independence. He later studied with Martin Buber and went on, after graduate work at Berkeley, to a distinguished academic career as a sociologist, authoring a shelf and a half of books, developing an influential role as a public intellectual with a prophet’s gift for seeing tomorrow’s issues (and a prophet’s curse in being sometimes too far ahead of the times), playing a part in national and international politics, including a stint in the White House, and of course, serving as the inspiration and chief founder of the communitarian movement. In wishing he had done more, however, Etzioni is judging his achievements by a higher standard, and that is the story of this book.

As its subtitle suggests, *My Brother's Keeper* is a “memoir and a message” as distinct from an autobiography. Amitai Etzioni occupies center stage in this narrative. He writes in a very personal voice; he takes pride in his successes and he certainly does not underrate the impact of the communitarian movement. He gives us, minimally, some insight into his private life, and overall we get a feeling for him as a person, particularly since he is engagingly willing to acknowledge shortcomings, such as the naiveté of his approach to White House politics during the last year of Carter’s presidency. But Etzioni is a character in the play, not the story itself. Amitai Etzioni’s vocation overshadows his person: eventually, he writes, “I will be gone, but not the calling.”

“Calling,” of course, is a grandly religious term—associated, for most social scientists, with Weber’s treatment of Protestantism—but Etzioni makes no such claims. (In fact, a number of religious rightists have been offended because Etzioni’s communitarianism gives reli-

gion less standing than they think appropriate). Yet nevertheless, Etzioni life is moved and informed by faith.

His work reflects a continuing belief that human beings are moral agents whose ideas and convictions matter, along with the corollary proposition that humans are entitled to a say in their own governance. The “special high” he felt in being caught up in the founding of the state of Israel left him with the assurance that action can influence history, a sense of perennial possibility even against great odds. Civilization, he argued in *The Active Society* (1968), gives societies an increasing power of self-direction, along with an increasing tendency for human beings to be baffled and dominated by their own artifacts, so that the great challenge is to subject economics and technology to “human primacy” rather than the other way round. (One result of that argument was Etzioni’s founding of the Society for the Advancement of Socio-Economics.) Etzioni aspires to the old socialist promise—the leap from necessity into freedom—without socialism: in place of Marxism’s reliance on historical inevitability, Etzioni trusts in the ancient principle that human beings are by nature political animals.

As much as Etzioni celebrates the virtues of community, he is aware of community’s human limits. He has had abundant experience of the outsider’s yearning to belong, but he also knows the critical insider’s recognition that belonging is not enough. His parents fled Nazism first, leaving him—aged five, or thereabouts—to be slipped into Italy by a non-Jewish relative who left him alone, for a few terrifying minutes, on a railway station platform. Reunited with his parents in Athens, Etzioni—beginning with no Greek—went to school for a year, while his family waited for admission to Palestine; his classmates, Etzioni says gently, “treated me as someone who did not belong.” At first, Israel was only marginally better, since Etzioni arrived speaking no Hebrew, and although he eventually found an intense community at the Ben Shemen boarding school (the place made him an Israeli, Etzioni says), it didn’t entirely fit: the Zionist ideal emphasized “working with one’s hands,” and Etzioni was a natural, irredeemable intellectual. (In *My Brother’s Keeper*, he refers to his heroic military service as “A Nerd Goes Fighting.”)

Moreover, throughout Etzioni's life, the desire for inclusion has always been tempered by his larger human vision: despite the agonizing losses of his military days—two-thirds of the men in his unit were killed or wounded in the defense of Jerusalem—he always had a measure of empathy for his enemies. Similarly, while he revered Martin Buber, he was uneasy with his early teacher's indifference to individual rights. And from the beginning, his encounters with American sociology followed the pattern. His English was hesitant at first, and probably not helped by his fascination with Talcott Parsons. While at Berkeley he soon found a spectacular intellectual community, including Seymour Martin Lipset, Philip Selznick, and Reinhard Bendix, but his time there was stunningly brief. (We overlapped a bit as graduate students, but Etzioni finished his dissertation in 18 months, while mine took—well, longer.) He moved from Berkeley to the narrow social science orthodoxy of Columbia, where he was repeatedly warned against ventures into the public arena (his first offense was a review of *Hiroshima Mon Amour*). Etzioni succeeded in publishing his way to tenure, but his continuing engagement with public questions—the Cold War and the nuclear threat, the Vietnam War, the space program or the dangers of biological engineering—marked him as an outsider in the academy, just as his democratic civilities quickly estranged him from anti-Vietnam militancy.

Etzioni exemplifies Aristotle's teaching that there is an inevitable tension between a good citizen and a good man, a strain that can be mitigated but not eliminated by art. As much as Etzioni devotes himself to civic life and public spirit, he always reaches for something more. Unlike run-of-the-mill communitarian theorists, for example, Etzioni rejects relativism; he sees and seeks the universals of human nature and value, perhaps most notably the principle that political animals can only be rightly ruled through speech.

Etzioni has, however, created his own "ample home" in the communitarian movement, and he devotes half of *My Brother's Keeper* to a person-by-person and meeting-by-meeting account of the development of the movement and its effort to articulate and activate a moral voice, receptive to diversity but mindful of core values.

And readers of *The Responsive Community* are likely to share Etzioni's celebration of the movement's role in bringing a measure of

sense into discussions of concerns like family policy, H.I.V., and multiculturalism, to say nothing of its emphatic affirmation of individual rights, reflected in the insistence that community be “responsive” rather than authoritarian.

But the movement’s mantra—its appeal to civil society against either the free market or the state—risks overstating Etzioni’s distrust of political power. In the first place, civil society itself is disordered and defensive, fragmented and penetrated in ways that radically limit its force. Etzioni recalls telling a German audience that the authoritarian potential of community need not greatly be feared today, since people are apt to belong to several communities, so that no single community has a “stranglehold” on them. The same logic, however, points to the limits of community power and the tendency toward privatization. It doesn’t help that technology is obliterating privacy as a social fact (as Etzioni noted in *The Limits of Privacy*, 1999) or that the media are intrusive, ubiquitous, and substantively inadequate. These days, Etzioni has had occasion to remark more than once that, where democratic liberties are concerned, “Big Bucks” are a more immediate danger than “Big Brother.” Communitarian rhetoric, however, can obscure the fact that in Etzioni’s teaching, civil society and the state are allies more than antagonists.

Moreover, while Etzioni’s version of communitarianism is formally nonpartisan, it has clear political affinities. *My Brother’s Keeper* reminds us that Etzioni entered the movement with the aim of developing a way of “remoralizing” America different from the right’s argument “by the book,” one that would be open to discussion and change and sensitive to the climate and conditions of political practice. Similarly, as Etzioni sought to spread the movement’s message, he saw conservative leaders as preoccupied with antigovernment negativism, not only apt to be bored with moral discourse (liberals shared that failing) but often hostile to it, lacking in what Etzioni regards as the generosity of genuine “Christian spirit.” While he was disappointed when Bush’s vaguely communitarian “compassionate conservatism” turned sharply to the right, it is doubtful that he was much surprised. By contrast, Etzioni found a better listener in Bill Clinton, although he suspects that Clinton, an “inconsistent communitarian,” lacks a moral “true north.” He has better things to say about Hilary Clinton and shows even greater enthusiasm for

Tony Blair. So understood, communitarianism leans decidedly to the left of center, at least on the current definition of the political spectrum. To enter the world of practical politics is to have friends and enemies, even though prudence tells us that the people and groups who bear those titles may change with the times.

Etzioni himself is a citizen for all seasons; his center of gravity is moral and theoretical, not ideological. He refers to his role as a public intellectual as “counterspeech,” power answered with truth. Just so: Etzioni has been an invaluable voice, never letting us forget that, within the limits of nature, we enjoy a measure of autonomy, that we have moral obligations, that speech matters, and that there are always possibilities for democratic self-rule. In his graceful conclusion, Etzioni gives a conspicuously honest account of aging and its pains, but Amitai Etzioni slowed to a walk is still a sprinter compared to most of us. He continues to follow his calling as a keeper of our dreams and decencies, and we have every reason to cherish his vocation.

Bowling Together

Faye Ginsburg

Robert D. Putnam, Lewis Feldstein, and Don Cohen, *Better Together: Restoring the American Community* (New York: Simon and Schuster, 2003), 318 pg.

In the first chapter of his groundbreaking book, *Bowling Alone: The Collapse and Revival of American Community*, political scientist Robert Putnam runs through a number of compelling, grounded examples that dramatize his central argument: that the United States has witnessed a three-decade decline in civic engagement. The cases he cites to open *Bowling Alone* and engage the reader in its thesis range from bridge clubs, to local NAACP chapters, to charity leagues (not to mention the famous bowling leagues from which the book draws its title). The dissolution of so many of these kinds of groups, Putnam argues, indicates that community involvement—the currency that

builds social capital—has been disintegrating, impoverishing the American body politic that has long depended on this kind of activity. Putnam then goes on to analyze a prodigious amount of survey and poll data documenting falling trends in religious, political, philanthropic and workplace participation. He offers a convincing quantitative demonstration that we have cause to worry about the collapse of the kind of voluntary activities that have long shaped American communal life, a characteristic that first struck observers like Alexis de Tocqueville in the 19th century and that continue to be of concern to current thinkers. In keeping with communitarians in particular, Putnam is unwilling simply to be dystopic. He ends *Bowling Alone* with a section entitled “What is to be Done?” answering that rhetorical question with the final chapter, “An Agenda for Social Capitalists” which itemizes specific recommendations for ways to reverse the trends he laments (a reversal he targets for the year 2010) in diverse social fields, from religion to media to politics.

I begin with this look over my shoulder at *Bowling Alone* because it provides the essential context for understanding what motivated the book under review, Putnam’s next volume, *Better Together: Restoring the American Community*, which he co-authored with civic activist Lewis Feldstein and writer Don Cohen. Indeed, it seems as if the strategy of the second book is precisely to reverse the alarmed pessimism of the first chapter and relentless reliance on numbers of the former book, by providing twelve successful case studies showing how social capital is being built across America. These cases range from familiar locations for collective action—union organizing by Harvard clerical staff, the revitalization of a poor neighborhood in Boston, intergenerational voluntarism in Philadelphia schools—to more unexpected sites: modern dance as a form of community-building public art in Portsmouth, New Hampshire’s shipyards; branch libraries in Chicago that have mobilized diverse citizens across the city to read books and re-inhabit libraries; a youth-organized social action network called “Do-Something” initiated in small-town Wisconsin; a mega-church in southern California; and the unlikely but refreshing winner of the virtual community example, the no frills internet bulletin board/swap meet, *craigslist.org*, that first emerged out of San Francisco. The authors do not pretend that these cases suggest a sudden efflorescence of communitarianism; rather

they provide what the cultural theorist, the late Raymond Williams called “resources of hope.”

Moving from the quantitative to the qualitative (or “descending from the statistical heights of *Bowling Alone*,” as the authors put it), and from the broadly sociological to the finer scale and close range observation associated with ethnography (though without the usual depth of that approach), this book is suggestive of cultural and political possibility rather than declarative about “sociological trends.” Fundamentally, it explores the myriad ways in which different groups of Americans have built community. The book looks carefully at diverse strategies used to develop “networks of relationships that weave individuals into groups and communities.” This is the baseline definition the authors give for “social capital,” which is the central topic of the book, further elaborated into the received categories of “bonding social capital” which occurs among people who are culturally similar; and “bridging social capital” which links people across social boundaries and which, the authors argue, is critical to well-functioning pluralist democracies.

The author’s want not only to suggest the emergence of new possibilities, despite the lonely bowlers still out there, but also to respond to critics and community activists who want to know, concretely, what they might do to create new forms of community. This concern to step outside of the academic debates and to ask what can be done reflects the book’s origins in the Saguaro Seminar on Civic Engagement in America, launched in 1997 by Robert Putnam and Harvard’s JFK School of Government. The Seminar pulled together a group of 30 activists, artists, clergy, and intellectuals who worked together over three years to find concrete ways to “redirect a downward spiral of civic apathy,” addressing how social capital might be catalyzed and built (see their informative website, www.bettertogether.org).

Given the circumstances and goals of the authors, it is not surprising that they turned away from the more abstract language of social science. The writing in *Better Together* stays resolutely close to the ground, with only a few nods per chapter to broader theoretical points, which are addressed more directly in the introduction and conclusion. The avoidance of jargon no doubt accounts in part for this

book's apparent popularity across a range of possible readerships, from academics to community organizers. Additionally, it is in keeping with a representational strategy that reflects the nature of the phenomena that they are trying to describe: storytelling. As a rhetorical mode, they argue, storytelling enables a narrative understanding of how groups came into being, often against expected odds, without flattening out the realities of everyday life. At the same time, shared storytelling is a central feature of how bonds are created among people in the projects they describe: whether through the translation of New Hampshire shipyard laborers' life stories into dance movement for a public art piece; or to the routinization of witnessing in Protestant practice that undergirds the "small groups" which form the human bricks and mortar of the megachurch movement that Saddleback Church exemplifies.

The choice of the dozen cases out of over one hundred was driven less by concerns for their typicality, and more by their longevity and impact, as well as by their variety in terms of region, age, class, ethnicity, or approach to organizing. Within that range, the authors pull out sociological similarities that underlie this diversity, and that account for their success. Their central findings are: (1) the creation of social capital takes time and requires face-to-face social encounters with considerable contact that helps to establish trust and mutual understanding. Because of this, social capital is generally (2) a local phenomenon and unlikely to be built successfully through virtual forms of contact (despite the claims made for online communities and their potential to transform social life). Finally, while (3) storytelling seems to be a ubiquitous and extremely effective technique for building community, especially in heterogeneous situations, it is a necessary but not sufficient component of building networks which tend to succeed when there are (4) clear common goals that unite people, and that enable distributed rather than centralized leadership.

Significantly, these are characteristics that are shared by groups who mobilize social capital and communitarian impulses toward what most of us would regard as socially destructive ends. Indeed, a short caveat in the book's first chapter acknowledges that there is a bias against reporting on such groups. The Ku Klux Klan, the authors point out, reminds us that the effects of community building can be "morally or culturally repugnant," or provide the scaffolding for

“uncivil” behavior (as my own research on the right-to-life movement has demonstrated). In this case, then, the emphasis on the positive is clearly a strategic one: “We focus on the social-capital success stories, hoping and believing that they may in fact be harbingers of a broader revival of social capital in this country.” The focus on the positive exemplary cases is the blessing and the curse of the book. Negative outcomes of social capital, on the one hand, remain in the background of the discussion, with only occasional mention of the potential of social networks to exclusionary scattered throughout the book. On the other hand, the authors provide a hopeful, grounded set of stories that are sociologically illuminating and morally inspiring. Falling somewhere between sociological analysis, ethnographic description, political prognostication, and optimistic intellectual activism, this is a project that might well bear as its catch phrase anthropologist Margaret Mead’s famous comment: “Never doubt that a small group of committed citizens can change the world: indeed, it’s the only thing that ever has.” Let’s hope their optimism is right, and that the change is for the better.

THE COMMUNITY'S PULSE

Attitudes towards the Homosexual Community in America

How sympathetic would you say you are to the gay community?

Now:	September 1983:		
Sympathetic:	60%	Sympathetic:	30%
Unsympathetic:	36%	Unsympathetic:	63%
Don't know:	4%	Don't know:	7%

Which comes closest to your view:

	Youngest respondents	Oldest respondents	All
Same-sex couples should be allowed to legally marry	44%	10%	24%
Same-sex couples should be allowed to form civil unions	31%	38%	38%
Same-sex couples should not be allowed to do either	22%	48%	34%
Don't know	3%	4%	4%

Do you think legal recognition of same-sex marriage is inevitable?:

	Youngest respondents	Oldest respondents	All
Inevitable	71%	45%	59%
Not inevitable	22%	39%	31%
Don't know	7%	16%	10%

Do you personally know someone who is gay?:

	Currently Youngest respondents	Oldest respondents	All	Dec. 1985* All
Yes	71%	45%	59%	46%

*CBS/New York TimesPoll

If you had a child who told you he or she was gay or lesbian, what would your reaction be?

Now:		September 1983:	
Very upset:	33%	Very upset:	63%
Somewhat upset:	27%	Somewhat upset:	27%
Not too upset:	11%	Not too upset:	4%
Not upset at all:	25%	Not upset at all:	3%
Don't know:	4%	Don't know:	3%

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Do you personally think that it is possible for two people of the same sex to be in love with one another the way that a man and a woman can be in love?:

	Youngest respondents	Oldest respondents	All
Yes	65%	31%	58%
No	32%	44%	31%
Don't know	3%	25%	11%

Should gays be protected under civil rights laws in the way racial minorities and women have been protected, or not?

Now:		October 1995:	
Protected:	62%	Protected:	43%
Not protected:	28%	Not protected:	50%
Don't know:	10%	Don't know:	7%

If you had a child of elementary school age, would you object to having a gay person as your child's teacher, or would that not bother you?:

	Currently Youngest respondents	Oldest respondents	All	Feb. 1993* All
Object	19%	44%	26%	55%
Not bother	76%	50%	68%	41%
Don't know	5%	6%	6%	4%

*CBS/New York Times Poll

Do you favor or oppose gay couples legally adopting children:

	Youngest respondents	Oldest respondents	All
Favor	54%	22%	40%
Oppose	43%	70%	52%
Don't know	3%	8%	8%

Do you think a gay person could be a good role model or not?:

	Currently Youngest respondents	Oldest respondents	All	June 1994* All
Good	74%	39%	61%	36%
Not good	22%	48%	30%	57%
Don't know	4%	13%	9%	7%

*Time/CNN/YankelovichPartners Poll

Do you personally believe that same-sex relationships between consenting adults are morally wrong, or is that not a moral issue?:

	Currently Youngest respondents	Oldest respondents	All	Mar. '78* All
Morally wrong	34%	62%	48%	53%
Not morally wrong	61%	30%	46%	38%
Don't know	5%	8%	6%	9%

*Time/Yankelovich, Skelly & White Poll

compiled by Elanit Rothschild

Source: Los Angeles Times Poll contacted 1,616 adults nationwide by telephone March 27-30, 2004. The youngest respondents are between the ages of 18 to 29. The oldest respondents are 65 years of age and older.

LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

From the Libertarian Side

Ladies' Night a Thing of the Past?

Say goodbye to "ladies' nights" at your local pub and nightclub in New Jersey.

David R. Gillespie filed a lawsuit against the Coastline nightclub, arguing that it was not fair for women to get in for free and receive discounted drinks while men had to pay a \$5 cover charge and full price for drinks. While the nightclub reasoned that ladies' nights were a legitimate promotion, the director of New Jersey's Division on Civil Rights, Frank Vespa-Papaleo, agreed with Gillespie, ruling that commercial interests do not override the "important social policy objective of eradicating discrimination." It took the division six years to decide on the case.

According to the *Bergen County Record*, David Miller, the restaurant manager at Coastline, says no one knows who David Gillespie is, although in an interview, Gillespie told the Associated Press that he was happy with the ruling, even though he knew many would criticize it. According to his 82-year-old mother, "There are bigger fish to fry than this."

Lewis Rothbart, of the New Jersey Licensed Beverage Association, agrees: "It's an old practice and no one gets hurt by it."

In his ruling on June 8, 2004, Vespa-Papaleo compared the women-only promotions to offering free drinks for Christians while making Jews pay. But other business owners simply compare it to senior citizen and children discounts often found at restaurants, movie theaters, and other venues. "Kids eat free," said Lisa Marinaro, the promotions director at Top Dog, another New Jersey club. "Is that fair to people who don't have children?"

The owner of Coastline, Christos Mourtos, has had a ladies' night every week since he bought the restaurant 26 years ago. In time, Wednesdays became one of the bar's busiest days, but now, since the ruling, has seen the crowd drop from 600 patrons to a mere 250.

"I don't think people have realized the far-reaching effect this is going to have," Mourtos said.

From the Authoritarian Side

Punishment Fit the Crime?

After telling a classmate that his mother is gay, a 7-year-old boy was disciplined by his school, the Ernest Gallet Elementary School in Louisiana. Marcus McLaurin was referred to the school's behavior clinic, where he was instructed to write the sentence "I will never say the word 'gay' in school again" over and over again, the American Civil Liberties Union said.

"The school called me the day it happened and said that Marcus was in trouble for using foul language, and behaving inappropriately," Marcus's biological mother, Sharon Huff, said. "I didn't know what he'd said because the assistant principal said he didn't feel comfortable repeating it over the phone. . . . When Marcus came home with the note, all it said was that he'd told another child I was gay, and explained what gay meant."

The boy's teacher, Terry Bethea, signed two disciplinary reports stating that Marcus explained to another child in his group that his

mother was gay. "He told the other child that gay is when a girl likes a girl. This kind of discussion is not acceptable in my room."

The incident was referred to the Lafayette Parish School Board, which refused to apologize to Huff. Several School Board members apparently accepted the explanation of school officials, who said that Marcus was disciplined for "disrupting class."

Felix Sellers, a Baptist seminarian from New Orleans who was raised in Lafayette, told the *Times-Picayune* in December 2003 that he trusted Lafayette schools Superintendent James Easton's version of events, even though it is contradicted by the discipline reports. "In times past we've always been able to trust Dr. Easton," Sellers commented. "To me this is not a matter of the woman's sexual preference."

Most community members, though, appeared to share the view of Wallace Senegal, who said the board should admit the school made a mistake and apologize. "How old do you have to be to have freedom of speech? We're sending our kids to school to teach them life skills."

From the Community

Silver Ring Thing

In a move to combat pregnancy and sexually transmitted diseases among British teenagers, six mothers will launch a solution to the "sexual epidemic" afflicting the nation's teens: a silver ring and a vow of chastity. Inspired by the success of the Silver Ring Thing in the United States, a movement that has encouraged 17,000 young people to take the pledge until marriage, *The Guardian, London* reports that the mothers and their supporters will go to seven cities in Britain and Ireland to present a series of free events in June and July, 2004.

"It's thumping music, lights, comedy, drama," said Paula Jacobs, a mother of three who teamed up with friends after being stunned by

rising levels of sexually transmitted infections and the “deterioration of our youth.” “It’s a fun night without any dark dangers or sex, just a good wholesome evening for kids with the same atmosphere as you get in a nightclub.”

While Silver Ring Thing is strongly rooted in Christianity, it encourages youth of any faith to take the pledge. Its practical aim is to reduce STDs: between 1992 and 2002, cases of syphilis rose by 870 percent in England, Wales, and Northern Ireland; chlamydia rose by 139 percent; and gonorrhea by 106 percent, according to the Public Health Laboratory Service. The largest increase was among those under 25 years of age.

Jones commented that they are not “here to convert people [but to] alert them. We want to help them eradicate this sexual epidemic among teens. We’re not going to be able to tell people what they do, we simply want to help those who want to change.”

The program encourages 11- to 18-year-olds to abstain from sex until marriage. Teenagers taking up the program are supported by an “accountability partner,” a friend with whom they can share thoughts and any worries, and the program emphasizes that everyone deserves a “second chance.”

Kristina Walters, 16, believes that teenagers are under great pressure to be sexually active. “You don’t think that TV and advertising makes a difference, but it accumulates and then you realize that it does.”

She supports Silver Ring Thing and thinks it could prove popular among Britain’s teenagers. “Sex is a problem for any teenager in most modern countries.”

Elanit Rothschild

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SOCIAL SCIENCE

From Military Officer Cadets to NYS Volunteer Cadets: The Transformation from Military to Civic Service

Donald J. Eberly and Reuven Gal

Military organizations worldwide have undergone major transitions throughout the last century: public attitude towards the military is now more skeptical or apathetic; its orientation and ethos are more tolerant and flexible, thus making it not as distinct from civil society as it was in the past; and, the motivation of the servicemen and women is not necessarily patriotic, but rather stems from the desire for self-actualization and exposure to occupational opportunities.

Perhaps the most striking transformation is the decline, almost disappearance, of the universal (mandatory or compulsory) conscription-based army. As of mid-2001, the only four countries in Europe that still maintained “hard-core” conscript forces were Greece, Turkey, Finland, and Switzerland (Israel still maintains a full mandatory service as well). Starting in the early sixties and up to today, all other North American and European countries have transformed their militaries into all-volunteer forces, or are in the process of becoming such.

Recent transformations of military organizations, however, apply not only to their size and structure, but also to their mission and orientation. Along with an increasing tendency to engage in peace-

keeping and constabulary missions (rather than in all-out-war actions), many of the current military organizations are involved nowadays in domestic and humanitarian missions. Such missions include rescue operations, fire fighting, helping uprooted populations in refugee camps, food supply, and so on.

This trend of “military humanitarianism” brings the military service as close as ever to the civil-service model, which includes all kinds of operations other than war, or in William James’s term (see below) bears the title “moral equivalent of war.”

These transitions and transformations of military organizations, which occurred throughout the last few decades, provide a major factor in the growth of the National Youth Service (NYS) during these same decades. The International Association for National Youth Service defines NYS as an organized activity in which young people serve others and the environment in ways that contribute positively to society. NYS participants have opportunities for reflection, normally serve full-time for six months to two years, and receive support—whether from government or NGOs—sufficient to enable them to serve. As armies shrink in size and move toward nonmilitary missions, more young people are available for organizations that are more “civilian” in the first place.

Clearly that is a major factor in the growth of NYS as the pool of young people available for nonmilitary activities has increased. However, it is not the only factor. Three prominent men, who advocated forms of national service near the beginning of the century, did not do so because they foresaw smaller armies or transformed military organizations; William James, Eugen Rosenstock-Huussy, and Pierre Ceresole did so for psychological, moral, and religious reasons.

Major Phases in NYS Development

It began in 1906 with William James’s essay *The Moral Equivalent of War*, first given as a lecture at Stanford University, where he called for “a conscription of the whole youthful population to work on many of the toughest jobs.” They would go “to coal and iron mines, to freight trains, to fishing fleets in December, to dish-washing, clothes-washing, and window-washing, to road-building and tunnel-making, to foundries and stokeholes....” Those who served “would

have paid their blood-tax, done their own part in the immemorial human warfare against nature; they would tread the earth more proudly, the women would value them more highly, they would be better fathers and teachers of the following generation." Although James placed himself "squarely in the anti-militarist camp," he said that martial values such as "intrepidity, contempt of softness, and surrender of private interest" must be the enduring cement of society. And he noted that painful work would be "done cheerily because the duty is temporary and threatens not, as now, to degrade the whole remainder of one's life."

A few years later Eugen Rosenstock-Huessy of Germany called for a work service corps. He wrote to the Prussian Ministry of War, reasoning that the one- and two-year recruits freed from military service for "ridiculous reasons of health" should instead be used in a "social service corps where they could practice living and learning how to live." His proposal got nowhere, but later he did organize a variety of short-term service corps efforts. He learned two major lessons from these experiments. First, they were much more successful when they involved young people from different strata of society than those from a homogenous group. Second, he found that short-term work camps had little impact.

It continued in 1920 with the launching of Service Civil International and the voluntary work camp movement. As the international secretary of the Fellowship of Reconciliation, Pierre Ceresole of Switzerland was the prime mover in the establishment of what is generally recognized as the first international voluntary work camp, near Verdun, site of one million deaths in a year-long battle in 1916. Ceresole, the son of a Swiss president, had strong Christian beliefs which led him to prison in both world wars for refusal to pay war taxes. Since 1920, there have been numerous work camps that have brought together young people from many countries to assist in reconstruction and rehabilitation following wars and natural disasters.

The next major national service milestone was the launching of the Civilian Conservation Corps (CCC) in 1933. The CCC, America's largest and probably most successful NYS program, was dependent on the U.S. army for its basic administration. Corps members got up

to morning reveille, were assigned to mess duty, and performed daily drills without guns. CCC camps were run by military officers and their work projects were supervised by civilian officials. Many of its former members entered military service early in World War II and adapted easily to the military lifestyle because of their experience in the CCC.

The purposes of the CCC were to do important conservation work, to alleviate the high level of youth unemployment, and to transfer money to poor families. The CCC met its goals. From 1933 until its wartime demise in 1942, an average of 300,000 young men were at work in the CCC at any one time, which represents about 30 percent of the male age cohort. The value of the work they did in projects such as planting billions of trees, building thousands of bridges, and over 100,000 miles of minor roads has been estimated at many times the total program cost.

It was not until 1960 that national service received major endorsement again in the United States, this time in the form of a campaign speech in which John F. Kennedy proposed the Peace Corps. Kennedy received enthusiastic support from university campuses because he previously said he would consider making Peace Corps service an alternative to what was then a required military service. As president, however, he backed away from that idea because he felt the draft was too hot an issue. One consequence was that some local draft boards exempted Peace Corps cadets from military service, others deferred them until they returned home, and still others drafted them while still in the Peace Corps.

Germany came by way of NYS accidentally. The post-World War II constitution stated that "no one shall be forced to do war service with arms against his conscience." So when military conscription returned in 1958, provision had to be made for conscientious objectors (COs). This provision led to alternative service for COs, called "civic service," or *Zivildienst* in German. Over time the process of declaring CO status became easier, and now the petitioner must only write a letter giving reasons for requesting CO status. About 85 percent of such requests are approved, and by 2000 there were some 180,000 young men classified as COs who were either in *Zivildienst* or awaiting assignment to it. The period of civilian service is one-third

longer than military service, and a larger portion of the public now view COs in a positive light.

What might be considered the largest national service program was engaged in by soldiers of China's People's Liberation Army (PLA). Mao Zedong intended that virtually everyone in China be occupied in a way that served the greater good of the Chinese people. Thus, his statement that "there is no profound difference between the farmer and the soldier" might as easily be applied to the teacher or the fisherman or the factory worker. Such a broad definition of service complicates the task of identifying NYS activities as distinct from salaried employment. Still, there can be little doubt that the young men of the PLA have provided an enormous amount of civilian service. In the second half of the 20th century, they constructed 8,000 miles of railway, planted hundreds of millions of trees, brought one million acres of land under irrigation, constructed 40 iron and steel factories and 20 coal mines, provided medical assistance and public health education to much of the population, and responded to thousands of natural disasters. The PLA continues to be heavily involved in civilian activities.

China also provides incentives for young people outside the military to do NYS kinds of activities. University graduates are asked to go to the countryside to teach school for a year or two. Doing so greatly increases their chances of obtaining an interesting job and decent housing on their return to the city. Additional activities are carried on by members of the Communist Youth League, in urban neighborhoods and rural areas, in labor units and factories, and in primary and secondary schools.

The evolution of national service in Israel resembles that in China in some ways, with Mao's dictum of no difference between a farmer and a soldier applying here as well. Soon after independence, the Knesset (Israeli parliament) passed a military service law declaring that "agricultural training will be an integral part of military service." Even before the Jewish state was created in 1947, Jewish residents established various youth organizations and pioneer youth movements which they described to the British Mandate authorities as nothing more than Boy Scout troops. But much of the underlying rationale for these youth groups was to develop a cadre of young

people who would be trained in military discipline, who could go on long route marches through the desert, and who would be ready to defend the nation-state when the time came. With the birth of Israel and its frequent wars with its neighbors, Israel maintained a high state of military readiness combined with development of the land and other nation-building missions.

Both young men and women serve in the Israel Defense Forces on a compulsory basis. As recently as the 1980s, conscription was almost universal (Arab youth are exempted), but by 2000 the number had edged towards 50 percent as the army became increasingly professionalized. The low participation rate concerned many Israelis who believe that service by young people is vital to national development, and who see it as a rite of passage to adulthood. A number of national service programs have developed over the years to meet this demand. Some 5,000 religious young women give a year or two of social service in Sherut Leumi ("National Service" organizations). Another 1,000 young women of varied beliefs serve in Shlomit, which in the last couple of years has also included some Arabs and young men in their service projects. Altogether, national service includes some 7,000 young people in full-time, year-round service. Since all but a few of them are women, that equals about 12 percent of the single year cohort of young women.

Nigeria's national service was the direct result of the Civil War in the late 1960s, when one part of Nigeria – called Biafra – tried to break away from the rest of Nigeria. Biafra failed in its effort to secede but Nigeria decided it must make efforts to foster national unity. After much debate, Head of State General Yakubu Gowon issued a decree in 1973 creating the National Youth Service Corps (NYSC) to develop "common ties among the youths of Nigeria and to promote national unity."

The NYSC requires all university graduates to serve for one year far from their home towns. Following an orientation period, they are posted to the place of assignment where they are expected not only to work for 11 months in a regular job, but also to initiate community development projects in the areas where they serve. After service, cadets are brought together again to discuss their experiences, participate in a parade, and receive a Certificate of National Service that

entitles them to be employed in Nigeria. While many entering cadets are not happy about being posted to a distant part of the country, a study of ex-cadets' attitudes to being posted away from their home areas showed that in retrospect only one in ten were negative, the rest positive.

Indonesia's *Kuliah Kerja Nyata* came about as a result of the post-World War II fight for independence from the Dutch. When educated Indonesian soldiers were not fighting, they taught reading, writing, and arithmetic to school children. They saw the value of that experience both for the children and for themselves and they wanted well-educated Indonesians in the future to have similar experiences. During the 1950s they served mostly as school teachers, but by the 1960s Indonesia had developed a strong cadre of teachers, so university students were assigned to remote villages to develop safe water supplies, work on public health projects, and the like.

NYS Trends

First, national service programs are increasingly being established for reasons unrelated to military service, for purposes such as nation building, the service delivered, and the benefits to those who serve. Examples include the AmeriCorps in the United States, Costa Rica's *Trabajo Comunal Universitario*, Chile's *Servicio Pais*, Vietnam's *Organization of Young Intellectual Volunteers Participating in Rural and Mountainous Area Development*, the *National Service Schemes of Ghana and India*, *The Gambia's National Service Scheme*, *Brazil's Servicio Civil Voluntario*, and many more.

Second, just as military service has been transformed in the past 100 years, so has the perception and nature of volunteer service. In many non-Western countries it was originally seen as an obligation of members of an extended family or of a community. In Western countries, volunteer service was seen as a kind of *noblesse oblige*, where rich people had an obligation to be generous to the poor.

The expanding role of volunteer service was recognized in the official guidelines for *International Year of the Volunteer 2001*. They said, "IYV 2001 is for and about all kinds of volunteers everywhere; it is not limited to any one category of volunteer, whether formal or informal...domestic or international, unremunerated or modestly

remunerated..." The guidelines also pointed to "volunteer service schemes as accepted alternatives...to military conscription."

The sense of obligation has also expanded beyond family members and rich people. The governments of Nigeria and Ghana decided in 1973 that university graduates had an obligation to give a year of service, usually in their fields of study; in the United States, the sense of obligation has extended to secondary schools. For about the last 15 years, a number of cities and states in the U.S. have made a period of community service a graduation requirement. The sense of obligation may go beyond secondary schools if Senator John Kerry is elected president in 2004. His basic national service speech says that "for America now, service is not just an option, but an obligation of citizenship."

Clearly then, volunteer service is widening its scope. It has extended to those in the Peace Corps and the United Nations Volunteers who receive stipends, to those in educational institutions where service is seen to be a vital part of the educational process, and to those in countries where service is seen to be a responsibility of citizenship.

Third, the strongest and probably most irreversible trend in recent decades has been the linkage between national service and education. One of the earliest examples of this linkage is in Mexico, where in 1936 the government directed that all senior medical students serve for six months in the poorest communities. *Servicio Social*, as it is called, was so successful that it led to a doubling of the public health budget and ten years later it extended to students in other disciplines. Similar programs, but on a voluntary basis, are found in China, Vietnam, and several Latin American countries.

The most prevalent manifestation of the linkage is service learning, where students do part-time or short-term service in a way that is closely integrated with their studies. Service learning is offered in secondary schools in almost every country in South and North America; in many school systems it is a requirement. At the university level, Indonesia's *Kuliah Kerja Nyata* and Costa Rica's *Trabajo Comunal Universitario* are perhaps the strongest examples of service learning. Students typically go to villages and work in teams of 10 to 15, and are accompanied by one or two professors. The professors

help with the service project and conduct seminars one or more times per week where the learning dimensions of the service experience are discussed.

Given the good sense, the momentum, and the low cost of service learning, we think it is likely that it will be widespread around the world in another 20 years or so. The major issue will be maintaining the quality of service learning.

NYS Characteristics

Compared to many fields of human endeavor, rigorous research on national service has been fairly limited. Longitudinal and comparative studies are even more rare. Still, it may be useful to put forward a number of observations based on what we have studied and experienced over nearly 100 years of combined interest in national service.

National service is good value for money. Simply in terms of services rendered by cadets to persons in need and to the environment, we can expect the value of those services to exceed the cost of the program. We have already noted the service impact of the CCC. A conservative reading of a number of recent studies suggests that the value of services rendered in NYS ranges from equal to double program costs.

National service also provides substantial benefits to the cadets who serve. They include work experience, career exploration, skills acquired, increased social maturity and self-esteem, increased awareness of the needs of others, and new understanding between ages, races, ethnic, and linguistic groups. For many cadets the service experience is a rite of passage from adolescence to adulthood. The profile of benefits is different for each cadet, but if we could quantify and add them up, we are fairly confident that the total value would be greater than program costs and probably greater than the value of services rendered.

Incidentally, it is the accumulation of benefits to the cadets that prevents national service from becoming an exploitative program. While their dollar incomes are below market wages, the sum of their psychic incomes and the value of their long-term benefits more than make up the difference.

National service can operate successfully on a large scale. With NYS, we have seen successful large-scale operation with the CCC in the U.S., Zivildienst in Germany, Sherut Leumi in Israel, and the National Youth Service Corps in Nigeria.

Nation building is a significant outcome of national service programs. By giving a year or two of service, cadets feel they have made an investment in their country. That encourages them to develop strong national loyalties, as has been true with veterans' organizations over the years.

It is likely that both communities and nations benefit from an increase in social capital and a reduction in crime, savings on welfare, unemployment payouts, and training courses. As yet, we do not have adequate research on these factors.

In spite of the widely held belief that persons in compulsory national service programs give inferior performances to those in volunteer programs, observations by people who know suggest that is not the case when cadets understand and accept the rationale for the compulsion. Thus, Nigerian cadets who are teaching perform at the same level as the salaried employees teaching in the same school. The German members of Zivildienst doing the same jobs as members of the Voluntary Social Year perform them just as well.

The optimal duration of a cadet's national service is between nine months and two years. Shorter periods fail to yield the above benefits and longer periods become exploitative of the cadets and risk burn-out.

If national service is to attract a substantial proportion of young people, it must offer a strong incentive for service. Thus, large numbers of Americans joined the CCC because doing so provided some relief from the extreme poverty faced by their families. The Nigerian Youth Service Corps has a very high participation rate because refusal means they are not eligible for employment in Nigeria. In Germany, some young men are genuine COs while others in Zivildienst find a period of civilian service to be a more agreeable option than a somewhat shorter period of military service. By contrast, national service programs that offer little external incentive but rely on the young person's inherent incentive to serve, have much

smaller enrollments, as with Volunteer Social Year in Germany and Servicio Pais in Chile.

On the basis of what we have seen to date, it is safe to say that if national service is to operate on a large scale throughout the world, there will have to be forms of the social contract that build national service into the life of a country and of young people as integrally as the study of anatomy is woven into medical education. That social contract will vary among countries, as there are different norms on matters such as individual choice, collective responsibility, remuneration, and acceptable kinds of service.

Thus, experiences with national service in the 20th century suggest that, in terms of the needs of individual countries, of society-at-large, and of young people the world over, national service can successfully replace military service to a substantial extent. It could become in the 21st century as much an institution of society as military service was in the 20th century.

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COMMENTARY

Replies to Amitai Etzioni's "Particularistic Obligations"

Are Particularistic Obligations Justified? Yes, but...

Why is it that the issue Amitai Etzioni takes up in his recent paper on "particularistic obligations," published in the last issue of *The Responsive Community* (volume 14 issue 1), has been attracting increasing interest in recent years? Is it that people disagree with the claims he makes in the paper? I think not. I am sure that if one reviews the relevant literature long enough, it is possible to identify people who are so committed to universalism as a criterion for the legitimacy of moral claims that they are prepared to deny any moral standing at all to the attachments we have to particular human communities. But surely they are the exception, not the rule. Most people who have shown an interest in this issue are quite prepared to acknowledge that what he calls "particularistic obligations" do in fact have some moral standing, and if they are asked to defend that claim, they do so, more often than not, on terms that are in keeping with the arguments he advances in his paper.

The real issue at stake in this matter is not, therefore, whether particularistic obligations are justified, but how they relate to the rest of our moral obligations, and I submit that the reason why that issue is attracting the attention it is these days is that growing numbers of

people are coming to believe: 1) that we need to be more attuned to the obligations we have to the wider human community in our thinking about moral problems than we presently tend to be; and, 2) that all too often we are prevented from doing so by the strength of the ties that bind us to the various particular communities of which we are a part. Inhabiting a world that is becoming more interdependent all the time, we can ill afford to think in parochial terms, these people say, yet that is often just what the special feelings we tend to have for “our own” incline us to do. So even though in principle the obligations we have to “our own” are not in conflict with the obligations we have to the rest of humanity, we easily end up thinking—and acting—in terms that do in fact pit the one against the other. As Etzioni himself admits in his opening paragraph, not only do the obligations people think they have to serve the needs of their “own kind” tend to dominate their attention, but all too often people use the priority they attach to those obligations as a justification for failing to respond to the needs of others.

Even if most of what Etzioni has to say is true (as I believe it is), therefore, it is only a part of what needs to be said on the subject. For the obvious question, if one assumes that it is not right for people routinely to privilege their particular obligations at the expense of the well-being of those to whom they are not attached by blood, marriage, nationality, religion, etc., is *how* people come to appreciate that this is the case. This is not a question that can be answered adequately, moreover, just by pointing out, as Etzioni does, that it is through participation in the life of particular human communities that one acquires the skills—and sentiments—necessary to feel the force of wider moral claims. For clearly it is one thing to have such an ability and quite another to exercise it, and it can hardly be assumed that the one follows naturally from the other. There are all sorts of intelligent, well-informed people, after all, who never get beyond what is appropriately characterized as a tribal morality. It has been my experience, in fact, that even in this day and age, it is a rare person who really feels strongly the force of moral claims that extend beyond the obligations we have to “our own.”

As true as it may be that the force of our particularistic obligations is no longer something that can be taken for granted, moreover, that

matter is hardly the only thing that needs attention if we are to meet the moral challenges of our time effectively. I have no doubt that Etzioni is right when he suggests that the “moral ecology” of our societies is something that needs to be shored up if we are to avoid a situation in which people’s willingness to take responsibility for the well-being of other human beings, even in the most basic and elementary ways is in doubt. But I also am convinced that if that is all we do, it will not be enough, and I think it must be conceded that there is a definite danger in focusing on our particularistic obligations without paying comparable attention to the obligations we have to the rest of our fellow human beings. The advocates of a more cosmopolitan way of thinking who have criticized communitarians on these grounds at times overstate their case, but they are hardly wrong in suggesting that it is quite possible that people who have taken the communitarian argument (as we now know it) to heart will end up having little interest in the moral challenges posed by the wider world.

To be sure, no one can fairly suggest that this is an outcome that would be welcomed by anyone who is commonly recognized today as a communitarian thinker (especially not the ones associated with this journal). But that is beside the point. The issue is whether the character of communitarian thought as we now know it lends itself to producing such a result, and on that score, I have to say, the critics are right. For not only have communitarians had little to say about issues that have to do primarily with the well-being of people in other parts of the globe (Third World poverty, etc.), but insofar as they have taken up issues that have more of a global reach to them, they have typically done so in a manner that avoids any direct consideration of the relative importance of local and global concerns. For the most part, the focus has been on addressing our concerns (the status of human rights, etc.) about what is happening in other parts of the world. So not only is it possible for people to avoid confronting the moral challenges posed to us by the wider world when reading communitarian literature, but it is even possible to come away from that literature with the sense that local concerns *should* have priority.

Communitarianism as we now know it tends to be inward-looking, in other words, and in a way that makes it all too easy for people to dwell on the needs of those who are near and dear to them at the expense of everyone else. However, it need not be that way, I

think. I realize there are those who believe communitarian thinking is inherently insular. But I am not persuaded by the things they have to say in defense of that claim. As far as I can see, there is nothing in the logic of communitarianism as such that requires it to be insular. In fact, the spirit of communitarianism as it is presently understood by most of its better-known proponents would seem to be contradicted by insular thinking. But at this point that is just an intuition; it is not something that has been proven. A communitarianism that is as sensitive to the needs of those who are distant from us as it is to the needs of those who happen to be close at hand may not be a contradiction in terms, but we are still awaiting its creation. It is time, I submit, that communitarian thinkers did something about this, and I would hope the Communitarian Network would take the lead in promoting such a development.

R. Bruce Douglass

On Universal and Particular Obligations

My comments derive from what might be called a constitutive cosmopolitan position. That is to say, I am interested in developing a communitarian account of cosmopolitan, or universal, community. In this I share much with communitarians regarding the origins of moral sensibility and the role of particular communities in forming our ethics and our sense of selfhood.

However, because I am interested in defending the idea that we are members of both the human species as well as our particular one, that there can and ought to be some obligations that we owe to everybody, my response is more concerned with situating our particular duties in a cosmopolitan context.

The task of seeking to identify hard, binding, obligations for particularistic communities is an interesting one, but also one that contains many dangers, most of which Professor Etzioni acknowledges. These dangers include privileging our local obligations at the

expense of obligations we may have to humanity, or other larger communities. Etzioni acknowledges that any such particularistic obligations are to be balanced by universal, or humanitarian, obligations, such as recognition of human rights. However, his paper does not offer any means whereby these two realms of obligation might interface or overlap each other, and thereby of how they might actually be balanced. My comments below are made in this spirit.

Balancing Cosmopolitan and Communitarian Obligations

The first part of a cosmopolitan response is to be somewhat suspicious of the motive behind defending particular obligations. This is not because of any necessary hostility to less than universal, or face-to-face communities. Rather it is because any such defense will necessarily invoke grounds for excluding some people from the community and therefore from the realm of moral obligation. What does it mean to have special obligations to one's community? When do they stop? To make a claim for such obligations are we making a claim to exclude consideration of outsiders from some obligations? Most dangerously, this line of thinking might lead to a claim to shield communities from external scrutiny which may seek to change aspects of it. The injunction to leave one's community in at least as good a condition as one found it could be interpreted in a parochial way so that it meant defending one's community from "hostile" outside forces which seek to bring about change. For instance, a segregationist might conceivably argue that her community would be damaged by the introduction of civil rights legislation by the "outside" force of the U.S. federal government. Her duty therefore is to oppose such a move. This type of response isn't necessarily a consequence of attempting to defend particularist obligations, but it is a possible one about which a cosmopolitan would be cautious.

However, a more constructive approach would be to examine how one's responsibilities might be balanced. One way to do this is to examine the context in which one's responsibilities are nestled. From a cosmopolitan perspective, there is no need to provide any special defense of communal obligations unless they have negative effects on outsiders, or unless all those affected by them cannot freely consent to them. In other words there is no real need to provide a special

justification for particularistic obligations—from a cosmopolitan perspective—if they can be shown not to impose a harm on outsiders. What this means is that local communities can in principle make any claims upon their members that they wish, as long as they are not fundamentally inconsistent with their obligations to humanity. To answer Etzioni's question, one can be on justifiable moral grounds in not extending obligation to everyone as long as those not included are not harmed. So if we had an obligation to members of our community to maintain our heritage or the conditions of our way of life and so on, then this is fine, but as soon as the obligation imposes harm upon others it becomes problematic and we have an obligation to consult and gain the approval or consent of those harmed by it.

In the instance of our segregationist, we could say that the local obligation to leave her community as well-off as she found it is outweighed by her cosmopolitan obligation not to cause avoidable harm. Her challenge then is to consider other ways to repay her community that do not impose harm on certain categories of people, and other ways of thinking about who the members of her community are.

It is important to note that both particularist and universalist communities are subject to the same criteria; they cannot impose harms on others that they have not consented to. In other words universal rules of obligation do not automatically trump local obligations. So, for instance, in the school fundraising case cited by Etzioni, a cosmopolitan position might well endorse the attempt to raise extra funds for one's local school, but only if this didn't constitute a cost to other schools. (The way to do this of course is to guarantee a minimum level of universal education that is reasonably high—and funded by taxes—and then allow local communities to provide extra funding above that if they can.) It is certainly possible that from a cosmopolitan position, preventing the school association from raising funds amounts to a harm, equal to, or greater than, the harm born by the poorer schools.

A cosmopolitan position would also argue that if all those in the school system, in other words, everybody affected by the decision, were able to consent to any particular policy, then the obligations to both insiders and outsiders have been fulfilled.

The obligations go both ways. If one's membership in a universal community of humankind means the destruction of particularistic communities wholesale or their assimilation into a larger community, then this is also clearly wrong and a violation of the value of community.

In 19th and 20th century Australia, the indigenous population was targeted for destruction through neglect and through active murder and finally through Christian imperialism. Settlers, Christian missionaries, and government agencies often understood themselves to be acting according to universal principles of civilization, progress, and faith when they murdered, impounded, or forcefully assimilated aboriginal Australians. The members of these indigenous communities clearly had an obligation to defend their particular communities and their values against an aggressive outsider bent on imposing universalist values.

Expanding the Constitutive Realm

Etzioni's defense of particularist obligations rests on the recognition that individuals are constituted by their specific community. Such constitutive ties provide an obligation to return the favor, not as an act of self-interested reciprocity, but of acceptance of the circumstances that allow for our existence. We have an obligation to return to our community as much as it gave us so as, at least, not to have left it worse off than we found it. Putting aside the vexed question of how we understand this obligation to have arisen, of why, for instance, simply belonging to a community which one has not chosen, creates obligations to that community, we can ask another question. Where do the constitutive influences on selves stop? My point is simple: if we owe debts to our immediate community because it is constitutive of our selfhood, then do we not also owe debts to other larger communities of which we are also members?

From a cosmopolitan perspective, there is no *prima facie* reason to restrict the boundaries of the constitutive community to the local. The cosmopolitan argument is that the constitutive elements of our identity and our selfhood always already extend beyond our immediate community, and for this reason, our universal obligations are equal to

our local ones. The realm of constitutive influences can be considered to be larger than the particular culture to which we belong. We are constituted by the international and global realms as well. Our local communities exist not in isolation but in relation to other communities. Indeed, it becomes harder and harder to identify just which is our "local" community, given the way in which our lives are mediated by distance-consuming technology. Furthermore, we are more often than not members of more than one "local" community.

Whatever the case, the different communities that constitute us also exist in some relationship with one another. Whether this be in the form of an arrangement of mere tolerance and coexistence, such as liberal pluralism, or as evoked by the idea of sovereignty, or some more purposive community, such as an alliance or a community of activists, we have good reason for considering ourselves equally obligated to humanity because we are also constituted by our relationship to belonging to larger groups of others. Indeed we cannot exist in our local communities without these communities existing in a larger community of communities. Indeed it may be that particularistic obligations can't survive without corresponding universal obligations, both to individuals and to societies or communities, which guarantee their safety and existence.

To state a stronger argument might be to say that first, one's obligations to humanity and one's obligations to one's community exist in a relationship, requiring that both be given equal status. Rather, one's obligations to one's community should not override one's obligations to humanity and one's obligations to humanity ought not to involve or require the abandonment or destruction of one's community.

It ought to be possible to recognize when one level of community is violating one's obligations to humanity, such as in the segregationist's case and, without that necessarily invoking an excessive sense of betrayal or abandonment of obligations to community.

Indeed it might be possible to see one's rejection of racist regimes as a means of improving one's community, i.e. leaving it better than one found it. However, the likelihood of a less parochial response to outside scrutiny is greater when one's particularist identity is mar-

ried to, or understood within and alongside, one's membership to a number of communities including the universal community of humankind.

Richard Shapcott

The Redemptive Principle of Particularistic Obligations: A Legal Political Inquiry

Are Particularistic Obligations Essential?

Particularistic obligations are duties of individuals toward their community, which stand in complementary or contradictory ways to the obligations of individuals toward their nation state and the international system. Is it not sufficiently democratic to exclusively obey universal and national obligations, while looking after a Kantian moral good? Amitai Etzioni's invigorating essay invites that debate and offers a communitarian solution.

A communitarian examination of particularistic obligations is important, especially after the demolition of some totalistic secular ideologies, the emergence of a cultural warfare between liberalism and some segments of Islam, and the inability to argue for any concrete culture that may be endorsed in all localities. The failure to globalize one local culture, including the failure to globalize only the liberal culture, and the absence of a localized global culture, are only one reason to look into communitarian arguments.

A second reason is that when the nation state is dysfunctional to many democratic expectations of social justice, communities are crucial sources of support, empowerment, and struggles for equality. Accordingly, communities are constitutive settings of multicultural identities and their practices. As Etzioni argues, to negate particularistic obligations would be to severely damage our abilities to practice our embedded identities. Moreover, recognition of these obligations is required for cultural legitimacy for minorities in a possibly unreceptive world. This argument is rooted in the communitarian scholarship and is strengthened by contemporary post-September 11, 2001 international events that demonstrated to what degree humanity could not globalize one culture.

Minorities as Sociopolitical Carriers

The debate goes further, raising strong arguments for the importance of nonruling communities—the carriers of particularistic obligations—in the constitution of our life. Etzioni raises, I suggest, three types of such arguments. First, an ontological claim that whatever one thinks, feels, and practices is meaningless, completely transcendent to one's life, unless it is contextualized in a specific community. Second, a theoretical assertion that builds on sociological studies, which prove the necessity of communities for social capital. One's ability to enjoy and provide social services significantly depends on the community that empowers and maintains these services. Third, a normative argument that refers to communities as social agents of better moral ecology, since without them human beings will be completely egoistic atoms, aloof from their social surroundings.

These arguments do not refer to power relations in contemporary multicultural societies. They do presume that communities are liberal, at least to some degree, and enjoy some access to political power. Hence, I argue for a fourth claim that points to the legal-political value of particularistic obligations. It makes Etzioni's paradigm more related to diversity of nonruling communities, which are not necessarily liberal. Referring to cultural, ethnic, religious, and national minorities that are not necessarily liberal makes the case for communitarians harder, but it proves the importance of communitarianism along the problematizations that it offers.

Assume a liberal community that expects to receive a large donation from one of its members, arguing that the donor should prefer the communal needs over the expectations of the general public for financial philanthropic assistance. Etzioni correctly justifies donation to one's community even if it diminishes one's financial assistance to the general public. Such instances that are rather common among religious congregations are easy cases for communitarians to discuss.

What if the community is nonliberal and the particularistic obligations that it is imposing on its individuals may oppose and even contradict liberal obligations? Communities should not be excessive in a way that makes them dictatorships. But not all nonliberal communities are in that undesirable category. "Freedom of choice" as

liberals incline to imagine, is only one type of individual freedom, since individuals in nonliberal communities do have significant personal autonomy and they enjoy social support even in more significant ways than liberalism may ensure to its adherents. Often, in nonliberal communities the freedom exists, but the choices are different than in liberal settings due to the different culture. "Freedom of choice" is by itself a matter of choice, because of cultural relativism. Therefore it is utterly problematic and undemocratic to exclude particularistic obligations in nonliberal minorities solely based on a relative criterion as "freedom of choice."

Even if a collision between liberal values and communal nonliberal values exists, still nonliberal particularistic obligations do have a lot of meaning in order to sustain a democratic justice. Let us refer to a religious minority that has unified clothing as part of its culture and for the sake of preserving that culture. Should we prefer that collective dictum on the liberal freedom of each member in the community to choose otherwise? For the sake of empowerment of nonliberal minorities we should prefer that particularistic obligation to respect unified clothing that is part of their collective identity.

If most members prefer differently, however, they can change the communal culture through proper political procedures. What liberals may perceive as an interruption to freedom of choice, community members may conceive as a choice to be seen differently and prefer unified clothing. One who wishes to choose another type of clothing can exit the community or try to change its habits. State interference in that communal habit cannot be justified once communities are being perceived as constitutive settings of humanity. If multiculturalism means anything beyond double standards, it is a democratic duty to maintain diversity of particularistic obligations. It protects the community from losing the culture that most of its members like to preserve. If an individual would like to be part of her/his community, she/he should respect its culture. I assume that even in nonliberal communities, we do know which culture the majority prefers.

That conclusion is based on ontological grounds, since the religious community considers the unified dressing as a crucial part of its collective identity. It is also validated by Etzioni's theoretical argu-

ment, since unity in clothing enables the community to mark the self-perceived necessary boundaries between itself and its surroundings. Normatively it would be undemocratic to negate the right of a minority to preserve its culture as expressed through clothing. Additionally there is the legal political argument in the junction between liberalism and nonliberal communities. Democratic regimes—possibly under the pretext of liberalism—will become utterly authoritative whilst advancing only one political tradition without protecting nonliberal cultures. There should be a democratic obligation to respect others' nonliberal particularistic obligation as well.

Let us make the case harder for communitarians by referring to the issue of disobedience in democracy. Assume a particularistic obligation to obey a religious law that infringes upon a national secular law. Should adherents of multicultural democracies be supportive of it, and under which criterion? Robert Cover, the critical legal pluralist, has referred to the redemptive principle as a criterion to be used to justify the exception of state law's intervention in a communal order. Cover, who advocated critical suspicion of state law, has justified its intervention notwithstanding if the communal order generates harsh instances of discrimination between minority members.

The same criterion applies, I argue, vice versa. If the particularistic obligation elevates human conditions, it should be preferred, while if it makes human conditions worse, national or universal obligations should prevail. Thus, if a community generates a particularistic obligation among its members that prevents women from education, then state law that requires otherwise should be imposed based on universal commitment to gender equality. In contrast, if a community generates a particularistic obligation to learn religious texts that are prohibited by state law and are not supported by any universal law, still the particularistic obligation overrules. In both examples the redemptive principle overrules, and it is the guideline of a solution to particularistic obligations in the junction of liberalism and nonliberal communities.

Like Etzioni, I do not consider violence to be protected by arguments for particularistic obligations, because violence does not redeem humanity but makes it worse. If members of a community

consider themselves to be under the obligation to impose violence against other members, the state is entitled to intervene under concrete circumstances for protecting innocent people. Thus, if a man kills a woman because he thinks that she has been disloyal to him and has damaged the family honor, he is a murderer and he should be convicted. His socialization within a patriarchal culture that perceives men as guardians of the family's purity, should not change the judgment but may be raised as a cultural defense in arguing for the punishment, and should be considered within broader considerations of the public safety.

Conclusion

The contextualization of rights and obligations is an important endeavor to constitute a less alienated and more egalitarian society, in which people are committed to and benefited by their communal surroundings. A communitarian examination of modern politics may better formulate the interactions between liberal and nonliberal cultures in democracies through offering a more synergetic public policy that conceives particularistic obligations as part of evolving, what Etzioni calls, a better social ecology. The legitimate existence of nonliberal communities in Europe and North America is a challenge to democratic theory. A communitarian approach as a means to frame complementary constitutionalism to liberalism is a solution to that challenge. Especially after the trauma of September 11, 2001, its reoccurrence in Madrid, March 11, 2004, and on the verge of yet additional unfortunate violence, particularistic obligations may redeem humanity from fantasies about a universal order that is stripped of local cultures. Such redemption should not pave the way for warfare but to solutions of human rights.

Gad Barzilai

Do Particularistic Obligations or Special Duties Bind Members to Communities?

Etzioni begins his discussion by evoking sympathies that favor what is near over what is far. We are more distressed, he writes, when children go hungry in our community than “if thousands starve in some far-away country.” As an observable phenomenon this is almost certainly true: my toothache hurts me more than my neighbor’s hurts me; my neighbor’s stubbed toe hurts him more than it does me. But in our neighborliness we are advantaged in a way that those who do not share proximity are not: by coordinating efforts and resources we can tend to one another, alleviating our suffering and reducing the burdens of our irritability on those around us, even if there is little we can do about all toothaches and stubbed toes everywhere.

A moral justification for the preference of fellow insiders is based on an argument from “affect-laden” bonds that, in Etzioni’s iteration, seem highly contingent on a latent, but inexplicit, assumption of proximity. Etzioni’s definition of community calls for “first, a web of affect-laden relationships among a group of individuals, relationships that crisscross and reinforce one another...and second, a measure of commitment to a set of shared values, norms, and meanings, and a shared history and identity—in short to a particular culture.”

Even if we are justified in preferring members when it comes to distributing resources, one wonders if having affect-laden bonds and a shared culture offer sufficient justification for doing so. Instead of first asking, are particularistic obligations justified, we should ask whether it is morally permissible to delineate preferences based on affective relationships and shared culture. Clearly there has to be some way to distribute resources, through an open commons or some kind of institution. Is it morally permissible for me to distribute resources among my neighbors while restricting resources from others based on our affect-laden bonds and the culture we share?

On extending the duty mutual aid to the level of coordinated communities, Michael Walzer writes, “[g]roups of people ought to help necessitous strangers whom they somehow discover in their midst or on their path. But the limit on risks and costs in these cases is sharply drawn.” He is concerned with maintaining the integrity of

community life by limiting the effect of disruptive strangers on the lives of community members: "The restraint of entry serves to defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life..." We can see what is at stake: do special duties trump general duties when it comes to resource allocation?

Although I think that Etzioni has localized communities in mind, there is nothing in his definition that restricts the proximity of a community. Indeed, affective relationships and shared commitments to a culture can happen across great distances. People of many religions share a culture and affective relationships across the globe. The diaspora of many national and ethnic groups do likewise. Although distant, there are also fraternal orders and political groups that maintain affective relationships and share values. One can imagine Rotary Club International, socialist parties, Zionists, white supremacist groups, and the NAACP, among others, as communities that fit Etzioni's definition. Community cultures are not always beneficial to democracy and they are not always localized, even if they are affect-laden.

I think that it is important to press Etzioni on this point so that we do not accept as ready-made the notion that we are better off in affect-laden communities that share a culture. Etzioni goes some way to protect himself from this criticism when he writes "[c]ommunity is to be considered as good only when its social order is balanced with carefully laid protections of autonomy, when particularistic obligations are balanced with universal ones, especially to protect individual rights." He continues, writing "communities do not have the final word about what is good, and [the] obligations they articulate are valid only if they do not violate what is otherwise justified as good."

But with these qualifications, Etzioni undermines his own project by subverting the special duties we owe our fellow members to the requirements of supporting and fulfilling general duties, such as the protection of individual rights. This binds people to universal principles; people have duties to their own when conditions in their community satisfy universal principles. Unjust conditions release individuals from the special duties they owe fellow members and

communities do not finally arbitrate on what is good. Members, then, are not bound *primarily* to one another through affect-laden relationships and shared culture, but to a concept of justice that includes a prohibition on violating individual rights. In this sense, general duties trump special duties because particularistic bonds are soluble in the face of the violation of general principles.

This is problematic because it means that the principle that binds individuals to one another and justifies a presumptive preference for fellow members is not satisfied by the definition of community that Etzioni offers. Community members may be justified in preferring their own, but not *because* they are members with affective relationships who share a culture. Rather, if we accept Etzioni's qualifications, members are bound to pre-consensual requirements that support the inviolability of human persons-based moral agency independent of and regardless of consent and independent of membership.

There is a strong presumption here that people are bearers of nonnegotiable claim-rights that call for a threshold of material conditions that may be appealed to whether or not embodied in the law of any community. Absolute claim-rights apply to individuals strictly since they cannot properly apply to groups, but the right to a common life applies to communities of people since the benefits of culture can only be shared. This means that, while individuals can appeal to rights regardless of the place of rights in the laws of the land, communities can appeal to the right to protect the projects they undertake from intrusion by interrupting outsiders.

And in this lies the circle to be squared: how to bind people to arrangements in a way that permits the kind of preferences for members that support and protect common projects while simultaneously satisfying our general duties. Insiders and outsiders alike are every bit members of the basic community shared between humans generally, and therefore bearers of all "absolute rights" owed generally. The fundamental status of inviolability commits people morally to preventing, where they can, violations of rights regardless of which particular community one is a member. But a commitment to the common projects that support a worthwhile life shared between members is necessarily exclusive and calls for members to prefer fellow insiders.

Morally equal agents distinguish themselves by binding themselves to arrangements consisting of other consenting members. When obligations are so assumed, members are justified in preferring their fellow insiders who have also consented. Morality calls for fulfilling obligations, but obligations are assumed, not constitutive. That is why I think that “duties” better describes the kind of relationship Etzioni has in mind for his constitutive argument. Duties bind people regardless of consent or their situation and they are therefore constitutive of moral agency. As Etzioni’s qualifications imply, people are inviolable. And inviolability prevents individuals from being preferred *because of* membership, regardless of the thickness of relationships or shared culture. But membership in communities does provide useful mechanisms through which to orchestrate the distribution of resources while avoiding the perils of an open commons. And that supports the moral justification for restricting access to the benefits of membership more than affective relationships and shared culture do.

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