

The Responsive Community

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UP FRONT

The End of Triumphalism

Nineteen ninety-eight will go down in history as the year in which the export of American capitalism failed, the year the Big Backlash against it gained momentum, and the year in which the quest for finding new ways to deal with globalism started in earnest. Just a few years ago, Americans were celebrating unabashedly the worldwide victory of capitalism. (It was what Robert Kuttner has called the “grand illusion.”) The main “other” form of economic order, that of command and control, declared bankruptcy as the Soviet Union collapsed. Other communist regimes toppled like so many dominos. China privatized its economy. And scores of nations in Asia, Africa, and Latin America deregulated, cut their deficits, and otherwise openly embraced the thesis that the best economy was one that exposed itself to the bracing forces of the global market. American economists predicted dire consequences for those few countries that were slow to join the parade. The recent troubled Asian economies suggested that crony capitalism was not going to work either. All that was left standing was the American way, or so it seemed. All of this was a short yesterday away.

Now countries from Russia to Malaysia are being swept by huge waves of rejection of the American form of capitalism. They have discovered that the recommendations of the IMF, the World Bank, AID, and the Jeffrey Sackses of the Western world, have brought to the majority of their people economic chaos, misery, loss of real income, dilution of assets (especially pensions), falling health standards, indig-

nity, massive organized crime, large-scale corruption, AIDS, drug abuse, self-centeredness, and the worship of materialism.

As of 1998 many people in the countries that until recently were counted as newly Americanizing are now demanding—and gaining—a change of course, to better protect their communities from financial if not economic globalism. In Malaysia the government imposed currency controls. Russia plans to re-expand the role of government in conducting the economy. The Czech Republic kicked out of government Vaclav Klaus, the great privatizer, and replaced his government with a more moderate one. In neighboring Austria, even very minor attempts to trim the welfare state have contributed to the rise of a major right-wing protest party. In the eastern parts of Germany, frustrated people voted against Kohl and the CDU and its relative free market policies. Many other nations, which never sailed far down the American course, are taking note.

The reasons for the worldwide failure of American capitalism and the rising backlash against it are numerous. Most important is the fact, often ignored by Americans, that many of the societies involved do not have the cultural, social, and political infrastructure a free economy requires. In these countries the most obvious expression of this deficit is the large-scale lawlessness that prevails. More is required than a few new laws, deregulation, and currency convertibility. For a people to be basically law abiding requires a mentality, personality, and culture that took the West centuries to evolve.

In addition, other cultures have much less of an inclination to work hard and trade harder to gain individual advancement at the cost of other considerations, from familial commitments to communal bonds. To provide but one example: Austrian and German workers are frequently described as having habits that are detrimental to participation in the global markets, as these workers are reluctant to move to new locations (“retarding essential labor mobility”), preferring instead to stay in communities in which their family’s graves are, where they grew up, their friends reside, and their children can walk to school unmolested.

As a result of these profound cultural differences between the United States and other countries, champions of American capitalism run into two difficulties. Superficially their counsel—to jump into

capitalism rather than introduce changes gradually, and to engineer the shift by resetting a few economic dials (interest rates, deficits)—runs into deeply rooted, slow-to-change cultural and social legacies. More profoundly, it is becoming increasingly clear that many societies have strong social preferences that they seek to protect even if it means not maximizing their economic efficiency.

American economists tend to sneer at such notions, arguing that societies have no choice but to yield to globalism and that problems arise out of not yielding fast enough rather than too rapidly. These economists, backed up by the IMF et al., believe that the people of the world need to take more of the painful medicine they prescribe rather than less. However, more and more nations are finding that the drubbing they are taking is too devastating to endure, sense that they may not have the kind of cultural infrastructure and ambitions American capitalism presumes, and conclude that they ought to intensify their search for ways to shield themselves at least from global financial forces. Putting brakes on hot money (which floods a country one day and gushes out the next), even if it means scaring away short-term funds and some long-term investments, seems far from an irrational policy.

All this does not mean a return to command and control regimes or “Asian capitalism.” Numerous nations are about to experiment with different combinations of varying degrees of capitalism with various forms of social protections for their people. The outcomes are far from evident but one thing is clear: the age of throwing one’s nation on the tender mercies of global forces is over, after it barely began.

Amitai Etzioni

Rights for Gangs, Handcuffs for Neighborhoods

May communities regulate loitering, or is the term so inherently vague as to be unconstitutional? Should police be allowed to order members of criminal gangs and their friends to move on rather than

loiter in a group at known gang locations? These are the questions raised in *Chicago v. Morales*, a case now before the US Supreme Court.

Chicago is a city beset by gangs. Well-organized groups engage in drug selling, gun running, robbery, and violence. They control entire neighborhoods by loitering in key locations as a group, by engaging in numerous “low-level” crimes (i.e., graffiti, vandalism, verbal intimidation, urinating openly, etc.), and by occasional use of violent force against perceived rivals or opponents. While only a handful of the gang members actually beat, maim, rob, or kill, the rest enjoy the deference that derives from the violent acts of their colleagues by openly announcing their affiliation through distinctive colors and “uniforms.” Ordinary citizens assume, with good reason, that affronts to any member of the group will trigger retaliation. Thus the loitering itself is a way by which a gang announces that it controls a territory, that neither the police nor the community can touch them.

Gangs and the people in their neighborhoods understand the significance of loitering by groups of people. But what can be done? Other than loitering with others, the gang members do not engage in illegal conduct when the police are present. And placing undercover officers nearby would be useless, since most of the gang members never engage in anything other than the lower level offenses that would never produce much in the way of jail time. Is there no remedy?

The People versus the Court

After hearings attended by hundreds of residents (one group brought 10,000 signatures), the city council, in May of 1992, approved the following ordinance:

Whenever a police officer observes a person he reasonably believes to be a criminal gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

By its terms, the ordinance forbade loitering by any group that included “criminal gang members.” Before any enforcement could begin, it required the police department to issue general orders—tantamount to administrative rules. The general orders limit and

control the discretion of individual officers in several ways. The ordinance may be invoked only at locations that have been specifically designated by a district commander, in consultation with community groups. “Only areas frequented by members of criminal street gangs which, because of their location, significantly affect the activities of law-abiding persons in the surrounding community shall be designated,” according to the rule. The officer must have probable cause to believe that a member of the loitering group is a “criminal gang” member, defined as identifiable groups whose members have been convicted of serious offenses (such as murder, armed robbery, aggravated battery on a child or senior citizen, etc.). Only officers from the gang unit or who have received specific training in identification of gang members may make arrests.

In November 1996, the Illinois Supreme Court ruled that the ordinance is unconstitutional, giving two reasons. First, they wrote, the prohibition on loitering is so vague that police are given too much discretion to decide whom to stop and citizens cannot tell how to comply with the law. Second, the ordinance violates due process because it intrudes “arbitrarily or in an utterly unreasonable manner” on the “right” to loiter. Of course, the Constitution does not mention loitering alongside freedom of speech and the right to a jury trial. However, citing Supreme Court cases from the civil rights era, the court held that the right to loiter is embedded in the Constitution. “Persons suspected of being in criminal street gangs are deprived of the personal liberty of being able to freely walk the streets and associate with friends, regardless of whether they are actually gang members or have committed any crime,” the court stated.

A Strange Jurisprudence: Ignoring the Actual Ordinance

Let us look at the court’s concerns one at a time. First is the issue of “vagueness,” of giving the police too much discretion. Of course, a major thrust of community policing is to give police more discretion to address certain types of actions. The “broken windows” theory says that police should address disorder and low-level offenses in order to prevent more serious crimes. This case is a classic example. The city says that if the loitering groups are permitted to remain they will attract violent attacks by other gang members; they will engage in actual violence against people who oppose them; and they will find it

easier to conceal activities like drug dealing and robbery upon which their livelihood depends. Loitering by groups that include recognizable gang members is a quintessential “broken window.”

To address the problem of *excessive* police discretion, the ordinance includes a requirement that police issue regulations. The regulations that were issued define the factors that an officer should use to decide who is a criminal gang member, and also limit enforcement to specific areas that are designated by a District Commander in consultation with community leaders. But the Illinois court refused to even consider whether the regulations were precise enough to limit officer discretion. The Supreme Court needs to stop the lower courts from using the vagueness doctrine to hold such ordinances unconstitutional on their face. In order to throw the ordinance out, the Illinois court should have been forced to find either that the regulations were not precise enough or that the limits were being ignored in practice.

Another “vagueness” concern the court raised concerns not the police, but citizens. How is a person to know if he is in the presence of a gang member? First, as noted, in Chicago gang members thrive on being noticed. They have insignia and colors that are recognized and well-understood by everyone. Still, to remove any doubt, the regulations stipulate that no person has to move along or disperse unless ordered to do so by a police officer. Only then, if the person refuses to move along, does a violation occur.

The Right to Loiter

What of the court’s second claim, that the ordinance intrudes “arbitrarily or in an utterly unreasonable manner” on the “right” to loiter? Won’t enforcement of the ordinance mean that, in some instances, persons who are entirely innocent will be forced to move along? Doesn’t this violate their rights to stand around without doing anything wrong? Obviously, some entirely innocent people are going to be forced to move along under this law, and they will resent it. The fact that an eye-popping 45,000 arrests were made in three years suggests how widely the police orders were resisted by gang members and others. Most people feel that they have a right to stand on the sidewalk or park green for no reason, just as we have a right to drive down the street for no reason.

The question is not whether we have a right to loiter any more than the question over traffic sobriety checkpoints is whether we have the right to drive down the street. The real questions are twofold: First, should the community have the power to regulate this activity? Second, is this particular regulation unreasonable?

As to the first, local governments should be permitted to regulate loitering that harms community life. It is one thing for courts to recognize a right to stand or stroll for no reason in public. The error in the Illinois Supreme Court opinion is that it treats loitering as if it were free speech, something that can be regulated in only the most extreme cases.

As to the second question—is this regulation arbitrary or unreasonable—consider this analogy. In most communities it is illegal to drink alcohol from an open container in a public place. Yet most of the people who drink in public places are entirely innocent of any other wrongdoing. Does that fact render the regulation arbitrary or unreasonable? Should such an ordinance be ruled unconstitutional? Few think so. It is hardly arbitrary or unreasonable for a community to regulate an activity—even when the activity is engaged in by entirely innocent people—when that activity frequently leads to harmful consequences for others.

Racism?

A final concern, one not raised by the Illinois court but frequently mentioned by critics of the law, is that this ordinance will be used in a discriminatory fashion. As critics have noted, loitering laws in the 50s and 60s were used in the South to suppress black Americans, and thus they were properly struck down. Today, however, the issue is how to protect the safety of people in minority communities from predatory groups of the same race. Yes, it is true that there is a danger that police will use this ordinance to target groups of blacks or Hispanics rather than using the guidelines to limit its application to persons who police reasonably believe are active gang members. But the same is true of virtually all laws.

The proper way to protect against discrimination is not to rule unconstitutional all statutes that could be misused, but rather to put the plaintiffs to their proofs. In other words, if the ordinance is being

misused and plaintiffs can prove it, courts should rule the laws unconstitutional as applied. They should not simply find all such statutes unconstitutional on their face.

A community cannot thrive when its residents are in constant fear for their persons and their property. Acknowledging this reality, the city of Chicago determined, through the democratic process, that the police need to be able to compel groups that include self-announced gang members to disperse. Not allowing the police to do this means the gangs will win and the communities will lose. With this weapon, at least the police and the community will have a chance. The battle to reclaim these communities is already difficult enough. We cannot allow faulty jurisprudence to stand in the way.

Roger Conner

ESSAYS

Liberty, Community, and Framers' Intent

JoEllen Lind

The US Supreme Court has decided numerous cases involving the relation of the person to the larger community. Through issues like abortion, flag burning, sexual orientation, hate speech, education, and physician-assisted suicide, the Court could have articulated the ways autonomy and human flourishing might depend on a good society and a good society, in turn, on them. Yet decisions resolving these disputes curiously lack—even in implicit form—a positive account of how our individuality and sociality may be linked. A commonplace of constitutional interpretation—that the Framers' intent can be used to pick between liberty and community—is one important cause of this omission. This is ironic because the Framers did not see an irreducible antimony between personal freedom and civic responsibility and for this reason, and because of practical and political considerations, they did not enshrine one in the Constitution. Thus it is not surprising that our efforts to use the constitutional moment to choose between these values have been largely unavailing. The founders were moved by both individual autonomy *and* public virtue, and hoped for a political structure where they each could enrich, not defeat, the other. Thus, we would be better served by engaging in honest debate over values than by treating the elusive question of their intent as a substitute for our own judgment. This is particularly true in conflicts over rights.

The Problem of Rights

The American constitution is revered for establishing a blueprint of government and touching on topics both practical and grand with an economy of space and language. However, a by-product of this economy is that the nature of constitutionally protected rights is easily disputed. Many citizens do not realize that originally the Constitution guaranteed almost no personal rights. While the Preamble has lofty language on par with the Declaration of Independence and is sometimes read with it to stand for a broad commitment to natural rights, most liberties Americans take for granted come from the Bill of Rights, a compact adopted after ratification and not even applicable against the states until the fourteenth amendment was adopted in 1868. Even reading the Constitution and the Bill of Rights as one statement does not settle the identity and scope of rights that the Framers intended as fundamental, because its language is open-textured. Over time, this ambiguity has generated a heated debate.

Fundamental rights can be broken down into two categories, each of which presents important interpretive questions for the Supreme Court: the categories of enumerated and unenumerated rights. The idea of “unenumerated rights” is the most troublesome in a democratic system because, as a jurist no less than Justice Black has suggested, it privileges courts to infer and then judicially enforce rights not fixed in the express language of the Constitution. The most famous of these is the claim to privacy, which figured prominently in cases like *Griswold v. Connecticut* (contraception), *Roe v. Wade* (abortion), and *Bowers v. Hardwick* (homosexual sex). But interpretative problems are not confined to the notion of unenumerated rights. Even guarantees specified in the text, things like the Contract Clause, the first amendment, and the right to due process, raise questions of meaning because being so broadly stated, their exact nature is ambiguous.

Rather than conceding this indeterminacy and moving on to a straightforward analysis of the substantive issues at stake, competing contenders for liberty and community continue to insist, first, that these values are necessarily opposed and, second, that the Constitution actually chooses between them. One pole of the argument, grounded in an individualist philosophy, is a libertarian reading of the Constitution advanced by legal scholars such as Randy Barnett

and others. This reading asserts that the Constitution expresses a presumption in favor of individual liberty across the board and embraces an expansive reading of rights, enumerated *and* unenumerated. But, as critics charge, subordinating communal values to individual will in this way takes place outside majoritarian democratic institutions. The other side, making community the priority, sees individual rights as limited and circumscribed by the Constitution and questions the very concept of unenumerated rights, or the power of courts to adapt specified rights to new uses. At this polar extreme, one notoriously associated with Robert Bork, community will would dominate in constitutional analysis except in those few areas where the Bill of Rights or a provision in the body of the Constitution confers clear protection of the person in clashes with the state. In general then, the problem of rights can be posed as the question of whether our Constitution is positivist and majoritarian or gives individual rights normative priority.

Frequently the contenders in the liberty-community debate invoke Framers' intent as a trump card in this dispute. Each side strains to show that a combat over rights took place at the founding of our nation and was soundly won by either the proponents of liberty or the backers of community. This strategy assumes that the founders saw liberty and community in conflict and understood and treated rights in that context. But for complex historical, ideological, and practical reasons, the founders did not reach consensus on whether personal freedom or communal will should dominate our constitutional framework. One frequently overlooked factor is the phenomenon of classic political compromise. In reality, the ratification of the Constitution and the enactment of the Bill of Rights were the result of an accommodation between the claims, attitudes, and interests of two important groups—those known to us now as the Federalists and the Anti-Federalists.

The Federalists and Anti-Federalists

As Jackson Turner Main's classic work, *The Anti-Federalists, Critics of the Constitution, 1781-1788*, took pains to show, the labels "Federalist" and "Anti-Federalist" were misleading, for the basic notion of federalism really denotes a congregation of smaller sovereign units, e.g., states, not a concentration of national political power. Those who

opposed ratification of the Constitution adhered to the former ideal and argued that theirs was the correct interpretation of federalism. In contrast, the “Federalists” were men like Alexander Hamilton, James Madison, and James Wilson, who had come to believe that governance under the Articles of Confederation was unworkable and so endeavored to secure real political power for a new national government. George Mason, Elbridge Gerry, Luther Martin, and others populated the ranks of Anti-Federalists and refused to sign the final draft of the Constitution, for they had grave doubts whether personal liberty *or* public virtue could survive in the face of a dominating national government.

But despite serious differences over which structure would secure the fortunes of the new nation—one making the states foundational, or the national power primary—the birth of the Constitution resulted from a “dialogue” between these camps, not a monologue of victor over vanquished. That dialogue presumed shared values, terms, and principles that make the liberty/community dichotomy too crude a tool for understanding the conversation. Moreover, as theorists like Wood, Bailyn, Pocock, Appleby, and others have shown, neither the Federalists nor the Anti-Federalists represented cohesive and well-understood political philosophies at the level of theory or practice.

Too often, the Anti-Federalists are exclusively associated with republican solidarity, while the Federalists are characterized as rejecting the notion of direct democracy out of a fear that local communities would prove too destructive of individual rights. As Herbert Storing describes it, Anti-Federalists believed that “[R]epublican government depends on civic virtue, on devotion to fellow citizens and country so deeply instilled as to be almost as automatic and powerful as the natural devotion to self-interest.” They feared that too centralized an authority inhibited, even eroded, these characteristics. In contrast, (especially as they are described by libertarian theorists), Federalists are treated as pursuing national power to institute a Lockean regime giving preference to individual freedom over communal concerns. But counterposing the attitudes of Anti-Federalists and Federalists in this way creates a caricature of their positions and oversimplifies the complexity of their views. That even the Federalists treated public virtue as a necessary condition for the

success of the new republic is perhaps best illustrated by James Madison.

Madison's statements are often taken as rejecting public virtue as the prime constituent of our political morality, especially when he advocated for the new constitution in *The Federalist*. But this is a distortion of his thinking. While Madison's thoughts oscillated between the values of personal freedom and community, he often combined them in the notion of *public* liberty (a concept I will return to later). He advanced the provocative claim that a national government actually ensured the public good better than a decentralized system of democracy depending on state sovereignty. And he sought a system that would preserve enough public virtue to sustain the polity in the face of a fallible human nature. To achieve this he hoped to co-opt the impulse to pursue more personal interests—either of the individual or the group—by creating a structure that curbed the excesses of both rampant privatism and tyrannical communal will (what he dubbed as “majority faction”). As he expressed it in a famous passage:

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

In Madison's view, both forms of interest politics (majority and minority) are corrosive of civic virtue. But unlike the Anti-Federalists, he thought that a republican system on a large scale better guards against them than a structure depending on small localities. In small republics it would be easier for government to be subverted: “Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people.” The check on this possibility is a larger republic:

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other.... In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And, according to the pleasure and pride we feel in

being republicans, ought to be our zeal in cherishing the spirit and supporting the character of federalists.

James Wilson heartily agreed: “It is only in remote corners of government that little demagogues arise. Nothing but real weight of character, can give a man real influence over a large district.” And Alexander Hamilton maintained that the loyalty of the people to a government depended on its efficacy, not its locality. Fidelity is “...more strongly secured by prosperous events which are the result of wise deliberation and vigorous execution....” Thus the Federalists recognized an important role for republican virtue, but one different than the Anti-Federalists’ and more cognizant of the imperfections of humans and their collectives. They believed that a strong central government could inhibit the negative impact of personal interest by co-opting it and diffusing it through the device of a large republic. Nonetheless, Madison had no doubt that individual liberty and civic virtue were inseparably connected: “Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical idea.”

The Anti-Federalists strongly endorsed this sentiment— “[W]hatever the refinement of modern politics may inculcate it still is certain that some degree of virtue must exist, or freedom cannot live”—but for their part the new Constitution depended too much on the notion that civic republicanism was a by-product of a national power. In one sense, then, the differences between the Federalists and Anti-Federalists can be recharacterized as a dispute over the best structure for insuring the same end—a healthy political community where the personal and private good reinforce each other. Yet this possibility is often overlooked because we impose on their thought modern conceptions that treat a notion like public liberty as an oxymoron.

Anachronism

The notion of public liberty had credence with the founders because, as Ian Shapiro and others have argued, the contemporary views of liberty and community with which we are familiar had not fully developed by the time of the Revolutionary era. The 20th century

understanding of rights as wholly individual had not become ascendent during the 18th century, notwithstanding Locke and Hobbes, nor had the individualistic conception of liberty as freedom from restraint gained clear dominance over the more communitarian conception of liberty as freedom to participate in public life. As Gordon Wood has emphasized, in the years leading up to the Declaration of Independence and the Articles of Confederation it was the liberty of the American people as a whole from the British Crown that was sought. As a result, conceptions of liberty were given a collectivist spin: individuals believed they could free themselves while freeing their society. Thus, participants in the American Revolution were drawn both by liberty and by community.

Later, in the period between the Articles and the Constitutional Convention, the threat from Britain ceased to provide external pressure for cohesion, and harsh economic times and pressures to further democratize put stress on the polity. By that point many began to gravitate to one or the other value—in fact the emergence of the camps of Federalists and Anti-Federalists to a large extent reflected just this phenomenon. Nonetheless, few came to completely prefer one norm over the other, if for no other reason than that the embryonic nature of these ideas inhibited realization that there was a conflict between them that needed to be resolved.

Bailyn has claimed that revolutionary political ideology was highly eclectic and this reflects the emphasis that was given to both liberty and community. As the numerous tracts and pamphlets of the period show, Americans borrowed instrumentally from a wide variety of ideas with little concern for theoretical consistency. They were able to do this in part because, as stated, the object of their discontent was the relationship of the British Crown to the American polity, not the problem of the manner in which the individual citizen relates to the social group. As a result, Aristotle, Machiavelli, Harrington, Montesquieu, and Rousseau are just as much intellectual forebears of the American Revolution as are Grotius, Pufendorf, Hobbes, and Locke.

But even if reasonable minds can differ over the extent to which anachronism blunts the usefulness of trying to discern the framers' intent regarding the "conflict" between liberty and community, few

can deny the importance of the fact that the Constitution reflects strategic concessions made by both sides. As we shall see, those Framers who gravitated toward the norm of individual rights resisted the idea of a bill of rights as a threat to the emerging central power, while those who retained a preference for local community tried to use a bill of rights strategically to block the nationalist constitution.

The Struggle over the Constitution

By 1787 most of the players in the Revolutionary drama had concluded the Articles of Confederation were a failure. Governance under the Confederation proceeded on the assumption that the states were to function as independent sovereigns and that, accordingly, the scope of political community could be no broader than the individual state. What was not agreed on in the period leading up to the Constitutional Convention was the degree to which this prior understanding ought to be abandoned. The move toward centrism came after attempts to reform the various state governments proved ineffective to achieve the goals of the embryonic Federalists. Just what were those goals and the problems that generated them?

Following the Revolution, a number of factors intersected causing many to de-emphasize civic republicanism for a form of interest politics. Fractures opened in the American polity on regional, economic, class, and cultural lines. In addition, pressures to further democratize American politics increased through the formation of state-based political majorities that were often opposed to more national economic interests. These populist, smaller majorities implicated a localized form of civic republicanism, one that was in opposition to the more hierarchical, elitist, and centrist version emerging from the “well-bred” and “well-read” gentlemen who had been ascendent during the Revolution. Moreover, the adherents of this provincial brand of civic republicanism often supported the passage of local laws that denied or revised property and contract rights to the detriment of out-of-state creditors. Constant wrangling between states as to how to conduct trade across borders was also a disincentive to economic growth, motivating persons to look to a stronger central government. Many joining the Federalists thought that a strong national government would blunt the ability of provincial political

majorities to impair the rights of the propertied class, would generally promote economic growth, and would limit erosion of public virtue occasioned by what they perceived as sometimes demagogic, even corrupt, local governments.

Yet both sides had begun with an enthusiasm for the civic republican tradition, and aspects of civic republicanism would continue to be found in Federalist thought, just as frequent reference to the rhetoric of rights would find its way into Anti-Federalist critiques of the nationalist constitution. Certainly the Federalist position from today's perspective would more accurately be described as constituting an emerging form of liberalism rather than pure libertarianism, for the simple reason that the minimal state was not what Federalist thinkers had in mind to solve the problems of the Articles of Confederation. Federalists were perfectly willing to curtail the freedom of individuals in order to promote what they took to be the national interest—that is how they understood their structural attack on state sovereignty. The general sociopolitical context of the Constitutional Convention, then, was not one that could be expected to produce a resolution of the claims of individualism versus communitarianism. And, as I will show, neither were the specific events leading to the compromise of the Bill of Rights.

From the various minutes kept by the participants in the Constitutional Convention, it is possible to reconstruct the sequence of events, though the proceedings were secret. These show that when it became clear that the Virginia Plan, a Federalist proposal, had gained momentum, Anti-Federalists like George Mason began to employ a number of strategies to derail the Federalist train. One was to offer a series of piecemeal revisions that focused on the issue of personal rights. This attack was unsuccessful. In the last week of deliberation, Mason asked that a formal bill of rights be made a part of the Constitution itself and moved that a bill of rights committee be appointed. This suggestion was rejected. Following this, Mason once again tried to inject various rights provisions into the emerging document by suggesting piecemeal changes. Still this strategy did not work. As a last attempt, Mason and his followers asked for a second constitutional convention. This too proved unavailing, but after the dust had settled and the work of the Convention was made public, Anti-Federalists and Federalists alike discovered that the absence of a

bill of rights worried the citizenry and so proved a threat to ratification. The net result of these events is a seeming paradox.

The civic republican Anti-Federalists, who ought to have been opposed in principle to the policy of interposing rights between the individual and community, were the very source for the impetus to the Bill of Rights itself. But the Anti-Federalists had been content to rely on the specification of rights through the law of the states until it was clear that the basic structure of federal/state relations would limit the principle of state sovereignty under the new constitution. Then and only then did they take up the standard of the Bill of Rights. The Anti-Federalists perceived the Federalist push for a strong national government as a structural attack on what they took to be the principle of state sovereignty. They reacted accordingly.

If the proto-communitarians in this drama turned out to be the Anti-Federalists, who paradoxically began the quest for the Bill of Rights, any proto-libertarian rights theorists were to be found among the Federalists. There was an anti-majoritarian faction group among them, people like Alexander Hamilton, who had distrust (if not outright distaste) for democratic government. Moreover, the right that many Federalists were most interested in vindicating was the property right. As a result, the Federalists did not want their strategy blunted by limitations on the powers of the federal government through a bill of rights. Accordingly, the Federalists did not warm to the notion of the Bill of Rights until it appeared that the Anti-Federalists might be able to drive a wedge between the states on ratification if one were not subsequently adopted. These events show that as a matter of pragmatic politics, the Federalists themselves had no motivation to limit the power of the federal government *either* by emphasizing the prerogatives of state power *or* by an open-textured invocation of rights.

What is the significance of these events for current disputes? Simply that the requirements of pragmatic politics prevented all groups—nascent communitarians, nascent liberals, and nascent libertarians—from being able to pursue political ideals directly and purely. In the context of the adoption of the Bill of Rights, the rights theorists were in some sense opposed to a broad grant of rights in the Constitution, and the civic republicans found themselves in the odd position

of resorting to the device of rights to blunt what they feared would develop into oligarchy at the federal level. Given this reality, as well as the complex effect of phenomena like anachronism and innovation, what is the real possibility that reference to Framers' intent could ever settle the controversy over which norm the Constitution establishes for us—liberty or community?

As I hope this discussion has shown, the search for the Framers' intent concerning an alleged clash between liberty and community is fruitless. Even if the question of why we should substitute the political understanding of others for our own did not itself raise serious normative issues, there simply was no clear consensus on these subjects that the Framers established for posterity, especially not one that assumed an irreducible conflict between personal freedom and public virtue. Any attempt to turn to the founders to adjudicate this "conflict" is to anachronistically force upon them a dichotomy born of contemporary, not 18th-century, political conceptions. The inappropriateness of such a dichotomy is an inconvenient reality that must be acknowledged by both sides of modern liberty/community debates, and also by supporters and opponents of original intent alike.

But this is not a bad thing. Too long the outworn polarity between liberty and community has limited the boundaries of our imagination—in political philosophy generally and constitutional analysis particularly. It is time to move beyond the supposed impasse between autonomy and sociality and to explore the possibility of their positive interrelation. The American polity needs an understanding of the ways meaningful personal choices depend on a healthy community that promotes the flourishing of all its members.

In 1998, on his way to 1978, Russian presidential hopeful Aleksandr Lebed, the new governor of the Siberian region of Krasnoyarsk, stated, "We may infringe on the rights of people, but it is in their interest."

Evolutionary Psychology and Our Mythical Dark Nature

Philip Yancey

In a novel by Miguel de Unamuno, the protagonist Augusto Perez suddenly stops the action to confront the author. Which of the two is more “real,” he demands: himself the character, or Unamuno the author? He is arguing for his life, for the author Unamuno has decided to kill him off. Finally Perez delivers a decisive blow. Obviously he, the “fictitious being,” is more real, for he is a creation of human thought and genius, whereas the author is a product of blind animality.

Unamuno was satirizing the state of art and science in modern times. With ever more brilliance and eloquence, the intellectuals of our day are arguing that they themselves are the product of blind animality. In doing so, they fail to see that devaluing the messenger casts doubt upon the message. Nowhere is this trend more obvious than in the new science of evolutionary psychology, which attempts to explain all human thought and behavior as the unguided result of natural selection.

As products of blind evolution, say these thinkers, we deceive ourselves by searching for any teleology other than that scripted in our DNA. Since all behavior is controlled by our genes, which are the products of natural selection, we learn about ourselves by studying other species and by tracking clues as to why natural selection might have preferred some behaviors over others. The hubris of this new science is breathtaking. Predicts Robert Trivers of Harvard, “Sooner or later, political science, law, economics, psychology, psychiatry, and anthropology will all be branches of sociobiology.” He might have added ethics to the list.

Writers on evolutionary psychology—Robert Wright, Frans de Waal, Richard Dawkins, Daniel Dennett, Steven Pinker, John Maynard

Smith, Matt Ridley, Lyall Watson—are talented and entertaining, and fill their works with vivid descriptions of birds, bees, and chimpanzees. They explain courtship displays, infidelity, maternal instincts, gossip, and social organization in arresting ways. Newsmagazines like *Time* hire these writers to interpret gang behavior in the inner cities or sexual indiscretions in the capital city, and the results are so winsome that evolutionary psychologists have become the new cosmologists. They help us make sense of ourselves and our role in the universe. Even magazines for teenage girls now rely on them to explain why guys behave the way they do. (I should note that not all evolutionary theorists embrace this school of thought. Notably, Stephen Jay Gould offered a strong critique in successive issues of *The New York Review of Books*, calling the evolutionary psychologists “Darwinian fundamentalists” and “hyper-Darwinian” for their dogged insistence that natural selection alone accounts for all evolutionary development and human behavior.)

Philosophers are just now beginning to scrutinize the assumptions of evolutionary psychology, and I suspect they will have a field day with its epistemology. In this essay, I am more concerned with its implications for what I call “the crisis of unmorality.”

‘The Disposable Plaything of Self-Interested Genes’

Evolutionary psychology relies on one principle, that of the selfish gene, to decipher behavior. I do what I do, *always*, to advance the likelihood of my genetic material perpetuating itself. Even if an individual act does not benefit me personally, it does benefit the “gene pool” I am contributing to. Evolutionary theorists do not shrink from this sweeping assertion; indeed, they herald it as the most important single advance in their theory since Darwin.

“Always, without exception,” affirms Matt Ridley, “living things are designed to do things that enhance the chances of their genes or copies of their genes surviving and replicating.” George Williams notes that “...a modern biologist seeing an animal doing something to benefit another assumes either that it is being manipulated by the other individual or that it is being subtly selfish.”

By their own admission, the new scientists propose a wholly deterministic understanding of the human species. Not only are we

just another animal, we are, in Ridley's words, a "disposable plaything and tool of a committee of self-interested genes." Or, as Richard Dawkins puts it, "We are survival machines—robot vehicles blindly programmed to preserve the selfish molecules known as genes. This is a truth which still fills me with astonishment. Though I have known it for years, I never seem to get fully used to it."

Randolph Nesse, another proponent, expresses more unease than astonishment:

The discovery that tendencies to altruism are shaped by benefits to genes is one of the most disturbing in the history of science. When I first grasped it, I slept badly for many nights, trying to find some alternative that did not so roughly challenge my sense of good and evil. Understanding this discovery can undermine commitment to morality—it seems silly to restrain oneself if moral behavior is just another strategy for advancing the interests of one's genes. Some students, I am embarrassed to say, have left my courses with a naïve notion of the selfish-gene theory that seemed to them to justify selfish behavior, despite my best efforts to explain the naturalistic fallacy.

Critics propose many anecdotal exceptions to the selfish-gene theory. What about gay people, or childless couples, who do not plan to perpetuate their genes—how to explain their behavior? Or consider the unselfish acts of Mother Teresa. Mother Teresa committed to a vow of chastity early in her life. On what basis can we account for her altruistic behavior? As if explaining algebra to a child, the evolutionary psychologists take up such thorny problems one by one and explicate them in terms of the selfish gene. Their energy is boundless, their ingenuity remarkable.

Like all monistic explanations of human behavior, evolutionary psychology has both the virtue and the defect of simplicity. If the writer Robertson McQuilkin argues, as he does, that he stands by his Alzheimer's-afflicted wife out of his love for her and because of his commitment to biblical standards of fidelity—why, of course he would argue that. He makes his living as a Christian writer and speaker. He is simply finding a way to propagate the ideas that have served him so well.

The same principle applies to me, too: I am doubtless writing this essay in response to my own selfish gene in order to propagate my

worldview. And if you find yourself disagreeing with me, you must be responding to a selfish gene that causes you to react against that worldview. Both of us are led by deterministic urges that may not be evident to us or anyone else—except, perhaps, the evolutionary psychologists.

Robert Wright, one of the best expositors of evolutionary psychology to the general public, articulates the tautology: “We believe the things—about morality, personal worth, even objective truth—that lead to behaviors that get our genes into the next generation.... What is in our genes’ interests is what seems ‘right’—morally right, objectively right, whatever sort of rightness is in order.” Carry the logic far enough, and it becomes evident why Professor Nesse slept poorly. Any notion of good and evil disappears. In essence, the evolutionary psychologists have devised a unified theory of human depravity that would make John Calvin blush. Hard-wired for selfishness, we have no potential for anything else.

Beyond Good and Evil

At one point or another, most evolutionary psychologists take their turn at accounting for the origin of morality. In his *On Human Nature*, for example, the sociobiologist Edward O. Wilson proposed that over the course of thousands of generations natural selection wired in certain tendencies that are “largely unconscious and irrational,” on the level of “gut feelings.” Morality must, of course, serve the monistic selfish-gene principle:

Human behavior—like the deepest capacities for emotional response which drive and guide it—is the circuitous technique by which human genetic material has been and will be kept intact. Morality has no other demonstrable ultimate function.

All this talk about genetic makeup and hard-wired predispositions raises important questions about human freedom and moral responsibility. Western jurisprudence assumes the right to judge a person guilty of criminal behavior if he or she 1) can discern the difference between good and evil and 2) was mentally competent to make a free decision when committing the crime. Sirhan Sirhan was sent to prison and John Hinckley to a mental institution over just this legal distinction. Evolutionary psychology appears to call both prin-

ciples into question by claiming that none of our actions are free, and that the difference between good and evil is a social construct.

In a widely publicized case a year before the famous Scopes Trial, attorney Clarence Darrow took exactly this tack in defending Nathan Leopold and Richard Loeb, two university students who had murdered a boy for the intellectual experience of it. Argued Darrow, "Is there any blame attached because somebody took Nietzsche's philosophy seriously and fashioned his life on it?... Your Honor, it is hardly fair to hang a nineteen-year-old boy for the philosophy that was taught him at the university."

Since Darrow's time, scientists have made great strides in unearthing the biological origins of our notions of morality. No longer must one study Nietzsche; nature itself provides the textbook.

Robert Wright points to lust as a clear example of the selfish-gene principle at work. Lust developed as nature's way of "getting us to act as if we wanted lots of offspring and knew how to get them, whether or not we actually do." Following this line of reasoning leads Wright tentatively to endorse polygamy. After all, the practice addresses the basic sexual imbalance between what men and women want. If a man grows restless after a woman gives him a few children, why shouldn't he "fall in love" and begin another family line without divorcing his first wife?

The sleuthing exercise can get dangerous when, as did Clarence Darrow, the theorist applies evolutionary principles to acts of violence. The authors of *Demonic Males: Apes and the Origins of Human Violence* advise us that we must resign ourselves to the fact that men "have been temperamentally shaped to use violence effectively, and that they will therefore find it hard to stop." They reason that men must be innately violent because male chimpanzees, our nearest relatives, murder and rape their neighbors, and dominate and batter their mates.

Robert Wright cites with sympathy the Unabomber's complaint that "society requires people to live under conditions radically different from those under which the human race evolved." Yes, and if we are hard-wired to rebel against the modern technological world, who sets the limits on acceptable rebellion, on what is appropriate or inappropriate, if not good or evil?

Locked into a monistic explanation of behavior that excludes any category of “evil,” evolutionary psychologists reach far to explain heinous crimes. Lyall Watson takes on the case of Susan Smith, who rolled a Mazda containing her two infant sons, nicknamed “Precious” and “Sugarfoot,” into a lake. Infanticide is nothing new, says Watson, citing the statistic that, in the United States alone, 1,300 children are killed each year by parents or close relatives. In a statement that could stand as a parody of the morally neutral stance of evolutionary psychology, Watson observes:

These examples are ones that cannot be described as contributing to social stability and ecological equilibrium, but neither can they, nor should they, be put beyond explanation as outbreaks of unimaginable evil. We have to be careful not to confuse the interests of parents and offspring, which often conflict where optimal fitness is concerned. Children nearly always want more than their parents can provide, and nice judgment is required to reconcile such disparity. In many situations, unconscious calculations are clearly being made, with every evidence of an evolutionary perspective coming into play.

A similar argument was advanced in the *New York Times Magazine* by Steven Pinker, the MIT linguist and author of *How the Mind Works*. “A mother who murders her baby commits an immoral act, but not necessarily a pathological one,” the subtitle of Pinker’s article explains. “Neonaticide may be the product of maternal wiring.”

In his book *Dark Nature: A Natural History of Evil*, Lyall Watson even attempts to fit the atrocities of Rwanda and Auschwitz into a rational framework of genetic behavior. Logically he must, for he assumes that *all* human behavior results from the inbuilt predispositions bequeathed to us by natural selection.

Trapped in philosophical naturalism, evolutionary biologists cannot embrace any external code, such as the Bible, the Tao, or others. The Tao represents objective truth, the first principle beyond which we cannot argue; it allows us to make judgments, we cannot judge it. Without such a standard, modern science must constantly teeter on the edge of self-contradiction. Edward O. Wilson’s memoirs, for example, wonderfully depict a scientist characterized by curiosity, fairness, and a commitment to truth. Yet if these very qualities came to him genetically, were in fact *determined* for him, what makes them

superior to the qualities of laziness, dishonesty, and superstition against which he so valiantly struggled? Why choose one set of values over another, especially when you do not believe in free choice?

Some evolutionary biologists cheerfully admit the problem. Concludes Robert Wright:

Thus the difficult question of whether the human animal can be a moral animal—the question that modern cynicism tends to greet with despair—may seem increasingly quaint. The question may be whether, after the new Darwinism takes root, the word ‘moral’ can be anything but a joke.

The Praying Mantis as Role Model

In the last pages of his book *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*, Frans de Waal says, “We seem to be reaching a point at which science can wrest morality from the hands of the philosophers.” He has just demonstrated that we can look to the primates for early examples of sympathy, empathy, and justice. Examples of “ethical” behavior abound in nature: whales and dolphins risking their lives to save injured companions, chimpanzees coming to the aid of the wounded, elephants refusing to abandon slain comrades.

Well, yes, but it all depends on where you point your field binoculars. Where do you learn about proper behavior between the sexes, for example? Each fall outside my Rocky Mountain home, a bull elk bugles together 60 to 100 cows, bullies them into a herd, and uses his magnificent rack of antlers to gore all male pretenders. Elk are more dramatic than most species in their male dominance, but nature offers very few examples of monogamy and none of egalitarianism. Should our females, like the praying mantises, devour the males who are mating with them? Should our neighborhoods resolve their disputes as do the bonobo chimpanzees, by engaging in a quick orgy in which they all have sex with one another? Should human males mimic the scorpion-fly by lying in wait to take the nearest female by force?

Mark Ridley sees sexual jealousy as a Darwinian adaptation for humans that enabled our ancestors to outreproduce their more relaxed contemporaries. But he quickly adds that he can “imagine a society in which people are conditioned to *enjoy* the thought of their

spouse's being unfaithful." In his discussion, the morality of sexual fidelity is a value-neutral adaptation to social circumstances.

Or, consider violence. Zoologists once thought murder a peculiarly human pastime, but no longer. Ground squirrels routinely eat their babies; mallard ducks gang-rape and drown other ducks; the larvae of parasitic wasps devour their paralyzed prey from the inside out; a species of African cichlid feeds on the eyes of other cichlids. Hyenas get the prize for ruthless cannibalism: within an hour, the stronger of twins will fight its baby sibling to the death.

Lyll Watson admits he finds it "disturbing" that hyena cubs seem genetically programmed to attack and kill their siblings on sight almost from birth. Researchers such as Frans de Waal and Jane Goodall likewise react in revulsion and dismay when primates they have grown to love are murdered by others of their species. On what grounds? The animals themselves seem undismayed; they are acting "naturally," in response to genetic messages. What gives an evolutionist the right to step outside of nature, endorse a moral concept of nonviolence, then apply it back to nature, of which we are all a part?

The alternative is not just jarring but appalling. Some evolutionary psychologists, showing more consistency, look to nature to explain, and even justify, the most egregious human behavior. Lyll Watson, for example, though mysteriously disturbed by fratricide among hyenas, admits that he could not easily condemn headhunting, because such a practice keeps certain tribes in ecological balance. In an extraordinary article in *The New Yorker*, Robert Wright drew parallels between inner-city gang behavior and that of primates in the wild. Urban violence may be a "natural" reaction to a particular social environment, he argued: "...inner-city violence shouldn't be labelled a 'pathology'.... Violence is eminently functional—something that people are designed to do." In her recent book, *Blood Rites: Origins and History of the Passions of War*, Barbara Ehrenreich wrestles with the moral dilemma of opposing war while accepting it as an expression of our innate neurobiology.

In response to their alarmist critics, evolutionary psychologists are quick to argue, "Don't go from 'is' to 'ought.'" We examine nature to see what is, to learn why we behave the way we do. It does not necessarily follow that we 'ought' to do what other species do. Fair

enough, but where *do* we go to get the 'ought?' And another question: Where did this whole notion of 'ought' come from, anyway?

A Kinder, Gentler Eugenics

Stephan Chorover's book *From Genesis to Genocide* traces the frightening misuse of biology in recent history. He shows how biological explanations have been used to justify slavery, imperialism, racism, sexism, and genocide. As Klaus Fischer's *Nazi Germany: A New History* asserts, our century's worst crime, the genocide orchestrated by Hitler, was made possible in part because of the eugenic consequences that German intellectuals drew from Darwin's "survival of the fittest" philosophy.

The Western intellectual community now finds eugenics repulsive and roundly condemns racism based on Social Darwinism. Yet its allegiance to philosophical naturalism leaves it vulnerable to abuse, especially now that advances in gene research allow for genetic "improvement."

Julian Huxley declared in 1963,

The population explosion is making us ask...What are people for? Whatever the answer...it is clear that the general quality of the world's population is not very high, is beginning to deteriorate, and should and could be improved. It is deteriorating thanks to genetic defectives who would otherwise have died being kept alive, and thanks to the crop of new mutations due to fallout. In modern man, the direction of genetic evolution has started to change its sign, from positive to negative, from advance to retreat: we must manage to put it back on its age-old course of positive improvement.

Any time a leading thinker uses phrases like "general quality of the world's population" and "genetic defectives," the rest of us should invest in home security systems. An engineered society or engineered individual must conform to some standard of correctness or normalcy, and here is where evolutionary psychology and social engineering break down. Who decides the standard or norm? Julian Huxley or Martin Heidegger? Bill Clinton or Pol Pot? I am still trying to think of a large-scale attempt to improve human society that has not led to catastrophe.

'Trust us,' say the new behaviorists. 'We're kinder and gentler. We have your best interests—the best interests of the whole species—at heart.' Oh? And what historical examples can you point to in which behavioral conditioning was used for benevolent purposes? Must we repeat history? One may disagree with the tactics, but understand the sentiments of the protestors who dumped a pitcher of ice water on the head of Edward O. Wilson as he received the National Medal of Science from President Carter in 1977. "Wilson, you're all wet!" they chanted.

James V. McConnell describes the ultimate goal of behaviorism: "I believe that the day has come when we can combine sensory deprivation with drugs, hypnosis, and astute manipulation of reward and punishment to gain absolute control over an individual's behavior." My fear, precisely.

Morality, Too, Abhors a Vacuum

The new science of evolutionary psychology founders on its anthropology, or basic understanding of the nature of humanity. The "trousered ape," C.S. Lewis satirically called us in *The Abolition of Man*—perhaps that should be updated to "untrousered ape." Scientists are finding it increasingly difficult to claim any distinctiveness about being human. In his recent book, *Full House: The Spread of Excellence from Plato to Darwin*, Stephen Jay Gould faults the view that places humanity at the top, as the pinnacle of evolutionary progress. We are instead, he says, "a cosmic accident that would never arise again if the tree of life could be replanted."

Given the ascendant state of evolutionary psychology, the general public increasingly will be bombarded with this message about what it means to be human. 'You are a cosmic accident. You are no different from other animals. All morality is arbitrary. You must look down, not up, in order to understand yourself.'

Animal rights activists seize upon the new paradigm as an endorsement of their campaign against "speciesism." Animals, being no different from people, should be treated accordingly. "There really is no rational reason for saying a human being has special rights," says Ingrid Newkirk, co-founder of People for the Ethical Treatment of Animals. "A rat is a pig is a dog is a boy."

Evelyn Pluhar takes that logic further down the same road, arguing (in *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals*) that in certain cases an animal's rights should take precedence over a human's. For example, as one reviewer of the book suggested, "Compare a normal chimpanzee to a severely retarded human child unable to take care of itself or to speak or to reason. Given that neither qualifies as a rational moral being, capable of asserting its rights, why do we allow vivisection of the chimp but not of the child? Surely, if moral significance attaches only to full persons, then the child should be granted no more protection than the chimp, or the pig awaiting slaughter."

It takes an honest scientist indeed to acknowledge that all discussion about rights is irrelevant. Rights are, by definition, granted. As zoologist Paul Shepard admits, "'Rights' implies some kind of cosmic rule prior to any contracts among users, legislation for protection, or decisions to liberate. It refers to something intrinsic or given by God or Nature.... Wild animals do not have rights; they have a natural history."

At least Shepard is honest about the moral vacuum at the center of evolutionary psychology. Books in this field by evolutionary psychologists tend to contain glaring contradictions. They call on us to respect the rights of animals without giving us a rationale for those rights. They inform us we have no claim to superiority over other species—though so far as I know only humans will be reading their elegant arguments. After describing nature's examples of gang rape, murder, and cannibalism, they urge us to rise above our genetic scripting. They call us to "higher" values of nonviolence and mutual respect even though there is no "higher" and "lower" and apparently we have no freedom to act anyway.

Thomas Henry Huxley, one of the pioneers in evolutionary theory, observed: "The practice of that which is ethically best—what we call goodness or virtue—involves a course of conduct which, in all respects, is opposed to that which leads to success in the cosmic struggle for existence. In a place of ruthless self-exertion it demands self-restraint; in place of thrusting aside, or treading down, all competitors, it requires that the individual shall not merely respect, but shall help his fellows." Others who follow Huxley, such as Robert Wright

and George Williams, quote him approvingly. They too urge us to transcend the destiny of natural selection, to combat the cosmic process. Yet by binding us within that cosmic process, and by insisting that we have no other fate but natural selection, they deny our ability to act on such noble instincts.

I have met a few evolutionary psychologists, and they seem like cultured, well-mannered individuals who do not beat their children, cheat on their income tax, or murder their undesirable cousins. Yet the doctrine they promulgate, by undercutting any transcendent basis for morality, destroys our very ability to judge such behavior “bad” or “evil.” I do not worry about the morality of individual evolutionists, but I do worry about the morality of those who follow their doctrines to their logical ends. “We make men without chests and expect of them virtue and enterprise,” wrote C. S. Lewis. “We laugh at honour and are shocked to find traitors in our midst. We castrate and bid the geldings be fruitful.”

Meanwhile the leaders of the movement are cranking out books, writing cover stories for newsmagazines, and being feted at major universities. For the moment, at least, they hold the spotlight, and it illuminates a benign and knowing smile. At last we understand human behavior. At last we understand ourselves.

Esteeming the “Responsible” Self

James L. Nolan, Jr.

Perhaps the defining theme in American public education over the last two decades has been the unrelenting emphasis on self-esteem. Replacing more traditionally derived ideas about what constitutes the essence of values education—ideas such as biblically based conceptions of morality, covenantal ideals regarding commitments to a larger community, or classically derived notions of civic virtue—self-esteem has emerged as a dominant pedagogical staple in the late 20th-century American educational landscape. In this essay I review the significant place of self-esteem in America’s schools. I also consider one important—though largely unnoticed—consequence of this development: the subtle yet profound redefinition of “responsibility” that such a context engenders.

The Birth and Growth of a Movement

That self-esteem has become central to the enterprise of contemporary American education is evident, among other places, in the way teachers are trained for the classroom. Rita Kramer’s investigation into America’s graduate schools of education provides just one example of the pronounced educational emphasis on self-esteem. What “matters” in today’s education schools, Kramer writes in *Ed-School Follies*, “is not to teach any particular subject or skill, not to preserve past accomplishments or stimulate future achievements, but to give to all that stamp of approval that will make them ‘feel good about themselves.’ Self-esteem has replaced understanding as the goal of education.”

This shift has been in the making for more than a decade. Self-esteem as a public movement appears to have had its roots in

California's state legislature. Under the leadership of Assemblyman John Vasconcellos, former chairman of California's Ways and Means Committee, the state's governing body appropriated \$735,000 in 1987 for the establishment of a task force to consider the relevance of self-esteem to a wide range of social problems. Three years later the task force concluded its study and produced a report with recommendations on how the government could promote self-esteem throughout the state. Since the release of the report, nearly all of California's 58 counties have established task forces on self-esteem and more than 250 programs have been started in California that contain a self-esteem component. The report also spawned the development of the National Council for Self-Esteem, which has 66 chapters in 29 states. Moreover, a number of other states have followed California's example of legislatively establishing self-esteem task forces—including Louisiana, Illinois, Maryland, Kentucky, Oregon, and Florida.

Interestingly, social scientific assessments of the efficacy of self-esteem have been somewhat underwhelming, offering little support for the sort of public enthusiasm the notion has engendered. Consider, for example, the results of research conducted by University of California social scientists and compiled in the much touted 1989 volume, *The Social Importance of Self-Esteem*, which is extensively cited by the California task force. Though the study is trumpeted as a foundational work in the movement, it actually reveals that there is very little association between self-esteem and the various social problems studied, much less any causal relationship. So dubious are the purported connections between self-esteem and the various social ills considered in the study that in the introduction to the volume sociologist Neil Smelser confesses that “[t]he news most consistently reported is that the associations between self-esteem and its expected consequences are mixed, insignificant, or absent.” Likewise, one member of California's task force refused to sign the final report, arguing that “The Task Force's interpretation of the U.C. professors' academic findings understates the absence of a significant linkage of self-esteem and the six social problems.”

A 1996 review of the self-esteem literature by Roy Baumeister, Laura Smith, and Joseph Boden published in the *Psychological Review* came to an even more damning conclusion. Not only is there no causal relationship between self-esteem and healthy social behavior, but

high self-esteem *is* positively related to violent behavior. Baumeister and his colleagues argue that the literature actually reveals findings that are in direct contrast to conventional public views about the efficacy of self-esteem. “The benefits of favorable self-appraisal” they conclude, “accrue mainly to the self, and they are if anything a burden and a potential problem to everyone else.” In spite of these findings and formidable criticism from other observers of American culture—including the late Christopher Lasch, John Leo, and Gary Trudeau (who has regularly lampooned cultural preoccupation with self-esteem in his *Doonosbury* comic strip)—the movement has continued to flourish.

When I asked Assemblyman Vasconcellos about recent advances in the self-esteem movement he responded by saying that “the whole notion of self-esteem has become much more legitimate. Whereas when we started, people talked about it in therapy offices, now it’s...in the newspaper everyday.... I think the word has become regularized, and the notion has become accepted by three-quarters of the society.” With its growing acceptability, Vasconcellos noted its subsequent influence on a number of realms of societal life, particularly education: “It is seeping its way into the culture, and into the schools especially.... About three-quarters of the schools in California have some self-esteem component.”

A review of state laws in all 50 states makes clear that Vasconcellos’s assessment of self-esteem’s widespread acceptance and institutionalization is on the mark. By the middle of 1994 some 30 states had enacted a total of over 170 statutes that in some fashion sought to either promote, protect, or enhance the self-esteem of Americans. The largest category of these (about 75) were, not surprisingly, in the area of education. Florida’s Department of Education, for example, was mandated by a 1993 state code to “revise curriculum frameworks, as appropriate, to include building self-esteem.” The stated intent of a 1994 Massachusetts law was to “ensure...that each public school classroom provides the conditions for all pupils to engage fully in learning as an inherently meaningful and enjoyable activity without threats to their sense of self-esteem.” A 1993 Louisiana law made provision for “any public elementary or secondary school in Louisiana to offer instruction in...self-esteem.” And a 1993 Wisconsin statute

directed schools to provide “instruction to pupils in communication, ...stress reduction, self-improvement and self-esteem.” So the story goes in state after state.

Legislative efforts at the federal level have also been enacted in order to help build or protect the self-esteem of Americans. In 1994, for example, there were 22 federal codes that in some fashion addressed the matter of self-esteem. Moreover, since 1981 the federal government has issued over 120 regulations from 13 different federal agencies that in some manner speak of the importance of self-esteem. As with the state laws, a significant number of the federal self-esteem regulations are directed toward the education of America’s children. Consider just two examples. A 1992 federal regulation issued from the Department of Education asserted the following:

The keys to change are programs, parents, and education or rehabilitation professionals that emphasize independence more than the performance of basic social and vocational skills. The development of individuality, self-esteem, goal oriented behavior, assertive behavior, and decision making ability are also critical outcomes.

Similarly, a 1991 federal regulation issued by the Department of Education on the abuse of illegal substances among people with disabilities asserted that while “little is known about the characteristics associated with substance abuse in persons with disabilities, researchers have found that self-esteem, mood, premorbid personality, and self-destructive behavior appear to be important variables.”

The Idea Sinks In

Because of the widespread emphasis on self-esteem in America’s schools, it is not surprising that students have begun to take the idea to heart. In a study conducted by University of Michigan psychologist Harold Stevenson, American school children were found to rank far ahead of students in other developed countries in “self-confidence about their abilities.” This healthy self-concept, however, does not seem to translate into actual performance. A comparison of math and science achievement by school children in 20 countries showed Ameri-

cans ranking near the bottom, below those with less developed self-concepts.

Likewise, in 1989 a standardized math test was given to 13-year-olds in six different countries. Korean children scored the highest on the test while Americans scored the lowest, coming behind Britain, Canada, Ireland, and Spain. On the test, the children were asked to respond to the statement, "I am good at mathematics." Only 23 percent of the Korean children answered "yes" to this statement—the lowest score of the six countries—whereas 68 percent of the American children answered "yes"—a higher percentage than any other country.

Children are not the only ones effected by the new emphasis on self-esteem. A 1992 Gallup Poll asked Americans what factors they think are important in motivating a person to work hard and succeed. Of those polled, 89 percent said that self-esteem (the way people feel about themselves) was a "very important" factor, and a majority (63 percent) believe that the time and effort being spent on promoting self-esteem is worthwhile.

Responsibility Redefined

According to the same poll, nearly half of all Americans (49 percent) believe responsibility to a community to be a "very important" factor. But what does it mean to be "responsible" in a climate that places so much emphasis on esteeming, actualizing, realizing, and affirming the self? Interestingly, self-esteem is sometimes discussed in conjunction with the idea of responsibility. Typical, for example, is a 1994 federal code directed toward the "strengthening and improvement of elementary and secondary schools," where provision is made for federal assistance in "programs designed to enhance and raise self-esteem, self-confidence, independence, and responsibility among students." Similarly, the stated purpose of a national self-esteem legislative proposal, introduced in 1992, was to "establish a national commission to promote self-esteem and social responsibility." The title of the final report put out by the California Self-Esteem Task Force likewise makes reference to promoting both "self esteem" and "personal and social responsibility," and the initial omnibus self-esteem

bill was reportedly only approved by the California legislature when the term “responsibility” was attached to the legislative package.

On the face of it, the concept of responsibility would seem to run counter to the individualistically-oriented idea of self-esteem. One imagines responsibility to refer to those duties and obligations that are imposed upon the self externally. It calls to mind the civic republican ideals of commitment to the common good, of the selfless performance of public obligations, and of the fulfilling of covenantal duties that transcend individual self-interest. The question, however, remains, “What does responsibility mean in the context of a culture overwhelmingly concerned with esteeming the self?” An assessment of its use in state program descriptions and in various educational curricula suggests that the essential meaning of responsibility has been redefined. Ultimately its point of reference, like that of self-esteem, is the self rather than the common good.

Consider, for example, the meaning of responsibility evident in a selection from the *Character Education Curriculum*, a curriculum put out by the Character Education Institute (CEI) and used in over 45,000 American classrooms and more than 430 cities.

Students who are most likely to become responsible citizens are those who have a good self-esteem; hence, those students who accept responsibility, increase their own self-esteem. Have you ever thought less of yourself when you did what you were supposed to do? You may not like having to fulfill your duties and obligations, but when you do, you realize that you are responsible and your respect for yourself increases.

Notice that the reason given for fulfilling one’s duties is that doing so will raise one’s self-esteem. Though a sense of personal accomplishment and satisfaction is a likely outcome of responsible action, it is conceivable that such service may not make a student feel particularly good about him- or herself. The act of service may be difficult. It may go unnoticed and unappreciated. It may even be regarded as utterly foolish. A student encountering such responses may experience anything but positive feelings about the self. How, given the current pedagogical climate, would a teacher continue to encourage service to others even when such service does not result in experiences of high self-respect? Unavailable to the teacher is the cultural basis upon which to appeal to values like duty and obligation apart from the way

in which these values contribute to building self-esteem. Thus the appeal ultimately made in the CEI curriculum is not to others or to the common good, but to the self.

The notion of responsibility is portrayed in a similar manner in the Grade Seven edition of McGraw-Hill's *Health Focus on You*, a curriculum used in all 50 states. Consider the following instruction under a section entitled "Responsible Friendships."

One of the requirements for forming good friendships is being a friend to yourself. This is the reason a good foundation for forming friendships with others is learning to spend quality time alone. Here are some important questions to ask yourself. Are you a good friend to yourself?

The section ends with the following:

Your best choice of a friend is someone who wants you to take care of your health, do well in school, be responsible, and obey your parents or guardian. This is what is meant by 'A friend is a gift you give yourself.' The gift of friendship can improve the quality of your life."

Friendship here is advocated on the basis that it ultimately profits the self. "Responsible friendship" begins with being a good friend to yourself and ends with a friend being a gift to yourself. As such, friendship is not understood as a commitment to another person, but rather as a means to the end of improving the quality of one's life. Friendship, as such, does not have an independent value apart from the benefit it provides the individual self.

The Commission on Values-Centered Goals for the District of Columbia Public Schools offers the most glaring example of this redefined and self-focused notion of responsibility. In 1988 the commission issued a report identifying the five most important values it believed the D.C. schools should seek to inculcate into its students. The first of these was, of course, "Self-Esteem." The fifth was "Responsibility to Self and Others." According to the report the latter means, "to help students revere the gift of healthy bodies and minds, appreciate the interdependence of all things, behave compassionately toward others and learn by example and experience that unselfish service is a key component to self-gratification." The irony here is exquisite: unselfish service for the sake of self-gratification.

In this example, as in the others, responsibility does not stand up as a value of independent import. Rather, it serves the end of helping one feel better about oneself. This conception is a significant shift from previous cultural interpretations of responsibility—understandings that were clearly less self-referential in nature. Consider the changing slogans employed by the U.S. military. “Uncle Sam wants you” had an entirely different emphasis than today’s entreaty to “Be all that you can be.” In the latter the basis of service is the potentiality of the self; in the former (at least rhetorically) it is the interests of the larger community. Therefore, when the term responsibility is used today in sections of educational curricula, in titles of state legislative packages, and in public declarations about citizenship more generally, a common understanding of what the concept means can no longer be assumed.

The meaning of responsibility depicted here calls to mind President John F. Kennedy’s famous appeal for public service. The new understanding, however, invites an important revision: “Ask not what your country can do for you, but what you can gain for yourself through doing for your country.” Inasmuch as such a modification reflects current cultural sensibilities, the following question must be asked: To the extent that “responsibility” has been reappropriated under the larger rubric of self-esteem, upon what basis can one make an appeal for public service when positive self-feelings are not the obvious expected outcome? If this question has no answer—and none is readily apparent—Americans face something of a quandary. As long as the esteemed self remains the ultimate cultural reference point, entreaties to respond to the demands of citizenship will become increasingly implausible.

Beyond Self-Interest: Why People Obey Laws and Accept Judicial Decisions

Tom R. Tyler

Americans deal with legal authorities under a wide variety of circumstances. They may call the police during a domestic dispute or go to court for help when a business deal goes sour. People may also be compelled to deal with these same legal authorities if they are ever accused of a crime as trivial as speeding or as serious as murder. And, in most of these cases, legal authorities are unable to give the people with whom they deal everything that those people might want or feel they deserve: police officers are often required to write one-hundred-dollar traffic tickets and judges must hand down 20-year sentences in court.

When delivering undesirable outcomes or enforcing the law, legal authorities have two problems: (1) gaining compliance with their decisions, and (2) maintaining their legitimacy in the eyes of those with whom they are dealing. My research suggests that psychologists have a great deal to tell legal authorities about both of these issues.

Legal authorities' current thinking is largely shaped by the belief that people are motivated entirely by self-interest when dealing with the police and the courts. They believe, as a consequence, that people are unhappy when legal authorities fail to provide them with favorable outcomes. In the case of the courts, for example, it has been assumed that people are discontented when they receive unfavorable verdicts or settlements, when court costs are too high, or when delays in litigation are too long. These assumptions are typical of those that develop from what social psychologist Dale Miller has labelled the "myth of self-interest"—the belief that people are basically motivated by personal gains and losses.

The results of studies of the public, however, suggest that the basis of people's actual reactions to laws and legal authorities differs substantially from that which would be predicted by this "self-interested" image of the person, suggesting that psychologists have important knowledge to give to judicial authorities. These misconceptions are found in two areas: (1) beliefs about why people generally obey the law; and (2) beliefs about why people accept decisions when they have personal experiences with the police and courts.

To Obey or Not Obey

In studies of everyday citizens' attitudes and behaviors a number of social scientists, including myself, have examined why people obey the law. These studies have involved interviewing people about their attitudes, their values, and their estimates of the likelihood of being caught and punished for law breaking. The studies then related these judgments to the degree to which people obey the law.

Not surprisingly, one factor that is found to shape people's obedience to the law is their fear of being caught and punished for breaking the law. This finding is in line with the self-interest model. However, the research suggests that people's behavior is *more* strongly influenced by their sense of what is morally appropriate than by their concerns over being punished for rule breaking. People make judgments about whether legal authorities are legitimate and ought to be obeyed, and these judgments about legitimacy are found to have more influence on citizen behavior than do assessments about the likelihood of punishment for breaking the law. Thus a key basis for the effective exercise of legal authority is that citizens feel an obligation to defer to the law. If they feel this internal obligation, they are more likely to obey laws.

Because people's behavior is only weakly influenced by judgments of the risk of punishment, it is difficult to obtain compliance with the law using only the fear of punishment engendered by potential prison sentences or fines. For example, recent efforts to lessen drug use by raising the penalty for the possession and sale of narcotics, and by increasing the magnitude of police efforts to stop drug trafficking, have been largely ineffective in lowering the use of drugs. Why? Because of widespread public feelings that drug laws are not legitimate and need not be obeyed.

On the other hand, appealing to internal values will be effective as a way of changing people's behavior, even when the risk of being caught and punished for wrongdoing is minor. For example, there is widespread voluntary compliance with tax laws, although the likelihood of being caught and punished for noncompliance is very small. Why? Because people feel that they ought to generally obey tax laws, even if they cheat a little bit on their returns. Because they feel that they ought to comply, citizens do so voluntarily without assessing the likelihood of being caught and punished for wrongdoing.

The question of why people obey laws is important because it determines how society responds to rule breaking. Whether the issue is discouraging people from running red lights, using drugs, or copying software or journal articles illegally, the social problem is the same: shaping public behavior to be in accord with the law. Influenced by the self-interest model, legal authorities have approached all of these problems by increasing the risk or the severity of punishment for breaking the law, making America one of the most punitive industrialized societies. This "control" ideology is not confined to issues of crime and punishment. It has also had an important influence on managerial thinking about how to motivate employees.

Psychological research suggests that irrespective of whether the arena is law, politics, or management, this control approach is not very effective in shaping people's behavior. For example, in the area of drug use a recent review by Robert MacCoun estimates that variations in the likelihood of being caught and punished for wrongdoing account for only about 5 percent of the variance in drug use behavior. Similarly, a review by H. Laurence Ross of studies of social programs designed to crack down on drunk driving suggests that changes in the likelihood or severity of punishment for drunk driving are generally ineffective in producing long-term changes in citizen behavior.

The reason that these control efforts have difficulty succeeding is that in a democratic society it is hard to raise citizen estimates of the likelihood of being caught and punished for wrongdoing to sufficiently high levels to be psychologically meaningful. Risk perceptions only have behavioral impact over a certain threshold level of perceived risk and, in most crime-related situations, the real and estimated risks of being caught and punished are quite low. Hence, if fear

of punishment is the only force shaping citizen's behavior, people have little reason to obey the law.

Research has suggested particularly strongly that increases in the *severity* of punishment—for example through the use of the death penalty or lifetime sentences—have only a minimal influence on behavior. Such severe punishments have been politically popular, since they suggest that society is getting “tough on crime.” And they may seem cost effective. Unfortunately, estimates of severity of punishment have not been found to be central to people's behavioral decisions. Hence, the use of severe punishments will not actually be an effective crime control strategy.

A more effective approach to controlling crime is to focus upon gaining voluntary compliance with laws by developing and maintaining citizen beliefs in the legitimacy of the law and of legal authorities. If people feel that the law is legitimate and ought to be obeyed, they will obey it irrespective of the likelihood of being caught and punished for wrongdoing.

Defining Fairness

I have also studied people's personal experiences with the legal system. Two issues are important: why people accept judicial decisions about how to settle their disputes or problems, and how people's views about the legal system are affected when they have personal experiences with the police and courts.

Again, legal authorities, guided by the self-interest model, assume that people are less willing to accept decisions when those decisions are unfavorable to them. Further, they believe that delivering unfavorable decisions inevitably makes authorities, legal or otherwise, unpopular. But the data do not support this position. Interviews with people who have been stopped by the police, been to court, or had some other type of personal experience with legal authorities show that the self-interest model is lacking. When evaluating their personal experiences the primary factor that litigants consider is their judgment about the fairness of the procedures used to resolve their problem.

Consider a concrete example. In my research on traffic court in Chicago, I found that those who went to court to contest their tickets had their cases immediately dismissed on the theory that missing work to spend a day in traffic court was punishment enough. So those who appeared in court achieved an immediate victory—no fine, no record to influence their insurance rates, and no “points” to threaten their driver’s license. Did these favorable outcomes lead to satisfaction? Interviews suggested no. In one case I interviewed an angry woman standing outside the courtroom. She was upset because the judge had not listened to her explanation for why she had received a ticket. In fact, she had taken pictures to show that the traffic sign she was accused of violating was not visible from the street, and the judge had not looked at her pictures. Hence, because the procedure had not given her a fair opportunity to present her side of the case, she was upset and angry in spite of receiving a favorable outcome.

Such procedural justice judgments also influence people’s willingness to voluntarily accept the directives of legal authorities. Again, consider an example. When the police are called to a home because of a domestic assault, what is it about the actions of the police that prevents further illegal assaults from occurring in the future? One possibility is that warnings of potential future arrest, or actual arrest and punishment when the police are first called, discourage further illegal domestic assaults. However, research from a longitudinal study by Raymond Paternoster suggests otherwise. Members of households with a domestic dispute were interviewed six months later to see if the behavior had recurred. The findings suggest that the key factor shaping the future behavior of assault suspects is their judgment of the procedural fairness of their treatment by the police who handled the initial complaint, not whether and how they are punished for that assault. If the men involved in the assaults feel that they are treated with dignity, fairness, and respect by the police, they are subsequently more likely to follow the law and avoid future abuse.

Procedural justice judgments about personal experiences are also important because they shape people’s views about the general legal system. They influence both people’s views about particular judges and mediators and people’s overall evaluations of the legitimacy of the judicial system. As a consequence, experiencing unfair procedures in a particular encounter with the police or courts diminishes a

person's respect for the legal system as a whole, and leads them to obey the law less frequently in their everyday lives. A bad personal experience with a particular judge or police officer generalizes to shape a person's overall relationship to the government and government authorities.

The impact of procedural justice judgments has been shown in a variety of judicial settings, including both informal mediation sessions and formal trials. Further, concerns about procedural justice are found to remain central when important issues are at stake: for example, in criminal proceedings where people risk long prison terms, and in civil proceedings in which considerable sums of money are involved. Even when the stakes are high people continue to be concerned about procedural fairness.

Interestingly, procedural justice judgments also matter when people are making evaluations of the legitimacy of national legal institutions, such as the Supreme Court. One example is the issue of abortion rights. What determines whether members of the general public think that the Supreme Court should be empowered to make decisions about whether abortions are or are not a legal right? According to a study I conducted with Greg Mitchell, personal agreement or disagreement with the Court's decisions is not found to be important. We found that what matters is whether people believe that the Court makes its decisions using fair procedures. If it does, it is viewed as a legitimate institution and people both feel it should be empowered to make abortion policy and that its decisions ought to be obeyed. Procedures have been found to have a similarly important role in evaluations of Congress and the executive branch of government.

These research findings have several implications. First, they show how difficulties can occur when public policies are based upon inaccurate models of human psychology. Based upon the assumption that people are unhappy about delays and court costs, the judicial system has naively implemented simplified procedures for resolving mass tort cases: For example, in cases concerning widespread worker exposure to asbestos, liability for a particular person's injuries is determined without a hearing, using answers to a questionnaire on exposure to asbestos. The courts use this approach to distribute settlements quickly. Instead of gratefully receiving their rapid settle-

ments, however, injured parties have been angered by the denial of their “day in court.” In other words, an effort of the judicial system to reform to better meet the needs of the public has not been successful due to an inaccurate understanding of what people really want.

On the other hand, psychological findings suggest approaches that will enhance the acceptance of judicial decisions. One example is the use of mediation. While informal legal procedures such as mediation have been criticized by legal authorities, they have been found by psychologists to be very popular among litigants, who view them as fair procedures for dispute resolution. In fact, civil case mediation has been found to produce a greater willingness to accept decisions than formal trials.

The key to understanding what people value in legal procedures is an understanding of what people mean by a “fair” procedure. Numerous studies suggest that four elements of procedures usually influence judgments about their fairness. First, whether they allow people an opportunity to state their case. Second, whether the people involved are treated with dignity and respect. Third, whether authorities are viewed as unbiased, honest, and principled in their decision making. Finally, whether the authorities involved are seen as benevolent and caring.

These findings indicate that judicial authorities can gain general acceptance for their decisions even though they are seldom in a position to give everyone everything they want. They can make decisions in ways that all parties to a dispute will feel are fair. Hence, the findings of psychological research are hopeful—they suggest effective ways for judicial authorities to manage discontent.

Obstacles: Public Cynicism and Diversity

While the findings outlined are hopeful, it is possible that recent changes within American society will make it more difficult for procedural mechanisms to serve as the basis for the viable exercise of authority. One potential problem is current discontent with judicial authorities. The relationship between procedural fairness and the legitimacy of authorities is reciprocal. People are more likely to regard authorities as legitimate if those authorities exercise their power in fair ways. But the actions of authorities who are *already* viewed as legiti-

mate are also more likely to be interpreted as fair. Hence, authorities benefit from having prior legitimacy, and have more difficulty achieving respect when they are not already respected by those with whom they deal. Public support for authorities is a valuable form of social capital, and once it is lost it is not easy to regain. The only way to do so is to attempt to do that which the low support for authority may make more difficult, but does not render impossible: exercise authority through the use of procedures that people evaluate as fair.

Many fear that a second potential problem is the changing character of American society. Although America has always been a society composed largely of immigrants, recent immigration patterns have raised questions about the future viability of legal and political authority within American society. The procedural justice strategy is based upon the assumption that people share a common concern with procedural fairness and define procedural fairness in similar ways. Will America's increasing ethnic diversity undermine this system?

Interestingly, studies conducted within the United States suggest that ethnic and racial diversity poses little threat to judicial authorities. There is widespread agreement across ethnic and racial groups both about the meaning of procedural fairness and that decisions should be deferred to if they are fairly made. Hence, demographic diversity is not a problem for procedural approaches to exercising authority.

Another potential problem posed by diversity is not diversity itself but multiculturalism. Multiculturalism involves the loyalty of ethnic and racial minorities to their own subcultures. Traditionally, American society has encouraged immigrants and minorities to assimilate into mainstream American society, abandoning loyalty to the values of their ethnic or racial subgroups. Increasingly, however, minorities have resisted such pressure, arguing for the maintenance of their subcultural values within the context of a multicultural society. Is such a society a threat to the viable exercise of legal authority?

Psychological research suggests that it need not be. Studies of minority group members indicate that the ability of authorities to function effectively using procedural strategies is enhanced when people identify with American values and institutions. The reason behind this would seem to be that those who identify with authorities are more willing to evaluate the actions of those authorities by judging

the fairness of the procedures they use. But, perhaps surprisingly, the willingness to evaluate authorities in procedural terms is *not* diminished if people also identify strongly with their own cultural values. What matters is that people continue to identify with American society and its authorities. In other words, it is much more important that immigrants learn English than that they not continue to speak Spanish or Russian. Hence, biculturalism need not threaten society.

On the other hand, if people identify only with their ethnic subgroup, and not with American society, then procedural mechanisms are less effective. Those people who identify only with their own ethnic subgroup decide whether to accept a decision made by an authority by judging its favorability, not the fairness of the procedures used to reach it. In other words, the research suggests that multiculturalism need not pose a threat to the operation of the American legal and political systems—but it could. What matters is the way multiculturalism is enacted.

Nature versus Nature

The policies of legal institutions and authorities are shaped by assumptions about the psychology of human nature. As the findings of myself and others suggest, some of the core assumptions about human nature which shape our current judicial policies and institutions are inaccurate. The self-interest model simply misrepresents many of the reasons why people follow the law, and why people view the judicial system as they do.

The result of adhering to such a model is policies that are ineffective, or at least not as effective as they could be. If the judicial system can more accurately understand both why people generally obey legal rules and why they accept the decisions made by particular legal authorities, the resultant policies and practices will enhance public compliance with law. Such policies and practices may also better enable the judicial system to achieve another of its goals: the promotion of justice.

Europe: Economic Union May Not Be Enough

Gerard Lyons

Political union may be needed for European economic and monetary union (Emu) to survive. This is one lesson from a historical analysis of monetary unions in the 19th and 20th centuries. Monetary unions of large sovereign nations that do not have political union eventually fail, sometimes after a long time.

Politics has been the driving force behind Emu. Since the Luxembourg prime minister presided over the Werner Report in October 1970, the irreversible fixing of exchange rates has been a central objective in European economic policy. Yet, even in 1970 it was not a new idea. A century ago Europe was also dominated by the desire for currency stability and the experience then suggests Emu's success is far from guaranteed.

Monetary unions can be divided into four categories. The first category is where political union has ensured the monetary union's success. Many examples fit this category. A recent one is German unification. Longer lasting is last century's Italian monetary union, which followed political unification in 1861. The example Emu may try and emulate is the US Federal Reserve, established in 1913 as a decentralized system. The setting of twin policy mandates for the Federal Open Market Committee, as well as accountability to Congress, have ensured a credible yet flexible monetary policy. This has been supported by flexibility in the labor market and in fiscal policy, helping to create the conditions for employment growth that Europe has been unable to match.

Second, monetary unions of small countries can survive without political union, provided there has been economic convergence. Two examples are the 1923 Union between Belgium and Luxembourg and

the CFA franc zone in West Africa, which has survived from 1948, helped by a substantial devaluation in 1994 following disappointing economic performance.

The third category is where the survival of the monetary union is dependent on the political system. Once the political system binding it together collapses, the monetary union fails. One example is the collapse of the Soviet system; another is the failure of the 19th-century German monetary union. This was one of three monetary unions which co-existed across Europe a century ago, the other two without political union. All three survived for some time.

There is a common perception that political union preceded German monetary union in the 19th century. Yet, many elements of monetary union were in place following the creation of the Zollverein in 1834, which removed all internal tariffs and created a single market, prior to German political union in 1871. Then followed the formation of the Reichsbank in 1871 and the introduction of the mark in 1876. The collapse came at the outbreak of the First World War.

The fourth category is a temporary monetary union that survives for a long time without political union but eventually collapses. The Latin and Scandinavian monetary unions from the last century are examples.

The Latin monetary union was formed in 1865 between France and the closely linked economies of Belgium, Italy, and Switzerland. Greece joined in 1868. It was a bimetallic union, initially based on silver and then on gold. The precious metal standard, common in old unions, reflected a commitment to fiscal conservatism and small balanced budgets. This union ran alongside Germany's monetary union until the First World War.

Denmark and Sweden almost joined the Latin monetary union, but did not, because of the Franco-Prussian War. Instead they formed the Scandinavian currency union, which Norway joined in 1875. This was the most stable of all the unions, benefitting from economic and political stability and common policy objectives. The suspension of the gold standard at the outbreak of the First World War, however, led to volatility in real exchange rates and provided the trigger for the gradual collapse of the union in 1920.

The lesson is that monetary unions of politically independent, large sovereign nations can fail, particularly when there is an external shock that causes the economic environment to change. It is easier for unions to survive when the economic cycle is favorable. The long time during which both the Latin and Scandinavian unions survived demonstrates the importance of withholding judgement on the success of a union until its performance can be judged in an economic downswing or when there is a deflationary shock.

There is also a fifth relevant category for Emu. This is the lesson from currency pegs and other systems. The lesson from the gold standard, Bretton Woods, or even the exchange rate mechanism (ERM) is the need for flexibility, particularly when currency systems are attempting to bind together economies whose cycles and structures are different. The ERM worked well in its first phase, from 1979 to 1987, because the system was flexible, with frequent (11) realignments. The second phase, between 1987 and 1992, appeared to work well. There was only one realignment, when the lira moved to a narrow band. Yet all that happened was that problems built up below the surface. Nominal exchange rates did not change, but real rates moved badly out of line, providing the catalyst for the system's near collapse in September 1992. Flexibility is important for any currency system.

Last year's Asian currency crisis was just the latest example of the clash between domestic and external needs. The previous experience of monetary unions in Europe is that they can last for some time, but ultimately Emu must become a political union to survive.

Same-Sex Marriage and Communal Dialogue

Milton C. Regan, Jr.

The decisions by Hawaii and Alaska trial courts that those states must grant marriage licenses to same-sex couples, and the response of supporters and critics throughout the country, likely have only begun the debate over same-sex marriage. But while initially divisive, the controversy surrounding this issue could be an occasion for reflection on, and articulation of, shared American values. It provides an opportunity to think more deeply about what marriage means, to listen more carefully to those whose conceptions of marriage differ from our own, and to chart a course based on a more subtle and informed sense of just what kind of community we are. In order for this to occur, however, we must recognize that our sense of moral direction will come largely from engagement in this communal process, rather than from some reference to transcendent truth.

Too often, however, the form of the debate over same-sex marriage has undermined this prospect. Our choices tend to be cast in stark terms: either we have some objective basis for our moral judgments, or anything goes. In their own ways, both opponents and supporters of same-sex marriage often tend implicitly to accept this formulation of the alternatives. That they do so illuminates that the issue of same-sex marriage touches on broader anxieties about sources of moral guidance in the modern world.

Opponents say that marriage must be rooted in the sexual difference between men and women. Some regard this difference as infused with religious significance, because it is a feature of God-given life so fundamental that it should not be subject to human tampering. Others maintain that sexual difference is an unyielding aspect of nature, whose imperative we ignore at our risk. In either case, the claim is that biology provides a touchstone for the way in which we should structure marriage. Deprived of this touchstone, all our marriage rules

are vulnerable to attack. How could we possibly defend prohibitions on polygamy or marriage between blood relatives if they are based simply on cultural convention? Marriage as heterosexual therefore must be placed beyond the realm of ordinary social debate by invoking the authority of biological difference. The assumption is that we need standards independent of human purposes and values. Human culture can have no binding force in itself because it can offer no “objective” rationale for its norms beyond the mere fact that we believe in them.

Some supporters of same-sex marriage share this skepticism about the moral force of cultural convention. These supporters thus also seek an ostensibly objective basis for their position. The concept of rights is intended to serve this purpose. The argument is that individuals have certain rights that are universal and timeless, which include the right to marry whom one chooses. This right must be acknowledged by any civilized society, regardless of the values and sentiments of the day.

What is lost by framing the debate in this way is an opportunity to discuss and reflect upon the goods and values that are served by marriage as a distinctively human creation. The biological argument claims simply that marriage is inherently heterosexual. This makes it unnecessary to inquire into whether the particular purposes served by marriage would be enhanced or thwarted if same-sex partners could marry. The rights argument asserts that gay men and lesbians should have the same range of choices in ordering their personal relationships as everyone else. This makes it unnecessary to ask whether the values we ascribe to marriage would be furthered or threatened by such a change.

Not all participants in the debate adopt these positions. Some opponents of same-sex marriage, such as William Bennett, combine reliance on biology with the claim that the distinctive goods promoted by marriage would be undermined if same-sex couples could marry. Some supporters, such as Jonathan Rauch, argue explicitly that extending marriage to gays and lesbians would reaffirm the traditional values that we associate with marriage. Other supporters, such as William Eskridge, advance this claim but also rely on the rights argument. Claims based on biology and rights nonetheless are prominent in the debate, which makes it worthwhile to examine in more

detail both the ground that they share and the alternative that they neglect.

The Possibility of Dialogue

I have suggested that, despite their other differences, certain opponents and supporters of same-sex marriage agree that norms embodied in cultural practices must refer to something beyond human experience if they are to have binding force. If they cannot, differences become simply a matter of taste, not morality.

Must we accept this set of choices? Must cultural norms be grounded in an objective moral order in order to have any ethical claim on us? I suggest that the answer is no—and that the debate over same-sex marriage in fact offers an example of how human practices and experience can serve as the basis for moral commitments.

Social institutions such as marriage and the family are not simply arbitrary conventions. To be sure, they possess features that are the product of historical contingency and cultural variation. Nonetheless, social practices and the norms that are associated with them persist because they tend to satisfy some of the basic requirements for human flourishing, such as sustenance, the need for emotional connection with others, a sense of human dignity, the need for meaning, the care of children and other vulnerable members of society, perpetuation of the human species, coping with the frailties of age, and confronting the inevitability of death.

Those practices that speak to these needs become infused with moral significance because they help us function as distinct human beings rather than as generic animals. We assess the morality of a given practice by asking: What kind of lives does this practice enable people to lead? Are they lives that embody our best notions of human dignity and responsibility? Do they contain an adequate measure of the features we regard as essential to living a good life? The answers to these questions are never transparent and are always open to debate, discussion, and sometimes fierce conflict. No social form is automatically exempt from challenge as new conditions arise. Nonetheless, those practices that persist are entitled at least to *prima facie* respect. They have withstood the process of challenge and justification because they seem to respond to important human concerns and needs. As such, they are the products of accumulated historical

experience from which we should learn, not arbitrary conventions whose existence reflects pure historical accident. As Goethe put it, "He who cannot draw on three thousand years is living from hand to mouth."

At the same time, we need not approve of every social development that emerges simply because it persists. Slavery, sexism, and racial discrimination have flourished for centuries, but their pernicious effect on human beings rightly leads us to condemn them. Unwed teenage pregnancy has become more widespread, but that alone does not mean that we must resign ourselves to its inevitability. Asking what kinds of lives this practice makes available for both parents and children can lead us to respond in different ways. We must inevitably make judgments about whether accommodation or resistance is the better course.

The fact that marriage has persisted for centuries suggests that this social institution should be respected as one that meets enduring human needs. At the same time, the emergence of gay men and lesbians as self-conscious groups whose members desire to formalize their romantic commitments has generated a debate about just what those needs are. The contradictions and tensions of everyday experience thus have created an occasion for clarifying the meaning of marriage in the face of new historical circumstances. How might a dialogue on this subject proceed? I cannot elaborate fully here on the form that it might take, not least because it is impossible to predict the myriad paths down which any conversation might go. It may be useful, however, at least to sketch the broad outlines of such a debate.

The Case of Children

We might begin with the role of marriage in providing a stable environment in which to create and raise children. Fulfilling this responsibility is crucial both for the welfare of individual children and for society. Same-sex partners obviously are distinguished from heterosexual ones by the fact that they cannot produce biological offspring. Even Andrew Sullivan, a supporter of same-sex marriage, has acknowledged that married homosexual couples may well be less likely to engage in childrearing than are heterosexual couples. Opponents may voice concern that permitting same-sex unions would de-emphasize the role of procreation in marriage, with a corresponding increase in emphasis on individual emotional satisfaction as the chief

function of the institution. This shift in cultural meaning could harm children by subordinating their welfare to that of their parents, as well as eventually threaten the ability of society to reproduce itself. From this perspective, marriage is a social institution that uses the fact of sexual difference to nurture an ethic of altruism and selflessness that redounds to the benefit of society and its most vulnerable members.

Supporters of same-sex marriage might respond in two ways. First, they might accept the centrality of procreation and childrearing to marriage, but contend that same-sex unions do not threaten the performance of that function. Biological procreation is not the only way that adults may assume the responsibilities of parenthood in modern society. Many homosexuals have already committed themselves to the care of children through adoption or nontraditional means of procreation. Studies suggest that children raised in such households are no more at risk than those raised by heterosexual couples. Indeed, the argument might go, gay men and lesbian parents typically make a much more deliberate decision to become parents than heterosexual couples, for whom accidental procreation is possible. This claim requires us to consider the relative significance of biology and choice. Does the creation of life through heterosexual intercourse provide a better guarantee of parental devotion than parent-child relationships formed in other ways? Or should we regard nontraditional avenues for becoming a parent as equally valuable because they always involve a deliberate commitment? One path of dialogue thus might accept the proposition that the creation and care of children is a crucial element of marriage, but require us to reflect on what features of marriage are necessary for fulfillment of that social responsibility.

Homosexuals alternatively might contest the claim that procreation is central to contemporary marriage. Childless heterosexual couples are increasingly common. High divorce rates create a substantial number of nonmarital parent households. The number of out-of-wedlock births is sharply up. Finally, some percentage of heterosexual couples are incapable of procreation because of either voluntary or involuntary sterility. Society nonetheless does not deny them the status of marriage despite this ostensible defect. Childless same-sex couples thus would hardly represent an anomaly in a culture that already has begun to separate marriage and procreation.

Furthermore, the absence of biological difference in same-sex couples can change marriage for the better by undermining the virtually automatic division of labor in which women are deemed primarily responsible for the care of children. Same-sex parenthood within marriage, the argument might go, thus carries the promise of freeing us from rigid assumptions about childrearing that may have deleterious effects for both children and the genuine equality of marital partners.

In response, opponents may argue that some studies of divorced and single-parent households raise concern that nontraditional caregiving arrangements are less successful than those involving married biological parents. We therefore should seek to reduce, rather than expand, the number of such households. Furthermore, some may assert that efforts to change the roles of men and women in childrearing reflect the pursuit of an abstract ideal that ignores evidence of the distinctive nurturance that women tend to provide. Critics thus may claim that the potential for same-sex marriage to transform our understanding of both marriage and parenthood is precisely why we should not legally bless such unions. However this debate may be resolved, the important point is that it is through such dialogue and reflection that a culture gains a deeper appreciation of the values that constitute and sustain its primary institutions.

Promoting Commitment and Sexual Restraint

A second arguably important function of marriage is to promote long-term emotional commitment and restrain sexual license. Supporters of same-sex marriage such as Eskridge and Rauch maintain that a particularly significant aspect of this function is marriage's role in curbing male promiscuity. Opponents may in turn argue that even gay and lesbian advocates acknowledge patterns of greater sexual license in the homosexual community, especially by men; the danger is that same-sex partners may continue to exhibit this tendency if they choose to marry, thus transforming our expectations of marriage for the worse. Such a prospect is even more probable if homosexual couples are less likely to have children, because they will lack the constraint on their impulses that parental obligation provides. It is also particularly important, opponents might claim, to encourage men to enter into relationships with women because of the civilizing force of femininity.

Proponents of same-sex marriage may respond in two ways. First, they could accept the claim that marriage should involve emotional commitment and sexual fidelity, but argue that same-sex relationships are as capable of exhibiting those qualities as heterosexual ones. Any patterns of promiscuity that may exist reflect not inherent traits of homosexual relationships, but the unfortunate effects of an absence of social reinforcement for commitment by gay and lesbian couples. This makes it all the more short-sighted for a society that values loyalty and sexual restraint to deny marriage to same-sex partners.

Furthermore, there are numerous examples of couples who have surmounted the social obstacles and established long-term, marriage-like relationships. Many partners have displayed extraordinary devotion in the care of loved ones with AIDS. Most of these partners have been men taking care of other men, thus belying the notion that gay males are incapable of meeting the demands of deep emotional commitment. Such experience arguably presents a challenge to the conventional assumption that women have a superior capacity for nurturance that makes them crucial to the marriage relationship. In light of this challenge, creating social pressure on gay men to enter heterosexual marriages is a misguided policy that hardly advances the goal of family stability. Given a current divorce rate of close to 50 percent, the argument might go, heterosexuals are not inherently better than homosexuals at sustaining long-term relationships. A genuine dialogue thus can force us to consider to what extent the union of masculine and feminine is crucial to the commitment that we regard as an integral feature of marriage.

Supporters of same-sex marriage alternatively might question whether marriage should involve an expectation of sexual fidelity or long-term commitment. Are such expectations realistic in an age in which marriages may last for 50 or more years? Has modern culture already moved toward separating sexual gratification from emotional involvement among heterosexuals? Those who challenge the current marital ideal may contend that this ideal is a relatively recent historical phenomenon rather than a timeless element of marriage. The ideal is wrong-headed, the argument might go, because it places a profound burden of unrealistic romantic expectations on marriage. This burden actually leads to a higher divorce rate, as individuals pursue the chimera of unalloyed physical, emotional, and spiritual union in a succession of marriages that inevitably fall short of the ideal. The notion of exclusive long-term commitment thus represents a mis-

guided unwillingness to accommodate natural human frailty and imperfection.

Opponents may counter that the historical contingency of the ideal of marital commitment does not deprive it of normative force. Any social practice has a large element of contingency, but the tenacious persistence of this one over a period of centuries testifies to its responsiveness to deeply rooted concerns. That the ideal is not universally attained hardly undermines its significance; it is in the nature of an ideal that it serves as a call to master impulses that may have a more immediate and direct appeal. In particular, opponents might claim, an ethic of sexual fidelity is important because sexuality is an unruly and powerful force that has a distinctive potential to disrupt human relationships. Those who suggest that we can give such a drive free rein without endangering the stability of emotional connections exhibit not wisdom but hubris. Again, however we resolve this debate, the discussion itself can be a valuable opportunity to think deeply about the significance of the marriage vow.

Some of the arguments in the dialogue I have sketched may be examined empirically. Others may depend on their resonance with more subtle chords of assent or dissent. Furthermore, any resolution necessarily will be tentative, for as social conditions change, so too must social practices. We cannot specify with precision the course of this debate. Human speech perpetually carries the potential to evoke new meanings and new self-understandings. Our very understanding of what marriage is will be shaped by our discussion of it.

One thing is clear, however: the dialogue cannot be sustained—indeed, cannot be begun—by invoking either biology or universal rights as a trump card that precludes further discussion. Clearly we must take certain biological facts into account. But we have wide latitude in determining just what significance to place on those facts—skin color, reproductive capacity, and congenital physical conditions represent but a few of the facts of nature toward which our attitudes have evolved over time. Similarly, we have come to regard some aspects of experience as entitled to individual control regardless of popular sentiment. We call these rights. These aren't revealed to us, however, through close attention to the structure of the universe. Rather, they reflect the evolution of our culture's sense that effective human agency requires that some decisions be left to individuals. This

is not the demarcation of an arena of life that is free of moral assessment; drawing the boundary itself reflects an act of moral judgment.

A Slippery Slope?

We must engage in the debate that I have suggested equipped simply with our understandings of human experience, values, and purposes, however widely those understandings may diverge. If this leads us to accept same-sex marriage, does it mean that we have no persuasive way of defending prohibitions on marriage between blood relatives or among more than two people?

Hardly. Prohibitions on incest reflect concern for the important values of protecting children's vulnerability, fostering trust among family members, and encouraging nonsexual relationships among persons who feel a sense of obligation toward one another not based solely on individual choice. While specific proscriptions vary, all cultures have some form of prohibition based on family relationship. Similarly, polygamy has never been a widespread practice. It has tended to meet with consistent disapproval in all Western societies, where for quite some time there has been a strong sense that marriage involves the commitment of one individual to another. There is no substantial group of persons who have turned to polygamous arrangements as a way of meeting important human needs in the face of modern historical circumstances. Thus, we need have little concern that prohibiting polygamy would deprive some individuals of the opportunity to engage in a social practice essential to human flourishing as we currently understand it. We therefore can distinguish same-sex marriage from incest or polygamy by reference to the kinds of lives that they make possible and the values that they serve.

Even if these arguments are persuasive, however, they do not cut off discussion once and for all. It is at least conceivable, for instance, that human circumstances a century from now may be such that polygamy meets important needs and serves significant values. While this sense of contingency may create a sense of anxiety, it also offers us an opportunity: to take responsibility for shaping and reshaping our social forms to preserve the possibility of human dignity and meaning in a world of dynamic and often random events.

The debate over same-sex marriage is but one opportunity for us to use public dialogue to constitute ourselves as a moral community.

Doing so is inescapably a collective enterprise in making meaning, in which we educate each other about the diverse forms of human experience. That process requires that we treat with respect those who invoke what they regard as objective authority for their positions. It also, however, demands that those who hold these views attend to the arguments of those who do not accept such authority. In a modern world marked by heightened self-consciousness of human choice, the

At 1:45 the next morning, May 11...two Japanese climbers, accompanied by three Sherpas, set out for the summit from the same high camp on the Northeast Ridge that the Ladakhis had used, despite the very high winds buffeting the peak. At 6:00 a.m., as they skirted a steep rock promontory called the First Step, twenty-one-year-old Eisuke Shigekawa and thirty-six-year-old Hiroshi Hanada were taken aback to see one of the Ladakhi climbers, probably Paljor, lying in the snow, horribly frostbitten but still alive after a night without shelter or oxygen, moaning unintelligibly. Not wanting to jeopardize their ascent by stopping to assist him, the Japanese team continued climbing toward the summit....

Just beyond the top of Second Step they came upon the other two Ladakhis, Smanla and Morup. According to an article in the Financial Times written by the British journalist Richard Cowper, who interviewed Hanada and Shigekawa...one of the Ladakhis was "apparently close to death, the other crouching in the snow. No words were passed. No water, food, or oxygen exchanged hands. The Japanese moved on and 160 feet farther along they rested and changed oxygen cylinders."

Hanada told Cowper, "We didn't know them. No, we didn't give them any water. We didn't talk to them. They had severe high-altitude sickness. They looked as if they were dangerous." Shigekawa explained, "We were too tired to help. Above 8,000 meters is not a place where people can afford morality."

Jon Krakauer, Into Thin Air

invocation of neither biology nor universal rights can relieve us from the communal task of deliberating about the meaning of marriage.

Civil Society: Attacked from All Corners

Don Eberly

The provocative talk show host, John McLaughlin, once asked his panelists, “Is civil society just another fad?” Their answer, in a word: “yes.” They, and many others, believe that the current focus on civil society is just another intellectual fad that will follow the familiar pattern of trendy public ideas, in accordance with which it will surface, briefly scintillate, then just as surely slip off America’s social screen.

Washington Post columnist E.J. Dionne, a frequent observer and occasional contributor to the civil society discussion, disagrees. The civil society debate “is not a flash in the pan,” he says, because it responds to “problems inherent in other ideas” that have been competing for the attention of Americans. Its rise and continued popularity is explained, he insists, by three developments with deep roots. One is a movement among thinkers on the left and right to “reflect on the failures of their respective sides and face evidence that may be inconvenient to their arguments.” The second is a widespread sense that changes in the economy and in the organization of work, family, and neighborhood have outpaced older forms of civic and associational life. The third factor that will ensure the continued focus on civil society, Dionne maintains, is “the impact of an antigovernment mood that has been part of American life since the 1970s.”

Certainly there are reasons to be skeptical. In contemporary American society enthusiasm for “paradigmatic shifts” is usually as big as the shifts are brief. An instant sense of expectation was raised previously with such terms as “empowerment,” “reinventing government,” “public-private partnerships,” and, more recently, “the new citizenship.” Social historian Gertrude Himmelfarb warns that civil society risks becoming just another mantra—a trendy term expressing merely a superficial desire, passing like previous social and political fads as quickly as it arrived.

Fad or not, one cannot deny what is happening. The social landscape is coming alive with new movements to recover character, ethics, sexual responsibility, fatherhood, marriage, and a less corrupt

popular culture. And thanks to the arrival of the civil society debate the public conversation about values has also changed, shifting significantly from the language of personal rights to that of social responsibility. Instead of concentrating exclusively on individual fulfillment, the conversation now focuses on community well-being; instead of the “whose values?” language of moral relativism, people increasingly speak the “our values” language of common ground. This is a new and potentially durable development that, even five years ago, could not be clearly discerned.

Whether the movement toward civil society represents a Copernican shift, or whether it proves to be little more than a momentary mood swing, or something in between, remains to be seen. But not all welcome the arrival of the civil society debate, much less view it as a social elixir. In fact, some observers from both ends of the political spectrum hope the issue proves to be the short-lived fad its skeptics predict it will be.

The Left: Civil Society as Social Reaction

Voices on the left dismiss the movement as repressive or reactionary. Feminist author Camile Paglia believes the entire civil society debate is an attempt to restrain discourse and stifle dissent. Rather than viewing the movement as an attempt by citizens to regain direction in a society careening out of control, Paglia takes the opposite view. She sees it as a last-ditch attempt by an old guard establishment to retain control of the social debate in America.

Jean Cohen, an academic adviser to the National Commission on Civic Renewal, contends that the entire debate over civil society, with its focus on the alleged decline of intermediary bodies, is “theoretically impoverished and politically suspect.” Cohen maintains that this conceptualization of civil society, which nearly everyone now “equates with traditional forms of voluntary associations (including ‘the’ family),” when combined with the discourse of civil and moral decline, “undermines democracy instead of making it work, threatens personal liberty instead of enhancing it, and blocks social justice and social solidarity instead of furthering them.” Cohen criticizes conservatives in the debate for assuming that “we can have a vital, well-

integrated, and just civil society without states guaranteeing that universalistic egalitarian principles inform social policy.”

For many feminists, according to sociologist Alan Wolfe, “the whole idea that civil society is in decline can be interpreted as part of the backlash against women’s entry into the workforce, since it was women historically who assumed the burdens of family and communal life.” Feminists are not alone, however, in this critique, says Wolfe. In many ways, he says, the response of feminists only mirrors that of others who are prepared to defend “modernity against nostalgia.” Civil society, in other words, appears to be a backlash against the great control individuals have gained over their lives since the 1950s. Wolfe is among those who believe that a revival of civil society is required, not in order to reject modernity, but “to complete its trajectory.” He maintains that civil society in today’s world will be found in the workplace, in cyberspace, and in forms of political organization, and that we should resist the yearning for older forms of civic association.

Other voices on the left dismiss it as a nostalgic movement of those who long for an imaginary golden age of “father knows best” traditionalism and small town Norman Rockwell parochialism. Their message is basically, “Get real! If that world ever actually existed, it certainly isn’t worth defending, much less recovering.”

Jean Bethke Elshtain, a leading theoretician in the civil society movement and one of its most powerful defenders, says that “the accusation of nostalgia” is one of the most common charges against civil society that is “indiscriminately shot skyward.” According to Elshtain, civil society’s critics view the current debate as “at best a big evasion, at worst, a pernicious invitation to triumphant localism.” Elshtain, like most civil society advocates, is quick to point out that the federal government sometimes is needed to override localism and that a robust civil society “isn’t a cure-all and never was.” But, she adds, the real nostalgia in the debate is felt among those who yearn for an unquestioned “triumphant progressivism” that stubbornly refuses to accept the fact that “the federal-government-centered solutions don’t solve all problems, or even, more disturbingly, that not all of our problems are fixable.”

Much of the nostalgia accusation appears tied directly to assumptions about the role of the federal government in guaranteeing certain

social conditions. Government can either help or hinder, says Elshtain, but the core tasks of democracy fall to “the overlapping, plural associations of civic life in which citizens build and pass on those formative institutions—families, schools, churches, unions, and all the rest, including state and local governments—without which there is not democratic culture and, indeed, nothing for the federal government to either correct or curb or serve.”

This reaction by “progressives” to talk of civic virtue and local voluntary associations fits a well-established pattern. The progressive drive of the 20th century, as scores of conservative civil society advocates allege, was animated by suspicion of the very private, voluntary associations civil society theorists are now trying to revive. These associations were dismissed by progressives as regressive and reactionary enclaves that had to be brought under the enlightened supervision of the bureaucratic state.

James Morone, writing in the liberal journal *American Prospect*, adds another criticism often heard coming from the left. Morone blasts the civil society movement as a familiar moralistic reflex that stands in “a long, unhappy American political tradition.” The moral diagnosis, he says, “is wrong and its political consequences are pernicious.” Moralizing “divides Americans into a righteous ‘us’ and a malevolent ‘them,’” he says.

Morone worries that civil society talk replaces discussion of the cold, hard facts of declining economic prospects for American workers and the poor with homilies about private virtue and “blame the victim” theories. Morone alleges that “when economic and social problems are transformed into declining moral standards, the hunt is on for immoral people who threaten the public good.”

The Right: Civil Society as Political Distraction

If liberals worry that civil society abandons public action, some conservatives fear the opposite. Reflecting the criticisms of many of his conservative colleagues, David Frum worries that talk of renewing civic community is taking the fighting spirit out of the antigovernment revolution, which is needed, according to Frum, because the federal government’s massive welfare machine constitutes “a colossal lure tempting citizens to reckless behavior.”

To libertarian conservatives, civil society basically means going soft. David Brooks of the conservative *Weekly Standard* notes disap-

provingly the shift away from the conservative ideology of the Reagan years, which celebrated such virtues of the entrepreneur as audacity, high ambition, and self-sufficiency. The virtues held up by civil society conservatives, he maintains, are not those of the rugged individualist but the quieter and softer virtues of the communitarian: fairness, caring, responsibility, respect, and trustworthiness.

Other more traditional conservatives like Gertrude Himmelfarb believe today's civil society virtues are too soft and ungrounded in another way. In stark contrast to civil society critics on the left, Himmelfarb maintains that civil society advocates invoke too few references to "morality and moral sanctions without any reference to one of its most important institutions, the churches." The function of civil society, she says, is "to encourage moral behavior and discourage—which is to say stigmatize—immoral behavior." For civil society to carry out these functions, it must be "a tougher civil society," promoting "vigorous virtues" such as shame.

In a revealing indicator of the potential implications for existing political coalitions, the criticism of the libertarian right is frequently similar to that of the left. David Brooks responds to the civil society movement's emphasis on restoring community bonds and local authority with a question Paglia, the feminist liberal, could have asked: "Do I want local busybodies with piddling township posts exercising their petty powers by looking into my affairs?" Libertarians on the left and the right alike sense in the civil society movement a challenge to their expansive views of freedom from social authority.

What does all of this mean for the future of democratic governance? It may be too early to tell. Naturally, civil society is not about to cancel out existing ideological nostrums. The abundance of polarizing public issues will see to that. Nevertheless, the civil society debate is likely to represent some challenge to existing left and right coalitions, each of which has an "order" wing and a "freedom" wing.

Conclusion

If the civil society movement proves to be more than a fad, it may do so because it did not originate in official political circles. In fact, the concept only recently entered political debate after years of germination in spheres well beyond the Beltway. The most consequential and durable social changes in America tend to bubble up from below, beyond the din of partisan Washington debates.

The civil society conversation is also unique because, unlike most social movements, it is not primarily focused merely on reforming government. The leading voices in the debate are rarely heard fulmi-

THE COMMUNITY BOOKSHELF

New Immigration Hurts Old Immigrants

Nathan Glazer

Roberto Suro, Strangers Among Us: How Latino Immigration Is Transforming America (New York: Alfred A. Knopf). 349 pp.

Roberto Suro has written an informed and somewhat surprising book on the varied immigrants from the Spanish-speaking countries of the New World. He is a journalist, but in common with other journalists today who are making significant contributions to our understanding of a changing America, he adds to the techniques of journalism (interview, observation, typical or perhaps exemplary life-stories) a solid knowledge of current social science research on Latino immigrants. He has written previously two papers on immigration for the Twentieth Century Fund. In contrast to so many recent books on the new immigration, this is neither a case against immigration nor a case for immigration. It is remarkably balanced, and raises important questions which have received some, but not enough, attention.

The most important question the book raises is whether the new Latino immigration is placing burdens on earlier immigrant communities, burdens which affect, for the worse, the stability, adaptation, and assimilation of these older communities. Suro's book is sensitive to the varied characteristics of different groups and different places, but this issue comes up almost everywhere. We see him at work in Houston, Miami, Los Angeles, and New York, among varied commu-

nities of Cubans, Puerto Ricans, Dominicans, Mexicans, and Central Americans. In almost every community we see the effects of continuous immigration: newcomers of lesser skills and abilities—lesser compared with those who came before, or those who have acquired these skills and abilities during their years in the United States—bring problems for the earlier immigrant communities, and for the rest of us.

In Houston, he accompanies a group of Mexican-American policemen out on “cantina patrol,” barging into bars that cater to recent migrants, checking for violations of liquor licenses, hauling off men for drunkenness, sending others home with sharp warnings or advice—engaging in the kind of behavior that would outrage civil liberties activists. But they are not only acting like policemen, but as Mexican-American policemen who feel they have the right and obligation to police the behavior of the newcomers, whom they view across the distance created by their own assimilation into American life: “By making the rounds, we kind of remind them they’re here in the United States, where the rules are different.”

Suro’s take on the Los Angeles riots also contrasts the better adapted and settled earlier immigrant communities—there was no rioting in Boyle Heights—with the newer areas of Mexican settlement, which have newer, more troubled, and less integrated migrants. Another city that demonstrates this contrast is El Paso. In 1993, Silvestre Reyes of the Border Patrol closed the border to illegals—and showed it could be done where there was a huge urban area on both sides of the Rio Grande, with thousands passing each day to and fro across the border on legitimate business. The most surprising thing about this action was that despite its discomforts, the people of El Paso, the great majority of them Mexican-American, accepted the blockade. Suro writes, “Previously, mere proposals to combat illegal immigration provoked effective political mobilizations by Latinos nationwide.... But when the blockade did not produce a reaction in El Paso, it proved that something is changing. That change was also apparent when the East L. A. Latino political leaders distanced themselves from those who took to the streets during the Rodney King riots. And the change was seen when Miami Cubans hardly bothered to protest the new policies that forcibly returned rafters to Cuba.”

Suro argues forcefully that illegal immigration poses a political and social handicap to older immigrant communities. He is committed to assimilation—the kind of assimilation that has recently been strongly advocated by Peter Salins (*Assimilation, American Style*) and John Miller (*The Unmaking of Americans*). He is not anti-immigrant: he does not like the recent legislation removing or toughening eligibility for benefits for legal and illegal immigrants. Settled here, their adaptation must be assisted, rather than hindered.

But Suro also asks Mexican Americans and other Latino Americans to accept the necessity of bringing order into immigration, and into the communities most affected by it. He asks them to accept the compact that most Americans think is the deal we make with new immigrants: “If the barrios refuse to serve as havens for illegal immigration and the federal government develops effective controls on the influx, if Latinos give up civil rights claims on language and school systems, the United States could begin integrating its newest immigrants....” This is not the kind of language we expect to hear from Hispanic-American spokesmen or intellectuals or journalists. (Suro is the son of a Puerto Rican father and an Ecuadorean mother.) But Suro believes that many Latino Americans are ready to accept this deal, and the results of the June referendum on bilingual education in California suggest he may be right.

And yet I wonder whether the tough policy he outlines on illegal immigration—which he does not hesitate to call “illegal”—is really possible politically. He is more optimistic about controlling the flow than many others, and he is not put off by the harsh measures that would be necessary. I agree with him that a reduced flow would assist the upward mobility and integration of earlier immigrant communities. I think the cut-off of immigration in 1924, whatever the illegitimacy of the causes for it, had such an effect on European immigrants. But that cut-off was assisted by world wars and by the Depression, and was made possible by a degree of virulent racism we have fortunately left behind. We would not like the recurrence of any of these conditions. In their absence, can we really do better with illegal immigration?

One of the most troubling sections of his book deals with the Puerto Rican community of New York. American citizens, coming to

a generous and liberal city, they do worse than almost any other group of Latino migrants. This simply was not to be foreseen at the height of their migration 40 years ago. In 1960, Puerto Rican family income was two-thirds of the city median, in 1990 it was scarcely more than half. How can we explain this? Suro does as well as anyone, and better than most. He refers to the collapse of manufacturing in New York City, the poor qualifications of the migrants, their loose family structures, the welfare state, and the movement back and forth between island and mainland. And yet there is a problem here that must concern all of us, particularly since it seems to foreshadow much that is happening in the largest immigrant group in New York City, the Dominicans: there are twists and turns and complexities in this process of adaptation to American life that we still do not understand.

Libertarian Smoke

Franklin Zimring and Gordon Hawkins

Jacob Sullum, For Your Own Good: The Anti-Smoking Crusade and the Tyranny of Public Health (New York: The Free Press, 1998). 368 pp.

While the Ronald Reagan 1980s are remembered as the heyday of libertarian chic and government bashing in the United States, cigarette policy was an important exception to this prevailing political fashion. Smoking policy in the 80s turned a corner from public exhortation and advertising regulation to a multifaceted governmental campaign to prevent new smoking, to reduce the number of places where smoking could take place, and to stigmatize the practice of smoking as harmful—not only to the smoker, but also to those who encounter what is called “environmental tobacco smoke.” Anti-smoking initiatives became quite common throughout the developed world in this period, but the United States was the world leader in the extremity of its nontaxation controls on smoking and its hostility to tobacco smoking

as a social institution. One might have expected energetic conservative counterattacks to a government anti-smoking crusade during the Reagan years, but the predominant response of American conservatives to the smoking wars of the 80s and 90s was silence.

In this respect, a book like Jacob Sullum's *For Your Own Good* is at least a decade overdue on the American scene. The syndrome the author labels "The Tyranny of Public Health" is by his account a mixture of faulty social and biological science, unjustified martial rhetoric, and disregard for the individual rights of adult Americans who choose to smoke even though the government knows full well that they should not. After two brief historical chapters, Sullum's critique is organized into a series of chapters devoted to specific controversy areas in the anti-tobacco campaign, such as advertising effects and regulation, tobacco tax levels and effects, product liability litigation, and the status of cigarettes and nicotine as addictive drugs.

The level of the scientific chapters varies from so-so (Chapter 4: Tobacco Taxes) to excellent (the environmental tobacco smoke material in Chapter 5). The author is looking for scientific over-reaching and distorted rhetoric only on the anti-tobacco side of the debate, so his treatment of each controversy is quite one-sided in that respect. But his treatment of the substantive science is frequently much better than what one would expect from an analysis so strongly anchored in an adversarial position.

While the author's thorough reading and careful analysis of the scientific literature are the great strength of his book, this even-handed treatment of the evidence also takes a great deal of the wind out of his rhetorical sails when it comes time for conclusions about the appropriate role of government policy. The author criticizes extremely high levels of cigarette taxation, gratuitous prohibitions of smoking outdoors and in private offices, and what he considers excessive levels of anti-smoking propaganda. But the book contains no categorical denunciation of any existing strategy of smoking control in the United States. Instead Sullum, in a disappointing final chapter, argues that some of the most extreme opponents of cigarette smoking in the United States might someday favor the criminal prohibition of cigarettes. Having erected this "straw man" of a prohibition policy, the

author proceeds to forcefully oppose it, and finishes his critique of current government tobacco policy by coming out foursquare against a strategy that nobody favors.

Part of Sullum's problem is that his careful reading of the evidence paints him into a corner that does not allow for pat libertarian policies. An adult smoking habit is painfully difficult to quit, and many cigarette smokers say that they would prefer never to have smoked. Three-quarters of all adult smokers were habituated to daily smoking by their 18th birthdays, so the decision to take up smoking is characteristically made during adolescence and subsequently regretted. Even John Stuart Mill was quite clear in his rejection of free choice among the immature.

And the effects of tobacco habits acquired by the immature have harmful consequences during adulthood. To deny that tobacco is unalterably addictive only establishes that continuing to smoke is only one of two unpleasant choices that a former teenage smoker faces in adulthood: giving up cigarettes is painful, continuing to smoke is dangerous. Avoiding this dilemma by preventing teenage smoking is public policy that even Milton Friedman might endorse if it could be achieved without burdening adult smokers unduly.

What communitarians and liberals should worry most about in regard to contemporary anti-tobacco crusades is the unfairness and governmental excess that are most likely to occur when governments conduct adversarial campaigns that are widely popular with the electorate. The major social change that has occurred over the last generation in the United States is not merely the reduction in the current prevalence of smoking from 43 to 25 percent of adults, but also the negative attitudes towards smoking that are shared by millions of current smokers. Ganging up on smokers and tobacco companies is not an unpopular sport in 1998. The dangerous irony of the anti-smoking movement and other similar crusades is this: governmental excesses are most likely in anti-vice campaigns when they are least necessary—after the support of public opinion has already been secured.

LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

From the Libertarian Side

Antisocial Service

In recent years, community service has been adopted at schools across the country as a requirement for graduation or class work, or as a prerequisite for involvement in other school activities. While there is debate about whether such service should be mandatory or optional, participation has been lauded by teachers, students, and social scientists as beneficial to students' academic and personal growth.

But a California organization has taken a new approach to the issue. Contending that “[v]olunteerism is designed to turn Americans into guilt-ridden indentured servants,” the Ayn Rand Institute recently introduced its “Campaign Against Servitude,” reports the *Los Angeles Times*. The Institute will offer “anti-service” internships, wherein students can complete their service requirement by conducting research and participating in other activities with the goal of “undermining” and ultimately defeating school community service programs.

Professor Benjamin Barber, founder of Rutgers University's education-based community service program, rejects the accusations of “servitude.” He counters that community service requirements are like homework requirements—both are questions of curriculum. In this vein, Barber notes that the public school movement began as an attempt to educate youths for their role as participants in a democracy.

From the Authoritarian Side

Thou Shalt Not Speak

Public decision-making bodies, from Congress to local school boards, frequently hold closed sessions when discussing sensitive matters. Those privileged to participate in those meetings are expected to display appropriate discretion in making public statements about such matters. That is not enough, according to the St. Louis School Board, which recently resolved to forbid members from publicly discussing *any* topic covered in closed session. Violation could result in censure, or exclusion or dismissal from the school board, reports the *St. Louis Post-Dispatch*.

The school board's policy came shortly after board member Bill Haas publicly mentioned (without giving specifics) an incident which he learned of in a closed session: a student was able to sneak a gun into a district school by telling a security guard that it was the student's pager that set off the school metal detector. The student was later found with the gun. According to Haas, his intent in discussing the incident was to express concern that a gun had made it into a school, and to address the broader topic of safety in schools.

In response to the new policy, the Missouri ACLU filed suit against the St. Louis School Board in July on Haas's behalf, contending that the resolution violates the First Amendment and has a chilling effect on those who seek to inform citizens about safety issues. Eastern Missouri ACLU executive director Deborah Jacobs stated, "While the ACLU and Mr. Haas recognize the importance of confidentiality in matters concerning personnel decisions and private student matters, not everything discussed in closed sessions is necessarily confidential."

Modern Medicine Meets Japan

Couples having difficulty conceiving often turn, with increasing success, to modern medicine. A range of methods, from fertility drugs to artificial insemination—all widely available in the United States and many other economically developed countries—have helped more and more couples who otherwise would not be able to conceive. But in Japan a doctor was recently expelled from the nation's leading

obstetric society and fears his medical license might be revoked. His crime: performing in vitro fertilization with a woman's husband's sperm and her sister's egg.

In a country that only last year allowed third-party sperm donation and a restricted number of organ donations, that outlaws the birth control pill, and where an estimated 15 percent of couples experience fertility problems, medical attention to and public discussion of fertility issues is considered taboo. Gynecologist Yahiro Netsu explained in the *Washington Post* that he performed the "extramarital" fertilization to bring Japan closer to current medical standards: "I am ashamed and angry that the Japanese government shuts their eyes to this issue and lets couples who desperately want children go abroad [to the U.S.] for help."

It is commonly believed in Japan that if a couple cannot conceive it is the woman's fault. While many Japanese women visit doctors to determine whether they have a physical problem conceiving, their reliance on modern medicine stops there. Women often turn to prayer, meditation, or visiting fertility shrines because there is a widely held perception that a child conceived with medical assistance would be a "semi-orphan," discriminated against, or even seen as a freak.

Increasingly, however, younger Japanese are more likely to reject the taboos surrounding artificial methods of conception. The number of couples using in vitro fertilization of their own sperm and egg has doubled in the last five years, and others in need of surrogate mothers, or third-party egg donation, travel to California for the procedures.

Despite this, the overwhelming sentiment in Japan is that it should not become like the United States, where, as Tokyo fertility doctor Yoshiaki Sawada disapprovingly notes, "Even a single lady can go to a sperm bank."

From the Community

Bartering for a Bypass

Collecting and paying for hospital services is never an easy task. But in Farmington, Maine, a small logging town where unemployment is twice the national average, a hospital found a creative—yet traditional—way to solve this problem. Franklin Memorial Hospital president Richard Batt came upon the solution when a patient's father, who was a writer, told Batt he could not pay his son's medical bills. Batt asked if the man would help rewrite the hospital's brochures as a means of paying off his son's bill. The man agreed. Inspired, Batt presented to fellow board members the idea of bartering medical care for services community members could provide the hospital. While most were doubtful of the arrangement, they agreed to implement it on a trial basis.

One woman, a part-time receptionist, was allowed to pay off her \$8,000 bill by performing data entry on the hospital's computer system. Another woman weeded the hospital's garden and helped with landscaping to cover her \$800 bill. A couple paid off \$7,000 from the birth of their son (complicated by the mother's diabetes) by restoring the hospital's lawn chairs and putting together a photo album of the hospital's doctors, nurses, other staff members, and equipment to help children become familiar with the hospital when they become patients.

The success of the barter system led the hospital to formally establish a program called "Contract for Care," whose objective is to help those who fall just above the federal poverty level and cannot afford out-of-pocket medical expenses. "This is a fee-for-service with a different currency," Dr. David Dixon, a Farmington surgeon, told *Time*. The hospital hopes that ultimately people will seek preventative care, rather than critical care, with the new program.

Lawyers and advocates for the poor in Maine have questioned Contract for Care's effectiveness. They argue that asking the poor to take on another "job" is asking too much, and that the IRS may rule their work as revenue, resulting in loss of food stamps, Medicaid, and earned-income tax credit. The hospital counters that its program is strictly voluntary and that, should a patient not complete his or her

work as agreed upon, it is the hospital's loss. But among patients there is no question of the programs' value: "I used to be ashamed to go to the post office and get all those hospital bills. But when you give back a little something, you feel better about yourself," one woman said.

An Old-Fashioned...Library-Raising

The residents of Southwick, Massachusetts knew something had to be done when they felt they were competing for space with their neighbors—and books—in their town library. Built in 1894 when the town's population was 700, the library could no longer accommodate the needs of the now 8,000 residents. After a motion to renovate an old school to provide the necessary space for the library was rejected, a group of ten residents formed the Southwick Volunteer Library Committee, and decided to build a new library themselves.

The committee recruited more than 100 volunteers to help with the building, including designing the structure, surveying and excavating the land, laying the foundation, installing electrical wiring, plumbing, heat, and air conditioning, and painting the inside. Local businesses donated materials; local restaurants donated food for the workers; and parents donated their babysitting services.

The volunteers' efforts created some challenges for public officials and the library's architect. Special legislation was passed to exempt the volunteers from state-regulated minimum wage laws. Southwick architect Patricia Baiardi faced the unusual dilemma of designing a structure that could be built by people of varying skills, and by a different number of people in a given day. "I had to design something so that if you've got two guys for five days and then twenty guys for two days, you can always handle it," she told the *Country Journal*.

It has been six years since the Southwick Volunteer Library Committee first met, but residents are looking forward to their new facility, which is scheduled to open this fall.

Faithful Unity

In recent years, the populations of several Orange County, California, communities have shifted from being largely white and Prot-

estant to being both ethnically and religiously diverse. In 1996, seeking to avoid tension among neighbors, and believing that “familiarity breeds friendship and breaks down walls,” the local chapter of the National Conference for Community and Justice established “interfaith councils” in two neighborhoods. The purpose of these councils was to bring together religious leaders and other community members around certain key goals: respecting differing beliefs, celebrating common values, and learning to stand up for one another. The *Orange County Register* reports that, inspired by these first efforts, interfaith councils have since been formed in several other communities in Orange County.

The councils’ roles have varied. One council holds monthly meetings on different religious topics, including Vatican II, the Sikh scriptures, the three branches of Judaism, and Old Testament archaeology. Member congregations of that council have also worked together on blood drives and at food banks. Another council sought compromises between member churches and city government when city officials ordered one church to “quiet down” after neighbors complained about noisy clapping and singing, and when city streets were closed for an annual parade, preventing Seventh-Day Adventists from being able to drive to church. A third community’s council wrote a letter of condemnation after a cross was burned on a Jewish family’s front lawn. The letter was signed by clergy of Catholic, Mormon, Islamic, and Jewish faiths.

Have the councils had an impact? Rabbi Bernie King, a member of the Newport Mesa Irvine Interfaith Council, believes that “the more we don’t know about each other, I think the less trustful we are. The more we begin to learn, the richer the community, [t]he more we can work together to solve problems.... The tone of Orange County I recall when I first arrived [in 1977] was not particularly accepting or open. I think a lot of that has changed.”

Nora Pollock

RESEARCH NOTE

Covenant Marriage: Louisiana Update

James D. Wright, Steven L. Nock, Laura Sanchez

On August 15, 1997, Louisiana enacted a “covenant marriage” bill that requires couples to choose between a standard marriage with easy access to no-fault divorce or a covenant marriage that is marginally harder both to enter and to exit. Covenant couples must acknowledge that marriage is a lifelong commitment. In addition

- Covenant marriage requires premarital counseling.
- Divorce from a covenant marriage requires more counseling and a good-faith effort to resolve differences.
- Although a no-fault divorce is still possible for covenant marriages, the law requires two years of legal separation (versus six months for other marriages).
- Dissolving a covenant marriage in less than two years requires one person to prove fault on the part of the other. Acceptable “faults” are a felony conviction, abuse, abandonment, or adultery. Period.
- For less serious offenses, legal separation is available.

The Louisiana law received a spate of national publicity when first enacted and similar bills have been introduced in more than 20 states since then. In May 1998, Arizona became the second state to adopt covenant marriage.

Covenant marriage has been hailed by some as a solution to the divorce “problem” and ridiculed by others as a return to the “bad old days” when women and children were frequently trapped in difficult or abusive marriages. In fact, covenant marriage is neither. Or so we have concluded after a few months of a long-term project to evaluate these new covenant marriage regimes.

Is covenant marriage “much ado about nothing,” as many seem to believe? No: the bill fundamentally transforms marriage by establishing two separate marriage regimes between which newly marrying couples must choose. Many traditionalists, who should presumably be sympathetic, oppose covenant marriage on just these grounds. Walter Olson, writing in *Reason*, explains that many traditionalists fear that “any step that would explicitly ‘redefine marriage’—even in a traditionalist direction—is dangerous, because it opens the door to the idea of further redefining it by an act of will.” Letting couples choose their marriage regime is perilous because “once you let in the notion of choice...you start ‘privatizing marriage,’ giving the other side a basis to argue for a dozen other choice-based innovations in family law, from ‘trial marriage’ to same-sex unions....”

The law’s counseling provisions have been ridiculed on the grounds that counseling is useless (or worse). Amitai Etzioni has noted, however, that about 20 percent of those who receive premarital counseling decide not to marry their would-be spouse, so it is clear that some people derive value from the experience.

Cynics argue that covenant marriage won’t work because people will always find a way to get divorced if they want to, for example, by hopping the border to a no-fault state. True enough! But we should not only ask whether covenant marriages prevent divorces. Another valid question is whether they would give the aggrieved party, usually but not always the wife, grounds for a civil suit to recover damages resulting from breach of the marital contract. It will be a brave man indeed who is the first to test this possibility in court.

Feminists object that covenant marriage is a return to the “bad old days” where bad marriages were nearly impossible to dissolve. But this overlooks important provisions in the law that allow covenant marriages to be terminated immediately. Granted, immediate dissolution requires proof of fault, and proving fault can be difficult, espe-

cially for abused women. Allegations may stimulate more brutality and waiting periods extend the woman's time at risk. At the same time, sooner or later, abused women have to "go public" with allegations and offer proof; otherwise, there is nothing police, prosecutors, courts, counselors, or others can do. Nothing about covenant marriage changes this unfortunate reality.

The Catholic Church is hesitant about covenant marriage in part because in the eyes of the Church, all marriages are covenants. Certainly, the covenant option would seem to "demote" standard marriages to second-class status, to "marriage lite." A related issue is coercion—a fear that couples will be coerced by parents, churches, and even one another into accepting the covenant option against their will.

Again, the concern seems overstated. True, a number of Louisiana churches—fewer than 20!—have promoted covenant marriages by sponsoring congregation-wide "upgrades" (several thousand couples converted to covenant marriage on Valentine's Day, 1998) or urging couples to consider the covenant option. In the first three months after the law was passed, however, fewer than 200 "new" covenant marriages were performed, or about 1 percent of all Louisiana marriages. In subsequent months, we estimate that the rate increased to about 2.5 percent of all marriages. To date, however, only one church has announced that all its future marriages will be covenants, and while others may follow, the hypothesized stampede of churches begging, requiring, or otherwise coercing a flood of covenant marriages out of a recalcitrant flock has not materialized. If young couples are being told about the option, nearly all have rejected it. More likely, they are not being told. And the hope that the new law might stimulate widespread discussion about the meaning of marriage also remains just a hope.

Covenant marriage lets people choose the terms of their marriage and therefore begins to change marriage from a status to a free contract between adults. Those who oppose giving people this choice would do well to consider Olson's assertion "that the principle of free contract, powerful though it may be as a solvent, works even better as an adhesive."

Every day, thousands of couples vow to "love and honor" one another "until death do us part." Unfortunately, "or until something

better comes along,” seems to be the invisible rider in every marriage contract under the no-fault regime. In important respects, covenant marriage is a legal public addendum to the wedding vow that says, “...and we really mean it.” Over the next five years, we will be interviewing and comparing several hundred couples who marry under each of Louisiana’s two regimes, and also surveying residents to investigate how average citizens see covenant marriage. It will be interesting to see what difference this new type of marriage makes.

Drawing by Bill Canty.

SOCIAL SCIENCE UPDATE: YOUTH EMPLOYMENT

After-school jobs are an integrated part of teen life in recent years. Over the past two decades, social scientists have studied the effects of student employment on various aspects of teen life and well-being.

Youth employment in the United States grew at a steady rate between 1950 and 1980, and remained at a high level during the 1980s, according to several studies. While in the 1950s only about 5 percent of youths held after-school jobs, today about one-fourth of high school teens are employed at any given time, and approximately 80 percent of teens will have held a job before graduation, according to the Department of Labor. The Third International Math and Science Study reports that 61 percent of American high school seniors hold jobs, working an average of 3.1 hours per day.

At least one study disputes the notion that student employment has been steadily growing since the 1950s. While youth employment “rose moderately” between 1968 and 1978, according to this report, “no growth in job-holding is evident for the decade ending in 1988.” In either case, parents, educators, and researchers are interested in the impacts of youth employment on academic performance and engagement, psychosocial development and well-being, and family relations.

Academic Performance and Engagement

The grade point averages of students who work more than 20 hours per week are, on average, one-third of a letter grade lower than

those of their fellow students who work 10 or fewer hours per week, according to Laurence Steinberg of Temple University and Sanford Dornbusch of Stanford University. Student employment (versus non-employment) is not necessarily detrimental. But researchers have identified working longer hours—generally 20 hours per week or more—as correlated with decreased school performance and engagement. “Students who work more hours each week earn lower grades, spend less time on homework, pay attention in class less often, exert less effort in school, are less involved in extracurricular activities, and report higher levels of mind wandering in class, more school misconduct, and more frequent class cutting.” The same study found that not only do those students who work longer hours contribute less in the classroom, but they “may attempt to compensate for their job commitment through such deviant activities as cheating, copying assignments, and cutting classes when convenient.”

Somewhat different impacts of student employment were found by Jeylan Mortimer and a team of researchers at the University of Minnesota and Pennsylvania State University. They found that high school seniors who worked between one and 20 hours per week performed better academically than both those who were not employed and those who worked more than 20 hours per week. Student employment at less than 20 hours per week was also shown to lessen drop-out rates in a 1984 analysis of data from the National Longitudinal Survey of Youth.

Psychosocial Development and Well-Being

Adolescents who work more than 20 hours per week are more likely to be emotionally distressed, to drink, smoke, and use drugs, and to have sex earlier than their less-employed peers, according to findings from the National Longitudinal Study on Adolescent Health. Steinberg and Dornbusch also found that “the deleterious correlates of employment increase as a direct function of the number of hours worked each week.” In addition, those researchers found that working did not enhance teens’ psychosocial development (including self-reliance and work orientation) as compared to nonworkers. In studies from the 1980s and early 1990s, youths who worked longer hours reported higher rates of delinquency, and of psychological and psy-

chosomatic stress. A smaller survey of teen worries at a high school in Virginia found teens more mentally preoccupied with after-school employment than with any other issue.

Higher rates of drug and alcohol use and behavior problems among working teens were also found by Mortimer and colleagues, with the same correlation between greater number of hours worked and higher rates of risky behavior noted. At the same time, these researchers reported that youths “who worked more than 20 hours were *not* found to exhibit...lower self-esteem, or greater depressive affect than students who did not work.” And while those teens who worked 20 or more hours were more likely to describe conflicts between work and school, they also were more likely to have benefited from supportive linkages between the two; that is, they were more likely to agree with statements such as, “I contribute to class discussions because of what I learn at work.”

High school employment may also have an impact on future earnings. Christopher Ruhm, an economist at the University of North Carolina at Greensboro, has found that students who work during their sophomore, junior, or senior years earn significantly more than their nonworking peers six to nine years after high school graduation. “High school jobs are unambiguously associated with elevated rates of future job-holding and increased earnings,” writes Ruhm. For example, six to nine years after graduation, “seniors employed 20 hours per week are expected to earn approximately 20 percent more annually and to receive 10 percent higher hourly wages...than their counterparts who do not work at all. They are also more likely to receive employer-provided fringe benefits and to be in higher status occupations.”

And just as some of the negative correlates of teen employment seem to increase at or beyond 20 hours employment per week, Ruhm found that “substantially larger gains are associated with working 20 hours per week” as compared to working fewer hours. Specifically, seniors who worked 10 hours during the week prior to Ruhm’s survey had 14.3 percent greater future earnings, while those who worked 20 hours in the previous week had 22.1 percent higher earnings. Working seniors who worked 10 hours per week and did not go to college gained over 20 percent in earnings compared to their nonworking

peers, while college-bound workers gained nine percent over non-working, college-bound students.

Family Relations

Not surprisingly, students who work spend less time with their families than students who do not, according to studies conducted in the 1980s. Also, the more students worked, the less they ate dinner with other family members and helped around the house. According to a 1990 report, parents of working teens reported more “disagreement with their children about helping around the house; staying out late; smoking, drinking, and drug use; money; school; and getting along with the family” than parents of nonworking teens. In this case, parent-teen conflict “was more closely tied to work status than to hours of work.” Still, researchers in 1994 found that “longer hours of work contribute to boys’ perceptions that they had become more independent of the family, that time spent with the family had diminished, and that there were arguments with parents about work.”

There were gender differences. For girls the above-mentioned pattern—greater independence, more arguments, and less time with family—emerged, though less clearly. But other differences were more dramatic, and perhaps less expected. While closeness to family declined for girls who worked, boys who worked actually expressed a “significant positive effect” in closeness to their families.

Adolescents who worked longer hours were found in the Steinberg-Dornbusch study to have more autonomy from their parents. These youths devoted less time per week to shared family activities, were monitored less closely by their parents, and were given greater autonomy over day-to-day decisions by their parents.

In sum, social scientists have found both positive and negative correlations of adolescent employment. Some factors seem to depend on work status, but many others seem to vary based on number of hours worked per week. Researchers attribute differences in their findings to methodological and interpretive disparities, such as accounting for self-selection (the selection process determining which students work) or estimating the significance of, say, a 28 percent difference between two groups on a certain measure. Ruhm points out that excluding his study, social scientists have focused on short-term

academic and social outcomes, and have not gathered data on long-term results, such as labor market performance.

Barbara Fusco

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Deep Thoughts on Religion

"What is the difference between crossing yourself or hanging a mezuzah, and avoiding black cats?"

Wendy Kaminer

COMMUNITY NEWS

MAKING YOUR OWN GRASS GREENER

The campus of historically black Jackson State University, in Jackson, Mississippi, was once the hub of a prospering, mainly African-American community. In time, though, the neighborhood began to succumb to forces like redlining and residential flight to other, newly integrated neighborhoods. But instead of watching the area crumble around it, the university decided to fight back by investing in local housing stock and encouraging new businesses. The university's business school created a revolving loan fund that seeds new housing and assists small-business start-ups.

"We only buy vacant abandoned units," said Carolyn Nelson of the school's Home Ownership Opportunities Program. "We do not attempt to do anything within the boundaries of that neighborhood without asking the residents. We need their input, support and direction." Where tattered, freestanding houses with peeling asbestos shingles once stood, there are now attractive newly refurbished homes with vinyl siding. Eight-foot privacy fencing surrounds the properties, which have backyards and driveways instead of curbside parking.

Around Jackson State, the average cost for a finished home is \$40,000 to \$48,000. "Cost ranges for buying the units have been from \$2,800 to \$22,000," said Nelson. "From the sale of the properties the funds received go into a revolving loan fund which allows us to continue to buy, rehab, and resell units. The university doesn't plan to

do this permanently. We are just interested in revitalizing this particular area and bringing up the property values to the point that private investors will be interested in it again.”

In Nashville, Tennessee, Fisk University found itself in a similar situation as the surrounding neighborhood deteriorated. “When I came to interview for this job about 30 years ago, there were bakery shops, flower stores, restaurants, everything, and mostly owned by black business owners,” said Fisk’s executive vice president, George Neely. “This vanished. Suddenly we had a rush of integration, the grass was greener elsewhere, the businesses moved elsewhere.” So Fisk, too, decided to invest heavily in neighborhood housing. “We’re making affordable housing on our property,” said Neely. “You can walk down the street now and see new duplexes, houses, and family activity like cutting the grass in their yards, where there were once just dilapidated homes.”

Fisk and Jackson State, like many other black colleges, have received funding to revitalize their neighborhoods through a federal Housing and Urban Development grant program for historically black colleges and universities. Since 1991, the Historically Black Colleges and Universities (HBCU) program has given more than \$30 million to 57 black colleges and universities, often located in poor and high-crime communities.

Howard University is a three-time recipient of HBCU funding, participating in the program in 1995, 1996, and 1997, and receiving a total of \$1.17 million. With the money, Howard University worked with several community groups, including Manna and the Georgia Avenue Community Renaissance Initiative, to build or renovate about 30 homes in a neighborhood near the university.

“There’s the altruistic reason to do good, and universities also have a self-interest. If they are in a community that’s in decay and is dangerous, they won’t attract students,” says Rodney Green, director of Howard University’s Center for Urban Progress. “It used to be that some of our dormitories were in shady areas, and I don’t mean trees,” said Green. Green says there are hundreds of abandoned and boarded up buildings near campus. “Prospective students would visit the university with their parents, drive up, see the community and drive right out.”

Not only is Howard University contributing money, through HBCU, to make the neighborhoods better, but it has the potential to contribute desirable residents. The university is encouraging its staff to move into the neighborhoods that are being refurbished. Green believes that this “would bring stability to the community.” Howard University has also used its HBCU money to support community outreach programs and has worked with banks and businesses in the surrounding communities to make them better. “We don’t all have the same agenda, but there is an intersection of interest,” said Green.

American News Service

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