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Youth Violence: An “Over-Determined” Problem
Amitai Etzioni

Conservative Republicans are right when they tell us, in response to the tragedy in Littleton—which has become a symbol for the recent slew of such attacks—that “gun control will not solve the problem of youth violence.” Liberal Democrats are right when they claim that it is ludicrous to assert that parents and educators could solve the problem by bringing kids up right. Free speech advocates make a good case when they maintain that putting filters on the Internet will not stop youngsters from making pipe bombs. All these advocates unwittingly fall into one and the same logical trap, or deliberately use half-truths, to stop us from embracing those measures that they oppose. It is true that no measure will solve the problem; there are, though, several that would significantly curb youth violence.

The lesson from Columbine High School is as dull as it is important: social phenomena are “over-determined.” They are caused by a combination of several factors and, therefore, attacking any one of them will not eliminate the problem. There is no silver bullet and no magic cure. But this valid observation should not be used to conceal the fact that guns, the culture, and the Internet each carry some of the blame. It follows that if we tackle any of them, we shall reduce the problem some; if we treat several, we shall do even better. But, truth be told, it cannot be completely licked.
The gun lobbies argue that guns do not kill people; people kill people. There’s no question that they are half right. People make a difference—more about this shortly. But so do guns. Think about the 1,000 or so children who die each year from accidental discharge of firearms they find in their homes and play with. Think about Charles Whitman, who stood on the tower of the University of Texas and killed 16 students with a gun. Obviously, he would not have killed that many if all he had was a knife or a monkey wrench. And the two killers in Denver would have long been wrestled to the ground if they weren’t armed with rapid-fire guns, which sent even the swat teams with their bulletproof vests and semi-military training cowering.

The gun lobbies have been making a lot of political noise over the fact that in some parts of the country, New England for instance, in which there are numerous guns, the murder rates are much lower than in the South, also awash with guns. See, they say, the difference is in the culture, not in the availability of the tools of mayhem. But if one is going to draw on cross-cultural comparisons, why stop in New England? If England, and all other democracies, are also included, we see that whatever the culture, the fewer guns, the less killing.

Given that guns account for a chunk of the problem—that is the way to think about single factors, in terms of what social scientists call “variance”—several more points need to be made. First, there is no individual “right to bear arms.” The second amendment reads, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The meaning of this has been tested before the highest court in the land five times over the last 155 years. In each and every case the U.S. Supreme Court ruled that there are no constitutional impediments to imposing gun controls on individuals. This is the reason the NRA as a rule does not challenge gun control measures in courts, but instead makes large campaign contributions to legislators, in order to block gun control legislation or repeal it. It should be noted that NRA monies played a major role in defeating 24 Democratic members of Congress in the last election who supported the Bradley bill.

Second, the NRA is damn right that the diluted Bradley bill, and other such measures, will not do much good. The reason is that they
are very limited in scope and gun sellers get around them through loopholes larger than ocean liners. (Examples: “mandatory” background checks of people buying guns are not required at gun shows; and if a manufacturer changes the name of an assault weapon, forbidden guns can become legal because Congress banned a specific list of guns—by name.) But the conclusion from the fact that current gun control measures are rather weak is the opposite of what the NRA implies: our children’s safety requires not fewer gun controls, but more, of the sweeping and encompassing kind Canada, Britain, France, and Germany have.

Finally, the NRA reminds us that Colorado is one of two states in which minors are not able to legally own guns, and ‘look how much good it did.’ Well, laws are of little value unless they are enforced. See the low budgets of those in charge of controlling firearms, especially the Bureau of Alcohol, Tobacco, and Firearms, and see where the inaction lies. If the NRA, with their tremendous lobbying power, allowed Congress and state legislatures to provide the budgets and other means gun control laws require, law enforcement agencies would be able to do their jobs.

**Education**

Parents and teachers should teach youngsters values, which will make them into good, peace-loving people, we are told. There is little doubt that education does make a difference (as do the economic conditions of the neighborhoods in which youth violence takes place, and the historical factors that lead some people to be more alienated than others). One should realize, though, that education centered around negative prohibitions, like “Just Say No,” is not going to work; we need messages that youngsters find meaningful and compelling, values and missions to “Say Yes” to.

Our society asks parents and teachers to teach young people not to use drugs and alcohol, not to have premarital sex, not to smoke, and not to express their aggressive feelings. In short, it seeks to repress just about everything that the culture tempts young people to do, those acts that appeal to their raging hormones and impulses.

The most relevant argument for education against violence is that teaching self-restraint and responsible conduct is most successful
when young people are positively involved in other activities. Look at dedicated young Mormons, orthodox Jews, Black Muslims, and many others who have strong religious convictions. Look at those truly engaged in a quest for a healthy body so they can excel in sports, or those deeply involved in community service. None of these young people are perfect or immune to the siren calls of our culture or their bodies. But on average—and this is what we must keep our eyes glued to, not on individual outliers—they do much better than those who are just asked to refrain.

Most important, the debate in public schools as to which values we should teach—a debate which unfortunately is so often used to block much needed character education—is off the mark. What schools should help youngsters develop are two crucial behavioral characteristics: impulse control, or more specifically the capacity to channel impulses into prosocial outlets, and empathy for others. Teens can learn to channel their aroused urges into activities that do not harm others and yet are self-fulfilling. Sports, if properly conducted, provide a major opportunity.

I refer to Physical Education more than to competitive sports, and sports conducted in the British manner, where whether you win or lose matters less. While jocks often pick on other students, such behavior is not inherent to athletic activities. Indeed, when any group of students picks on others, or isolates them, this should not be viewed as a reason to cut back on their activities but as an opportunity for education, to develop the other much needed capacity, that of empathy. Empathy makes it much less likely that we shall hurt, taunt, or isolate others.

Once given these two essential behavioral character traits, specific values that presuppose them can be readily grafted at home, in churches, etc. Public schools can dedicate education for specific values, once the two basic personality capacities (or character traits) have been developed, to those values we all share—a richer catalog than many assume.

**Culture**

In discussing the role of movies, video games, and the Internet in making our youngsters more violent than they would otherwise be, it
is as fallacious to argue that these cultural products cause violence as it is to argue that they play no role.

Among studies showing that what people watch on television does have effects is a particularly interesting one conducted in three Canadian villages, which for years were prevented from receiving TV signals because of their peculiar location. Shortly after these communities started watching TV as a result of the introduction of cable, crime rose significantly more than in other Canadian villages. To a social scientist, this natural experiment shows that TV added something to the causes of crime.

I myself studied a videotape of a toddler watching a violent TV show while playing with his teddy bear. At the beginning of the program the kid was all smiles. By the time the tape was winding down, the toddler had torn the head off his teddy. In a similar vein, children who have viewed pornographic material are, according to court testimony by a UCLA psychologist, more likely to engage in “orally copulating with another child” and “inserting an object into their anus or vagina or that of another child.”

The Columbine killers downloaded both their neo-Nazi propaganda and specific designs for making pipe bombs from the Internet. In response, Vice President Gore has worked out an agreement with several major Internet companies to set up web pages that will help parents protect their children from vile and violent material. And there are already a fairly large variety of software products that can assist parents, educators, and librarians in screening out dangerous materials. These include Internet filters such as Net Nanny, Cyber Patrol, and V-chips which are now required to be included in all new TV sets. Some of these block access to given lists of web sites and TV shows; others block access to ‘texts’ that include specific, explicit terms.

These filters are attacked by the same false logic and rhetorical tricks that by now are all too familiar. These filters, we are told, will not solve the problem. Hackers can disable them; they will allow some vile and violent material through; and they will prevent access to some material children might find useful. All this is true—and beside the point. Filters do not prevent violence any more than locks on our
front doors prevent burglaries or cooking hamburger meat ensures that e-coli will never infect us. They “just” make it less likely.

Filters unfortunately also seem to make some people foolish and others immoderate. There are those who argue that parents and educators should “talk” to their children, communicate more with them, take responsibility for their children’s conduct, and teach them to be responsible. What is foolish about these arguments is that they overlook the merit of getting help in discharging our parental and educational duties, from wherever we can. Example: in my household children were not allowed to watch TV on school days, and their TV time on other days was rather limited. Yes, we talked plenty—“why” is young children’s favorite word. However, given that I worked outside the home, and given that the children were young and hence both their will power and sense of responsibility were still being developed, locks on the TV sets helped prevent them from undue temptation until they matured. And, these locks allowed me to do something other than keeping an eye on two TV sets in a household with four children.

To reiterate, to argue that we should not “rely” on gadgets is all too true; God forgive the parents who install a Net Nanny and a V-chip and believe they have discharged their educational duties. But to argue that we should refuse the help of such devices is like saying that we don’t need seat belts and should instead simply teach young people in driver’s ed to drive “responsibly.”

The immoderate opposition to filters, led by the ACLU and the American Library Association (ALA), deserves particular attention because it raises a major question of educational philosophy: Are we to view children as developing creatures or as undersized adults, with all the rights thereof? By “developing creatures” I mean human beings that begin their lives highly dependent on adults for their well-being and quite unable to form judgments of their own or exercise self-restraint, and who gradually acquire an increasing ability over the years to act in a responsible manner, toward themselves, others, and the community. The fact that children are developmental may seem so self-evident that we rarely articulate this elementary fact. It is not so for the ACLU, the ALA, and some extreme children’s rights advocates.
These associations and advocates take the position that children are basically to be accorded the same rights as adults. For instance, the ACLU opposed limitations on the so-called Joe Camel cigarette advertising campaign, aimed at enticing children to smoke, on several grounds, one of which is that children’s access to information should not be denied. For the same reason, the ACLU went to court and got filters on computers thrown out of public libraries in Virginia and in California. The ACLU made it clear that it is opposed to setting any age limit whatsoever on the rights of children to access any and all material.

The ALA takes a similar position. It denies parents of children of any age the right to find out which books their children have checked out. In a policy that is humorous if not absurd, the ALA tells parents—who must sign a statement accepting liability for books their children lose—that if such parents wish to find out which books they are being fined for, they need a note from their children permitting the library to disclose such information!

As I see it, parents and teachers have not merely a right but a duty to find out what their charges are reading, screening, or playing with. They have a duty to help shape the educational environment of their children, help them choose which books they should read, which music they should listen to, which TV programs they should watch, and which they should avoid. This seems indisputable when we’re talking about pre-teens; and even for teenagers, parents and educators need to be involved rather than shut out. If a classmate of my son committed suicide, and my son seems rather depressed and is spending long hours alone in the library, it is my duty at a minimum to find out if he merely reads Dostoyevsky or The Hemlock Society’s “how-to” books. I also had better find out if one of my children is deep into “Mein Kampf,” “The Anarchist’s Cookbook,” or the Unabomber’s manifesto, so I can help him learn to properly deal with these poisonous works.

Helping children develop the moral and intellectual faculties needed to make responsible choices when they grow up is what raising kids is all about. Anybody can provide room and board, and love comes naturally. But developing a child’s character is a parent’s highest duty, one they share with educators, who often do stand in for parents.
Not Letting the Perfect Be the Enemy of the Good

Truth be told, the Lord, nature, and social science have not given us what it takes to lick most social problems. Hence, it is rather easy to show that any specific measure will not solve youth violence or much of anything else. But if we do not allow the quest for the perfect person and society to stop us, we will be able to make it much less likely that we shall face other Columbine tragedies. There is very little in our personal and collective lives that is more important than saving the lives of our children. We should dedicate more of our energy and resources to doing so even if this means we have to protect one child at a time. By helping one, we may save fifteen.

Chris Britt, Copley News Service.
Opportunistic Federalism?
E.J. Dionne Jr.

“What’s striking to me,” says state senator Jeanne Kohl-Welles of Seattle, “is how much of what goes on in the state legislature mirrors what happens in Congress.” Kohl-Welles’s words were themselves striking because she spoke a day after last June’s five to four Supreme Court rulings shifting power away from the federal government and toward the states. The court restricted citizens’ right to sue their states for violating federal laws. This made no sense to Justice David Souter. He called the decisions “indefensible” and said “the principle that ‘no man is above the law’—which applies to the president of the United States as well as the lowliest public servant—should apply equally to the states.” Justice Stephen Breyer agreed, suggesting the court was granting state governments the divine right of kings. He cast the majority’s thinking as “more akin to the thought of James I than to the thought of James Madison.”

As Kohl-Welles’s comments show, the court is reviving old states’ rights doctrines at a moment when our politics, economy, and social life are more nationalized than ever. Kohl-Welles was in Washington, D.C. for meetings organized by the Center for Policy Alternatives, a group whose purpose underscores the increasingly interlocking nature of federal and state politics. The Center brings together progressive Democrats and moderate Republicans from state legislatures around the country to share ideas, experiences, and proposals. The Center has its conservative counterparts promoting their own agendas across state lines.

To listen to Kohl-Welles and to state representative Miguel Wise, who was also in Washington for the Center’s meetings and represents a district in Texas’s Rio Grande Valley, is to understand the difficulty of drawing sharp jurisdictional lines around problems that are national in scope. State legislatures, like Congress, are arguing about patients’ bills of rights to regulate health maintenance organizations, education reforms to improve school standards, gun laws, and the economic inequalities created by a new economy. Wise’s district, for example, has a 17 percent unemployment rate. Its residents look at the reports of a booming national economy, he says, and ask, “Where’s the money? Why isn’t it coming down here?”
Kohl-Welles, who like Wise is a Democrat, represents a booming district. But she worries about “the huge, growing gap between eastern rural Washington and the Puget Sound.” Rural economic development is a priority in Washington as it is in Texas. The economically troubled rural areas of Texas and Washington have more in common with each other in these matters than they do with other parts of their own states. And if you ask Wise where most of the help for his district has come from, he’ll list the federal government’s empowerment zone program first, because of its investment of job-training money.

John Freeman, a consultant to the Center and a former state legislator in Michigan, sees similarities among urban areas coping with the transition away from manufacturing. “You’ve got a lot of older cities whose economies have changed underneath them,” he says. “You have a tax base which has been gutted, which leads to poorer schools.” Is this only a local problem? Isn’t it a national problem created by global economic changes far beyond the control of city and state governments?

If you wonder whether advocates of states’ rights really mean what they say, just ask them what they’ll do during next year’s crucial campaigns for the country’s state legislatures. In seven states, party control of the lower house will change hands if as few as six seats switch from one party to the other. Control of 10 state senates hangs on shifts of only three seats. Will national parties and political action committees keep their hands off these elections in deference to their intense respect for states’ rights? Not a chance. Huge sums will flow across state lines.

No one with any sense would suggest administering the whole country from Washington. It’s clear that state governments can encourage innovation by serving as those famous “laboratories of democracy.” But there is a disingenuous quality to many of the states’ rights arguments you’re hearing these days. We are a nation of states, but also a nation. Even those who argue the loudest for states’ rights act as nationalists when their pet issues—for example, tort reform, abortion, or local library policies on Internet porn—are at stake. So don’t just listen to what states’ rights advocates say. Watch what they do.
Animal Abuse Meets Rights Abuse
John Leo

Sometime soon, according to animal-rights activists, a great ape will testify in an American courtroom. Speaking through a voice synthesizer, or perhaps in sign language, the lucky ape will argue that it has a fundamental right to liberty. “This is going to be a very important case,” Duke University law professor William Reppy Jr. told the New York Times.

Reppy concedes that apes can talk only at the level of a human four-year-old, so they may not be ready to discuss abstractions like oppression and freedom. Just last month, though, one ape did manage to say through a synthesizer: “Please buy me a hamburger.” That may not sound like crucial testimony, but lawyers think that the spectacle of an ape saying anything at all in court may change a lot of minds about the status of animals as property.

One problem is that apes probably won’t be able to convince judges that they know right from wrong, or that they intend to tell the whole truth and nothing but the truth. Since they are not persons, they don’t even have legal standing to sue. No problem, says Steven Wise, who taught animal law for 10 years at Vermont Law School and is now teaching Harvard Law School’s first course in the subject. He says lawyers should be able to use slavery-era statutes that authorized legal nonpersons (slaves) to bring lawsuits. Gary Francione, who teaches animal law at Rutgers University, says that gorillas “should be declared to be persons under the constitution.”

Are these people serious? Enslaved gorillas suing for their constitutional rights? Oh, yes. Unlike mainstream animal-welfare activists, radical animal-rights activists think that all animals are morally equal and have rights, though not necessarily the same rights as humans. So the law’s denial of rights to animals is simply a matter of bias—speciesism. It’s even an expression of bias to talk about protecting wildlife, since this assumes that human control and domination of other species is acceptable. These are surely far-out ideas. “Would even bacteria have rights?” asks one exasperated law professor, Richard Epstein of the University of Chicago Law School.
For the moment, the radicals want to confine the rights discussion to apes and chimps, mostly to avoid the obvious mockery about litigious lemmings, cockroach liberation, and the issue of whether a hyena eating an antelope is committing a rights violation that should be brought before the world court in the Hague. One wag wrote a poem containing the line, “Every beast within his paws/ Will clutch an order to show cause.”

The news is that law schools are increasingly involved in animal issues. Any radical notion that vastly inflates the concept of rights and requires a lot more litigation is apt to take root in the law schools. (“Some lawyers say they are in the field to advance their ideology, but some note that it is an area of legal practice that could be profitable,” reports the *New York Times.*) A dozen law schools now feature courses on animal law, and in some cases, at least, the teaching seems to be a simple extension of radical activism. The course description of next spring’s “Animal Law Seminar” at Georgetown University Law Center, for instance, makes clear to students which opinions are the correct ones to have. It talks about the plight of “rightless plaintiffs” and promises to examine how and why laws “purporting to protect” animals have failed.

Ideas about humane treatment of animals are indeed changing. Many of us have changed our minds about furs, zoos, slaughterhouse techniques, and at least some forms of animal experimentation. The debate about greater concern for the animal world continues. But the alliance between the radicals and the lawyers means that, once again, an issue that ought to be taken to the people and resolved by democratic means will most likely be preempted by judges and lawyers. Professor Wise talks of using the courts to knock down the wall between humans and apes. Once apes have rights, he says, the status of other animals can be decided by other courts and other litigation.

The advantage of the litigation strategy is that there’s no need to sell radical ideas to the American people. There are almost no takers for the concept of “nonhuman personhood,” the view of pets as slaves, or the notion that meat eating is part of “a specter of oppression” that equally afflicts minorities, women, and animals in America. You can supersede open debate by convincing a few judges to detect a “rights” issue that functions as a political trump card. The rhetoric is
high-minded, but the strategy is to force change without gaining the consent of the public.

Converting every controversy into a “rights” issue is by now a knee-jerk response. Harvard Law professor Mary Ann Glendon, author of Rights Talk, writes about our legal culture’s “lost language of obligation.” Instead of casting arguments in terms of human responsibility for the natural world, rights talkers automatically spin out tortured arguments about “rights” of animals and even about the “rights” of trees and mountains. This is how “rights talk” becomes a parody of itself. Let’s hope the lawyers and the law schools eventually get the joke.

And You Thought They Were Just Annoying

Pastor Mark Juvera of Colorado Springs believes that Pokémon games and toys are evil. So at a church service that included 85 children, Juvera burned Pokémon trading cards and struck a plastic Pokémon action figure with a 30-inch sword before he had his 9-year-old son tear its limbs and head off. During the demonstration the children chanted, “Burn it! Burn it!” and “Chop it up! Chop it up!”

The Denver Post, August 14, 1999
Why are we all so fascinated by Isaiah Berlin? Several reasons easily come to mind if we try to explain why Isaiah Berlin has become such a crucial figure of contemporary discussions in political theory. During his lifetime one reviewer already called him “the intellectual high priest of humane Western liberalism,” and since his death he seems to have turned almost into a cult figure for Western intellectuals. But some of the potential explanations for this fact—like the sheer brilliance of Berlin’s conversational and writing style, or the erudition and ease with which he moved between different national intellectual traditions—clearly are not fully satisfying. In addition to them there must be a more profound motive that makes his writings such a focus of interest today.

In my eyes, this deeper reason lies in Berlin’s attempt to combine a radical value pluralism with a firm and almost militant liberalism in political matters. Obviously my emphasis in this last sentence was on the word “combine,” since in our time—with its ongoing debates about postmodernity—there is no lack of value pluralists or even value relativists whose liberal credentials, however, may sometimes be problematical. On the other hand, while liberalism remains the strongest tradition of political thinking in the English-speaking world...
and has become more and more important on the European continent in the last years, many of these liberals do not excel in their understanding of their adversaries and pay the high price of hermeneutical insensitivity for the rationalist defense of their liberal convictions. Most people, however, feel attracted to both ends of this spectrum. They find value pluralism important because they believe in an ethos of tolerance and tend to problematize their own culture, which makes them skeptical toward all sorts of philosophical universalism. But very often these same people are well aware of the political dangers of a mere particularism and hence cannot avoid the question of whether liberal values really should be considered nothing but one option among innumerable competing ones. For them, value pluralism and moral universalism clearly do not seem to be logically exclusive, though they do not know how exactly they could be combined.

Does Isaiah Berlin's work contain an answer to this question, and how satisfying is this answer? Or did Berlin just give us the feeling he had an answer, but in reality only represents a sort of “personal union” of liberalism plus value pluralism, a combination grounded in his particular biography, but not in a systematic philosophy? This is the question I am going to discuss here. After a short recapitulation of Berlin’s ideas on this matter I will attempt to demonstrate that his attempt at combination falls short of complete success. I will argue that a more successful approach can be based on the ethics of pragmatism. The catchword for this approach is “the sieve of norms”—an expression I borrow from Paul Ricoeur whose thinking, though it cannot be derived from pragmatist sources, has astonishing similarities with them.

Value Pluralism Defined

As John Gray has demonstrated in his masterly book on Isaiah Berlin, there is one core idea in Berlin’s writings, which are devoted to a very great variety of subjects and thinkers. This core idea is the idea of “value pluralism,” defined by Gray as the assumption “that ultimate human values are objective but irreducibly diverse, that they are conflicting and often uncombinable, and that sometimes when they come into conflict with one another they are incommensurable.” According to this definition, “value pluralism” has to be distinguished from a pluralism of interests and from value relativism or
value skepticism. A pluralism of interests can occur within the framework of a shared consensual value system; value skepticism denies that the notion of an objective binding force of values makes sense at all, and a value relativist believes in the total mutual exclusiveness of competing value systems. Berlin’s value pluralism is more culture-oriented than a pluralism of interests, more objectivity-oriented than value-skepticism, and more willing to engage in the mediation or intercommunication between value-systems than value-relativism. It also has a clear implication for political philosophy, namely—following Gray again—that “the idea of a perfect society in which all genuine ideals and goods are achieved is not merely utopian; it is incoherent.” According to Berlin there is no single ideal way of living, and the utopian dream of realizing such an ideal is always prone to degenerate into a totalitarian project. Berlin is radical enough to conclude that even a liberalism that understands itself as such an ideal is dangerous, but this does not prevent him from defending liberalism as a better way of organizing political life than all the others. He subverts a certain triumphalist self-understanding of liberalism, not liberal institutions as such.

Three characteristic traits of Berlin’s thinking are logically connected with this core assumption of value pluralism. First, if there is no single ideal possible that integrates all ultimate ends in one harmonious synthesis, and if we cannot measure the competing values with one unitary standard and cannot dissolve our dilemmas of decision making by applying one consistent set of principles, then the situation of decision making itself takes on an irreducible quality in our understanding of ethical and moral life. Hence Berlin’s emphasis on choice—on the complexities of practical decision making under contingent conditions, in view of conflicts between values or even within one and the same value, and on the unavoidability of practical trade-offs. For Berlin, this insight is valid not only on the individual level, but also on the collective and institutional level. He would not agree with John Rawls and the assumption that in public life one value, namely justice, can be declared supreme and isolated from constant conflict with other values like freedom, equality, community, or peace.

Second, the idea of value pluralism is also logically connected with Berlin’s historicism; with his critical attitude toward universalist
anthropologies (i.e., claims of a single human nature); and with one of his most important achievements in the history of ideas: his reconstruction of the “expressionist” or “expressivist” model of human action (i.e., action as not primarily purpose-oriented, but expressive), which is found in his interpretation of Herder’s work. Berlin himself established this connection when he claimed—in his famous essay “Two Concepts of Liberty”—“If, as I believe, the ends of men are many, and not all of them are in principle compatible with each other, then the possibility of conflict—and of tragedy—can never wholly be eliminated from human life, either personal or social. The necessity of choosing between absolute claims is then an inescapable characteristic of the human condition.” Choosing itself becomes for Berlin the cornerstone of his anthropology, of his understanding of the specificities of human nature. The connection for him works both ways. If on one hand human beings do choose how they want to be, that is evidence that there is not one fixed set of supracultural anthropological traits; if on the other hand human beings can choose how they want to be, a pluralism of cultures and individuals necessarily ensues.

The third trait of Berlin’s thinking that I wish to highlight here contrasts Berlin with overly optimistic liberals. Value pluralism—as the last quotation has already made clear—is also related to a tragic view of history, tragic at least in the sense that tragedy remains possible whatever political progress we might imagine, that even in our most reasonable decisions in moral and political life there is a neglected side, a part of the world doomed to perish. Liberalism for Berlin is not a doctrine of salvation; it is not the end of history or the solution of all problems, and Berlin’s tragic liberalism is very different from the shallow optimism of conventional modernization theories.

But if such a tragic view of history can be derived from the core assumption of value pluralism, why should it be tragic liberalism? Why liberalism? Can liberalism be justified in the widest sense of this term without any universalist claims? A purely cultural justification in terms of living liberal traditions can only make sense in cultures which have been thoroughly impregnated by the spirit of liberalism, but not in Germany, let alone in Russia or China! Berlin is ambiguous in this respect. On some occasions he simply disclaimed any logical connection between pluralism and liberalism. On others, he seems to
have established at least a “negative” connection, i.e., he claimed quite plausibly that pluralism presupposes a liberal political order if it is to flourish. But this move is not really convincing as a justification of liberalism on the basis of value pluralism since it transforms the fact of a plurality of competing values into a value in itself; it transforms the insight of value pluralism into a plea for the value of plurality.

Beyond this “negative” connection Berlin leaves us at a loss in this respect. Instead of going into philological detail here and instead of examining possible traces of a “positive” connection between value pluralism and liberalism in Berlin’s work—traces which certainly do not represent a fully elaborated philosophical argument—I will argue that Berlin’s idea of “value pluralism” has two weaknesses, and that these weaknesses are responsible for the difficulties his thinking encounters at that point. “Value pluralism” and “liberalism” can be connected with each other in a positive way only if we supersede these two deficiencies.

**Choice Between Values?**

The first weakness seems to me to lie in Berlin’s description of choice and decision making. Concepts like “choice” and “self-invention” appear to be too voluntarist and not adequate for a description of what happens in the type of situations Berlin has in mind. Let us consider what it is that we can choose in such a situation. In the utilitarian tradition, we have to decide between competing desires or preferences, or the objects of our desires in the world. Under these utilitarian assumptions, it sounds quite plausible to assume a common measure for the competing desires (like the calculus of pleasure and pain), or a common standard of utility (like money). A denial of a common standard or measure leads, under utilitarian assumptions, to a description of choice which makes it look like a lottery, a decision that cannot be improved by a more methodical procedure. But Berlin was not a utilitarian; he was an expressivist in terms of his theory of action. He knew very well that a value pluralist has to describe the decisions we make between competing values and not just competing desires. There are two respects in which a decision between values differs from a decision between desires. We may consider our desires as empirically given, but we evaluate them before we allow them to
govern our actions. That means that values are necessarily reflective—they are emotionally laden standards for the reflective evaluation of our standards. And, secondly, values themselves are not the result of a choice, but of an experience of being bound, being affected by something that is independent of ourselves and commanding our orientation. In our decision making between competing values we reflect upon the diverse feelings of obligation and attraction we experience in the situation.

Against a radical philosophical communitarianism that overemphasizes the difficulties to distance oneself from one’s values, an emphasis on choice may be reasonable, because it is true that the result of our decision making is never fully predetermined. But one could also say that Berlin’s language betrays here that he has not fully developed the importance of his expressivist understanding of action for the analysis of decision making. Had he done so, he could also have avoided the irrationalist undertone in his description of the alternative to a fully rational choice. The actual alternative is not groundless decision and criterionless choice, completely ungoverned by reason. A latent unpragmatic understanding of reason leads to such exaggerations. A pragmatic understanding, rather, directs our attention to the role of reasoning in situations of decision making characterized by the impossibility of certainty, to the logic of practical judgment. In Berlin’s late essays we find a growing emphasis on the ways we balance competing claims and establish priorities, but this insight remains rather superficial.

My second objection is directed at Berlin’s historicism. I am convinced that he fell into the historicist trap. This could be described as a sort of optical illusion. The more we compare different human cultures the more we recognize their enormous diversity, and the more we doubt that there is anything substantial to be said about human nature as such. But this is an optical illusion, because if we compare human cultures in general with prehuman and nonhuman forms of life, behavior, and sociality, then we recognize that there is a common human nature uniting the members of all cultures.

Berlin, in joining the expressivist and romantic revolt against the Enlightenment and its universalist anthropology, neglected the possibility and the necessity of an anthropological theory of expression.
Anthropological universalism does not necessarily mean that we assume a fixed human nature on which cultural traits are only superficially grafted. Because of this neglect, Berlin can only retain the human disposition for variability, the capacity for choice as such, as a minimal anthropology. Again he seems to have realized from time to time, particularly when he talked about the possibility of communication between cultures, that “the nature of men, however various and subject to change, must possess some generic character if it is to be called human at all.” But this is certainly not enough. Much more can be said if we try to describe the specificities of human action, human communication, the formation of selves and the genesis of values. By neglecting the possibilities of anthropological reasoning, Berlin did not only refrain from developing an adequate conception of values, but also cut himself off from a justification of moral universalism.

**Discourse and Action**

For an attempt to combine value pluralism and moral universalism, we need an anthropologically based understanding of moral universalism and of the genesis of value-commitments. And here I turn to my own proposal. American pragmatism had—in William James and John Dewey—a theory of the contingent genesis of values, but also—in Dewey and George Herbert Mead—a conception of moral universalism. How are we to envisage the combination of these two divergent theoretical components in the pragmatist spirit?

In order to answer this question, we should recall two distinctive features of pragmatist ethics that distinguish it from several other approaches. First of all, pragmatist ethics is based on an elaborate anthropological theory of human action in general, and human communication in particular. Dewey and especially Mead developed the essential features of such a theory of the biological preconditions for human-specific performances. Without going into these in detail, it can, nevertheless, be emphasized that even the attempt at such a theory involves the assumption that there are universal structures of human action that distinguish it from animal behavior, and that it is possible to make substantial statements about these universal human structures. Dewey and Mead have no doubt that typical problems and conflicts are inherent in these universal structures, from which there arises a need for regulation. George Herbert Mead above all—and
subsequently Dewey, under his influence—interprets the universal human capacity for "role-taking," the decisive characteristic of typically human communication, as the prerequisite for overcoming these disturbances. The development of this capacity and the social facilitation of this development are thus of the highest empirical significance. At the same time, however, Dewey and Mead see a substantial ideal located in precisely this empirically verifiable capacity: "Universal discourse is then the formal ideal of communication."

Mead shows how the capacity to employ significant symbols refers every participant in communication beyond his immediate community to a virtual world of ideal meanings. Pragmatist ethics thus stands opposed to culturalistic moral relativism and stresses the universal need for the normative regulation of human cooperation and care, as well as the possibility of seeing a substantial ideal in the solution of these problems of cooperation through communication itself.

The second distinctive feature of pragmatist ethics consists in the fact that it is an ethics from the perspective of the actor. Of central interest for Dewey and Mead is not the question of the foundation of norms, nor even that of the justification of actions, but the question of the solution to problems of action. What was novel in Mead’s critique of Kant’s ethics was the notion that the categorical imperative as such could only serve to subject actions to a universalization test, but not to discover which actions were adequate in the first place. Action itself demands a creative design. The concept of the “application” of norms or values is hardly appropriate for this emphasis on the creative and risky performances in action. Of course, a value as well as the “application” of a value can be subjected to a discourse of justification, but pragmatist ethics separates the perspective of such a discourse from the existential perspective of the agent.

If one takes these two distinctive features together—pragmatism’s elaborate theory of human action and its emphasis on the perspective of the actor—then it becomes apparent how the universalistic conception of morality and the theory of the contingent genesis of values can be combined to form a whole along pragmatist lines. According to this point of view, there is no higher authority for the justification of norms than discourses. From the perspective of the actor, however, it is not the justification that is uppermost, but the achievement of the good or
the right. Even if, as agents, we wish to concede a clear primacy to a particular good or the right as we understand it, we do not have at our disposal certain knowledge of what we must therefore do. We can honestly strive to increase the good or to act exclusively according to the right, but this does not furnish us with any certainty that we will actually be successful in doing this with all the actions that we decide upon, and all the direct and indirect consequences which we thus bring about. In the light of the consequences of action, every conception of the good and the right will come under the pressure of revision.

Each new specification does not liberate us from this pressure either. A clear conclusion cannot be envisaged, since the situations in which our action takes place are always new, and the search for certainty remains forever unfulfilled. While we can establish for certain in the abstract, that is to say, in the discourse removed from action situations, that certain aims of action should enjoy priority as a result of certain presuppositions about points of view to be considered, in the concrete reality of the action situations we often achieve a subjective feeling of certainty but, intersubjectively, only one of plausibility. In retrospect—having become wiser after the event—we can discover more about the actual appropriateness of our action, but even here a definitive and certain judgment cannot be reached, because the future will yield further consequences of action and points of view, which again jeopardize our appraisal.

While some might concede that our action has the character described here, they might nevertheless dispute that an answer to the question of the relationship between the good and the right and between value pluralism and moral universalism follows from it. In which respect, then, should this emphasis on the expressivity or—better still—creativity of action suggest such an answer? It might at first seem as if this emphasis were at best banal and at worst dangerous. It would be dangerous if it exclusively emphasized the situation-specific nature of our decisions and, in so doing, opened the way to arbitrariness and a lack of principles. It would be banal if it only stressed what no one, even the most ardent proponent of an ethics of conviction, has ever contested—that, namely, the right acts do not always follow from a good will. But the way in which the pragmatists present the argument for the creativity of action in ethical contexts does not grant unrestricted freedom to arbitrariness; it declares only
certain revisions and specifications as acceptable. And it is not banal to include in the concept of the good will itself the moral duty to recognize what works and what doesn’t. From the pragmatists’ understanding of action and from the structure of their ethics as an ethics from the perspective of the actor, it follows that, in the action situation itself, the restrictive point of view of the morally right must inevitably arise, but can arise only as one point of view alongside the various orientations of the good.

This double assertion requires further clarification. The viewpoint of the right must arise, according to this view, because it represents the universal requirements of the coordination of social action, and these are unavoidable in the face of the unavoidable embedding of human action in social contexts. All action is unavoidably embedded in the social because the capacity for action is itself already socially constituted, and our cooperation by no means aims only at individually attributable, but also at irreducibly social goods. This point of view of the right is always present in the manifold diversity of our orientations; the situative revision of our objectives does not degenerate into arbitrariness because it must pass through the potentially universal “sieve of norms.”

The viewpoint of the right can only arise, according to this view, as one point of view among several in the action situation, because this potentially universal “sieve of norms” would have nothing to test if the agent were not oriented to various conceptions of the good, of which he cannot be certain if they are acceptable from the point of view of the right. Even the self-overtaxing moralist who is thoroughly determined always to give precedence to the universalization procedure may well want to eliminate his inclinations, but will only be able to test his conceptions of possible actions in this procedure. One point in emphasizing the creativity of action is the recognition that actions cannot be derived from the universalizing point of view itself, but can only be assessed as to whether a possible action is acceptable from this point of view. Even he who wishes to eliminate his inclinations does not thereby eliminate the candidates for examination which the rule of universalization represents. These candidates are our conceptions of our duty on the one hand, and our inclinations on the other—they too contain a potentially universal validity claim. If with Kant and his followers it remained unclear whether the universalization test of the
categorical imperative is directed at our inclinations or at the maxims of our action, then this was due to his failure to understand the reciprocity obtaining between our prereflective inclinations and our conscious intentions. If one assumes a theory of action, however, which anchors intentionality in the situation-specific reflection on our prereflective inclinations, then it becomes clear that the right can only ever be an examining authority—unless it becomes itself the good, the value of justice.

In the action situation, consequently, there is no primacy of the good or the right. There is a relationship of neither superordination nor subordination, but rather, one of complementariness. In the action situation, the irreducible orientations to the good, which are already contained in our inclinations, encounter the examining authority of the right. In these situations, we can only ever achieve a reflective equilibrium between our orientations. Certainly, the extent to which we subject our orientations to this test may vary. For this reason, there is in the point of view of the right a perpetual, unflagging potential to modify the good, in order to enable it to pass the universalization test. But it does not follow from the universality of the right that in action situations we should give precedence to the right as a matter of course before all other considerations—nor that we should not do this. The debate over the question of whether primacy should be attributed either to the good or the right must be sharply distinguished from the debate over the universalizibility of the right. From the pragmatist perspective, the debate over the universalizibility of the right does not have to take place—not because this possibility is rejected, but because it is held to be beyond dispute, following from the premises of the anthropological theory of action. The emphasis on the situativeness and creativity of action here does not involve skepticism towards the notion of the universality of the right. But in turn, this does not entail for the pragmatists that, within the action situation, the testing of an orientation against the universalization principle must self-evidently be given precedence above all other considerations.

**Particular, Not Particularist**

Not only individual agents, but also collectives, entire communities, and cultures are placed in action situations. From the philosophi-
cal conceptualization of the “good” and the “right,” let us switch to the sociological terminology of “values” and “norms” when we come to speak of collective actors and aggregations of action. Like individual agents, these too exist in an area of conflict between their particular value systems which have arisen contingently, and the potential of a morality which is pressing towards universality. Universally distributed structures of morality can be ascertained entirely by empirical means. Fundamental norms of fairness, for example, can be discovered by children by merely concentrating on the internal need for the regulation of cooperation and, right up to the reflective formulation of the “golden rule,” are undoubtedly known in all cultures.

But one should qualify this allusion to the universal distribution of fundamental norms by immediately adding the rider that every culture fences in the potentially universal morality, by defining its areas and conditions of application. Which people (or organisms) and which situations are, for this morality, “set free” requires interpretation and is accordingly culturally and historically variable. In each case, a justification is produced for excluding people of different nationalities, ethnic groups, races or religions, of another sex or age, of other mentalities and moralities; without such justification, the right would become an explosive charge for a culture. But in the exuberance of the plea for a universalistic morality, it would again—as in the case of the individual agent—be an error to overlook the fact that no culture can manage without a definite, particular value system and a definite, particular interpretation of the world. “Particular” does not, of course, mean here “particularistic”; cultural distinctiveness does not lead to an inability to consider the universalistic point of view. On the contrary, the question is which particular cultural traditions, from the point of view of the universality of the right, can be most readily adhered to, and how can other cultural traditions be creatively continued and reshaped from this point of view?

In the particular value systems of democratic societies we can indeed find rules which can be viewed as translations of universal moral rules into particular political institutions. These remain, nonetheless, inevitably particular and, in the case of each transposition into another culture, must always subject themselves to scrutiny as to whether their particularity is a particularism, that is, whether their
unavoidable cultural distinctiveness restricts them so that they underestimate or ignore the viewpoints and interests of others. The notion, however, that in order to overcome particularism, particularity itself must disappear, overlooks the necessarily contingent character of values. It condemns itself to remain a mere morality, detached from the attractiveness of values, to declare possible a motivation from pure morality.

In this last respect the American pragmatists and Isaiah Berlin clearly are on the same side; in their attempts to combine value pluralism and moral universalism they are close together. Whereas the pragmatists may be more convincing with respect to elaborating the universal claims of the liberal-democratic tradition and its foundation in human nature, Isaiah Berlin is superior in his concrete understanding of different (European) cultures and in his sensitivity toward the difficulties of their mutual understanding. We can learn from him in the most vivid way that no culture or national political tradition can simply claim universality for itself. Berlin is not a dogmatist of liberalism, not a fundamentalist of the Enlightenment, even less so of certain national types or traditions of liberalism or the Enlightenment. He can also teach us how to prevent a cultural justification for antiliberal political regimes. Though there can never be a universal culture, there is a universal dimension in the regulation of human affairs—at all times and everywhere.
Phillips Avenue has been the main business street of downtown Sioux Falls, South Dakota, almost since the city’s founding in the 1870s. It was the hub of local commercial life in the 1880s, when the original dirt sidewalks were replaced by wooden planks, and in the 1920s, when electric trolleys clanged up and down the street all day. In the late 1950s, in the heyday of postwar prosperity, the three busiest blocks of Phillips, from 9th Street to 12th Street, housed six men’s wear stores, fourteen women’s wear stores, seven shoe stores, a Sears, a J.C. Penney, a Woolworth’s, a Kresge’s, a Newberry’s, a Sheraton hotel, and the local headquarters of both the Lions and Kiwanis clubs.

Then the malls came, as they did everywhere. There were three of them, clustered on a two-mile strip along 41st Street, a few miles south of downtown. The decisive event was the opening of Empire Mall, which grew to 180 stores. The year Empire opened, three downtown department stores (Sears, Kresge’s, and Newberry’s) moved there, although the two local ones soon failed. Some of the smaller traditional merchants on Phillips Avenue hung on through the eighties, but the opening of a Wal-Mart on 41st Street in 1991 finished most of them off. The one remaining downtown drug store began losing money, forcing its pharmacist-owner to sell out, and the last men’s clothing store finally gave up in the winter of 1997.

But if all this sounds like the beginning of a chronicle of urban failure and blight, it isn’t. In the nineties, this Main Street of an old blue-collar city has been sprouting incongruous buds of upscale trendiness. Minerva’s Restaurant is a good example. Unlike many of the enterprises on Phillips Avenue, it is reassuringly familiar to those
who walk by it: Minerva’s has been operating successfully at the same location for more than 20 years. But in the seventies Minerva’s was a meat-and-potatoes kind of place. Crêpes were available for the diner who possessed more exotic tastes. Those who preferred seafood were limited to walleye from local waters, or else frozen shrimp. Now you can have just about anything—tilapia, mahi-mahi, salmon flown in fresh from Alaska the same day, and other exotic options.

Not that anyone would say Sioux Falls has become an exotic place. Even with a population that has swelled to 120,000, and an influx of foreign arrivals that it never had before, Sioux Falls remains a safe, quiet, friendly outpost of upper-Midwest conservatism. But Sioux Falls has nonetheless changed dramatically. Twenty years ago the leading local industry was meatpacking; now it is credit card processing. The sprawling Citibank campus built on the outskirts of town employs 3,200 people, and its presence has attracted a dozen other companies doing similar back-office work. Sioux Falls has another distinction that places it in the forefront of economic change: more than 80 percent of area women who have school-age children are in the work force, a percentage said to be higher than in any city of its size in America.

Sioux Falls has not only changed; it has expanded and broadened out to the world. Twenty years ago its location limited the jobs it could do, the customers it could sell to, and the people it could attract. Now there are no such restrictions. “We have become more global,” says Evan Nolte, the Chamber of Commerce president. “There are no limits to where we market.” John McLaughlin, an education finance consultant, came to Sioux Falls from Tennessee by way of Minnesota. He could just as well be running his company anywhere. But technology, he says, “has made this city capable of being competitive with the rest of the country. It allows wealth to be created here, and power to be created here.”

“Face to Face Is Very Expensive”

If the economy of the nineties has given Sioux Falls energy and expansive dreams, it has also changed the rhythms of everyday life. Like towns all over the American map, and without really knowing it, Sioux Falls has made a bargain in the past 30 years, and is now living...
with the consequences. The bargain is, on one side, an explosion of freedom and choice. Not just the freedom to sip espresso and order fresh salmon, but the freedom to do business anywhere on the globe, to communicate with London or Tokyo in a matter of seconds, to live on the safe, quiet prairie without all of the economic or cultural sacrifices this would have entailed a generation ago. That is Sioux Falls’s triumph of the nineties, and it is hard to find anyone on Phillips Avenue who would be willing to give it up.

But it is only one side of the bargain. The other side is the erosion of custom, of predictability, of patterns of conduct that are known as community. Commercial enterprises on Phillips Avenue used to be built on local habit and stable relationships, but now most of them seem hostage to an unpredictable sequence of bottom-line decisions made somewhere far away. Everywhere one goes on this ordinary street one finds ordinary institutions and customs being devoured by the global economy.

The inhabitants of Phillips Avenue don’t spend much time talking about community—or civil society or social capital—but they do like to talk about relationships. To a remarkable degree they talk about commercial relationships, the ones that used to exist between doctor and patient, storekeeper and customer. They are keenly aware of how important those bonds used to be, and how they have come apart in the economic turmoil of the past two decades.

Banking is perhaps the best example. The two big banks in downtown Sioux Falls eye each other warily, just as they did two decades ago. They are still competing hard. But they are not the same institutions they once were. One is now a branch of USBank, which operates in 17 states. The other is a branch of Wells Fargo, based in San Francisco. Neither one is crowded inside most of the time. The banks practically make people use the automated teller machines. Wells Fargo, which had 17 teller windows in the seventies, is now down to six. USBank charges some of its customers an extra dollar for every teller visit they make. And the bankers themselves have been caught up in a vortex of competitive pressure that leaves them uncertain from year to year what company policy will be, where the CEO will be located, and even what the company will be named.
Not that Sioux Falls isn’t used to a little absentee ownership. The big downtown banks were colonies of Minneapolis institutions for as long as anyone can remember. Still, there was a personal quality to banking that remained intact all the way into the nineties. The farmer or merchant who came downtown for a small business loan stated his case to a local manager who gave his approval, more often than not on his personal judgment about the applicant’s competence and character. But now that they have gone national—or global—the big Sioux Falls banks no longer have an intense interest in lending money to small businesses. They make most of their money from loaning larger amounts to much bigger fish—and from individual customers who use the machines, stay out of the way, and help keep the teller count low. “Face to face is very expensive for us,” admits Jim Mirehouse, district manager of USBank’s Sioux Falls office. “We try to minimize the face-to-face number as much as we can.”

The lending process at USBank is this: A customer who wants to borrow less than $250,000 sits down with a salesman who simply takes down the information, sends it to a computer in Minneapolis, and gets back a sheet of paper with a “score” telling him whether the loan has been approved or not. The salesman may or may not know the applicant, but his opinion of the applicant’s character has nothing to do with the decision. Nor does USBank make any apologies for the standardization of what used to be a highly personal service. “What we’re trying to do,” says Mirehouse, “is become the McDonald’s of banking, so a customer when they see a sign will know what you can get there.” What happened to the bank’s loyalty to its customers? USBank answers that question with another question: What happened to customer loyalty? As the manager sees it, the conversion to loaning money by formula has been matched, if not exceeded, by the customer’s willingness to shift his business wherever the return is a little better at a given moment. “You’ve got a very mobile customer,” he says. “Price is what you have to get them on.”

But wherever the responsibility may lie, it is clear that there has been an erosion of relationships in downtown Sioux Falls in almost every significant aspect of commercial life. In 1957, for example, there were three pharmacies on Phillips Avenue, each of them operated by the druggist himself, dispensing sympathy and friendly advice along with prescriptions. Today, although one of the three remains open,
the vast bulk of the business has moved to the 41st Street strip. Along one two-mile stretch of 41st there are 11 different pharmacies, each part of a supermarket, discount store, or other mass retail outlet. The druggists’ contact with customers is minimal. They simply fill one prescription after another, as quickly as possible, eight hours a day.

Of course, the transformation of the pharmacy business merely tracks what has occurred in the practice of medicine itself. Four decades ago the downtown corridor boasted six general practitioners, nine dentists, an osteopath, and a podiatrist. They all practiced solo or in groups of two or three. Today that form of practice is gone. Medicine is in fact thriving in Sioux Falls: there are 500 doctors in town, including cardiologists, orthopedic surgeons, and a whole range of other specialists not previously available there. But they are involved in a profession utterly unlike the one that was practiced on Phillips Avenue a generation ago. Virtually all of them have been caught up in the bottom-line economics of health maintenance organizations. Working in clinics toward the outskirts of town, where patients see a doctor who happens to be on duty at the time they arrive, physicians’ opportunities for personal contact with the patient are, for the most part, little better than those of the pharmacist. It would be foolish to imply that the technical quality of health care has declined in Sioux Falls, or that the people are less healthy as a result of the conquest of medicine by market forces. But it would be equally foolish not to acknowledge that something important has been lost as well.

**Can Relationships Be Marketed?**

Critics have written a great deal about the emergence of Wal-Mart and other giant retailers, and the ensuing decline of the Main Street merchant. But the problem is much larger than retailing. It is the depersonalization of ordinary commerce, of the little rituals of human economic interaction that have long resided somewhere close to the core of what most of us consider a decent life. Buying groceries is one such interaction, but so are banking, visiting the doctor, and filling a prescription.

In the fifties and sixties local commerce in America stood for the most part outside the dictates of global economic forces. True, the
American consumer products of the postwar years were promoted by mass media advertising, just as they are today. But the final sale, in most cases, was conducted in a local store. While the local businesses of a generation ago were as interested in making money as the current ones, the difference was that these businesses were personal institutions. The parties knew each other and were invested in a continuing relationship. In communitarian terms, that is an enormous difference. Today local commerce not only has ceased to protect people from global economic forces, it has become a symbol of them. The drive-up pharmacy window and the ubiquitous ATM send an inescapable message, and the customers who use them, however they may appreciate the convenience, understand the message all too well.

The drawback to this personal commerce of a generation ago was its shortage of choice for the customer. While one could take comfort from the stability of commercial relationships, it was an age of bland white bread, weak coffee, and bad beer. What we have done over the past generation in local commerce, as in many phases of life, is trade relationships for choice. The vast majority of us would not cancel that trade if we could. Choice is simply too attractive. So the task for communitarians is not to condemn the transformation; there is little to be gained by indulging in nostalgia for lost soda fountains or in cursing the existence of Wal-Mart. The damage done by Wal-Mart is enormous, but it has been done and cannot be repealed. The task is to look for ways to reintroduce human relationships into local commerce.

To a remarkable extent, experiments in this direction are being conducted all over the country. One can see them in the efforts of New Urbanists to graft pedestrian-scale shopping into planned residential developments such as Kentlands in Maryland, Laguna West in California, and North Boulder in Colorado. Thus far, however, none of these projects has managed to generate a successful retail component to match its neotraditional values. Residents seem to want them, but the problem of operating small stores profitably in an urban enclave along a freeway has yet to be solved.

A similar experiment can be seen in the “town center” movement that seeks to create brand-new downtowns in sprawling postwar suburbs that have never had them before. In dozens of affluent
suburbs scattered across America, developers are creating shopping malls designed to look like old-fashioned Main Streets, with “town squares,” sidewalk cafes, and a conscious effort at pedestrian-friendliness. Some of these town centers—such as the ones built in Reston, Virginia, and most recently in Redmond, Washington—are creative and appealing to look at, and are attracting more than enough customers to make money. The difficulty is that they re-create traditional commerce only in a physical sense, not a social sense. The merchants in the new suburban town centers are the same ones that do business in the huge regional malls—chain stores staffed by transient part-time employees whose relationship with the customer is minimal. While town centers are an interesting idea, they are not a significant step in the direction of human-scale commerce.

But more important steps are being taken, and in the most appropriate places: the Main Streets of small-town and small-city America. It is common to find downtowns whose primary commercial streets had most of their storefronts empty a few years ago, and now have 80 percent of them occupied. These are not the merchants of the 1950s; they are not selling hardware or groceries or men’s socks. They are niche merchants, selling unusual items or providing a personal shopping experience that retail malls are unable to provide.

But whatever they sell, they represent a revival of genuine local commerce. In Sioux Falls one can detect signs of this revival even in such unlikely places as the banking business. On the corner of 11th and Phillips, in a brand-new red brick building, is the Dacotah Bank. It looks like the two giants down the street, but in fact it is something entirely different. It is an experiment launched by a country bank from the small town of Huron, 100 miles away, hoping to take advantage of the big banks’ growing reputation for sterile impersonality. Then there is Founders Bank, a venture backed by affluent physicians hoping to capture some of the medical trade.

All of these upstarts are essentially selling the same thing: relationships. “The big banks don’t care anymore,” they tell customers. “We care about you.” Deerfield Bank, another upstart, hired two doormen, Bob and Ossie, just to greet the customers and make small talk with them. The president of Dacotah Bank, David Bangasser, grills hot dogs on the sidewalk at noon on Fridays. “Does it look
stupid for the bank president to be out there grilling hot dogs?” he asks, and then he gives the answer: Who cares? His bank has a point to make, and they will make it any way they can.

Not all of the newcomers will succeed; there are simply too many of them, with too little capital. Even Dacotah Bank, considerably better financed than most, would be in trouble if the giants decided to play genuine hardball and cut their spread on interest rates down to a point or two. So the upstarts are playing a very chancy game. But what matters most about the banking competition is the mere fact that it is taking place. Everyone on Phillips Avenue appreciates the prosperity of the moment, and yet everybody also knows that something is missing. The missing element is relationship. It is a word that every business on the street is eager to use.

On the corner of Phillips and 10th is the old Eastwold Drug Store, now renamed Statz Drug. Steve Statz and his wife, Julie, bought it a couple of years ago from a pharmacist-owner who was losing money. Statz, like many of the new proprietors on Phillips Avenue, is trying to prove something. His family has been running drug stores since 1915, when his grandfather set up shop in the little town of Parkston, an hour west of Sioux Falls. The Statz family business has changed with the years as it has had to, opening up near the malls on 41st Street and branching out into home health care and equipment rental. But Statz has wondered for years if he could re-create an old-fashioned family store downtown, a walk-in place with a soda fountain and a friendly, patient pharmacist.

So he is trying. Whether it will work remains to be seen. Any effort to revive a family-owned drug store might seem like a foolish move. “We can’t make any money competing with Wal-Mart on price,” says Statz. “If you try to go head to head with these people, you lose your shirt.” Nor can a family drug store compete very well for labor. Pharmacy school graduates can go to work for Wal-Mart, Walgreen’s, or one of the other giants at an annual salary of $50-60,000 for a 40-hour week. Steve Statz can’t afford to pay them that.

But he is doing something that the chain store pharmacists don’t do—are all but prevented from doing—and that is cultivating a relationship with the customer. The chain pharmacists crank out prescriptions so fast they scarcely have time to talk to the person
across the counter, let alone inquire about personal problems. The pharmacists at Statz make conversation with the customers. They do compounding and mixing of remedies, the way old time druggists did but modern supermarket pharmacies generally will not. And unlike the chains, they deliver.

**Saving Downtown: A Little Irony Never Hurts**

As the malls opened in the 1960s and 1970s, 41st Street was thriving, populated largely by the businesses that had fled downtown. In the mid-1970s, copying other communities, Sioux Falls tried converting Phillips into a pedestrian mall to save it. That move was a disaster. Unable to drive down Phillips or park along the street, people stopped coming there at all. By 1980, 40 percent of the retail space was empty.

Over on 41st Street, after years of wooing by Empire Mall, the glitzier chains like The Limited and Eddie Bauer finally decided in the early 1990s to come to Sioux Falls. By the end of 1993 the big national stores had all but invaded Empire Mall. But as they did, the rivalry with Phillips Avenue began to change. While Empire was never a locally owned institution, at least the tenants were local. Then, within the space of a few months, that ceased to be true. Once 41st Street became attractive to the Gap and Victoria’s Secret, the rents rose too high for the homegrown merchants. One by one, they disappeared.

More than that, the clientele and image of the mall changed as well. On weekends Empire began attracting huge crowds from rural South Dakota and from out of state, and generated messy traffic jams. Sioux Falls residents began advising each other to stay away on Saturdays—“It’s all farmers and teenagers.” As a result, almost by default, Phillips Avenue began to reclaim its position as the hub of local community. It also began to turn upscale. Now on an ordinary Saturday morning the parking lots at Empire Mall are full of RVs and pickups. But the Volvos are downtown. They belong to doctors buying expensive camping equipment at Great Outdoors, or Citibank managers browsing at the Irish import store or having lunch at Minerva’s.

Phillips Avenue hasn’t become quaint or gentrified; it’s about as dowdy looking as it ever was. A few conspicuous eyesores, like the State Theater, vacant for more than a decade, serve as reminders that

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there is still a great deal of ground to make up. But it isn’t difficult to see what’s happening. Downtown shop owner Jeff Danz, sipping a dark roast coffee at a table in his cafe, sees it in many places besides Sioux Falls. “Downtowns will resurface upscale,” he says. “The malls will be all big box. They will be the nuts and bolts of commercial life. We’re going to become cool.”

The revival of downtown Sioux Falls has been a patchy sort of revival, to say the least. There are many products that cannot profitably be sold there, many small but important economic transactions that are not going to take place there anytime soon. No one is going to open up a grocery or a hardware store on Phillips Avenue in the next few years. Still, it is a genuine revival, and it parallels the changes currently taking place in communities all over the country, in cities larger than Sioux Falls and in much smaller towns as well.

The history of efforts to revive downtown commercial corridors is one of failure: from pedestrian shopping malls and federally subsidized hotel-convention center projects to the replacing of older shopping blocks with suburban-style malls and, in a few cases, the bulldozing of entire downtowns and building of malls and parking lots on the empty ground. Now, though, an increasing number of communities have switched to a strategy of historic preservation, and this has been demonstrably more successful. Towns and cities that considered their Victorian shopping districts to be eyesores a decade ago are now promoting them as tourist attractions, and drawing large weekend crowds. At the same time, nearly every decent-size community has a strip mall that is half-vacant or more. Many of these shopping-centers look as dilapidated and obsolete as the most forlorn small town Main Street.

But in the end, as even the most ardent preservationists concede, it is not physical preservation or any physical features at all that bring an urban retail corridor to health. It is the return of a commerce based on human interaction, on stable relationships, on the small comforts that derive from the intercourse of buyer and seller, professional and client, week after week and year after year, during all the seasons of ordinary life. Those relationships have eroded in recent times, but they are starting to return, for the simple reason that people realize what has been lost. That’s the important communitarian lesson that Phillips Avenue and its counterparts across America can teach us.
Mark Twain once reminded us that “to do right is noble; to advise others to do right is also noble and much less trouble for yourself.” For too many lawyers, the issue of pro bono service reflects too wide a gap between professional rhetoric and professional practice. Bar ethical codes have long maintained that all lawyers have obligations to assist individuals who cannot afford counsel. Yet the percentage of lawyers who actually do so has remained dispiritingly small. Recent estimates suggest that most attorneys do not perform significant pro bono work, and that only between 10 and 20 percent of those who do are assisting low-income clients. The average for the profession as a whole is less than half an hour per week. Few lawyers come close to satisfying the American Bar Association’s (ABA) Model Rules, which provide that “a lawyer should aspire to render at least 50 hours of pro bono public legal services per year,” primarily to “persons of limited means or to organizations assisting such persons.”

The bar’s failure to secure broader participation in pro bono work is all the more disappointing when measured against the extraordinary successes such work has yielded. Many of the nation’s landmark public interest cases have grown out of lawyers’ voluntary contributions, and for low-income clients, pro bono programs are crucial in meeting basic survival needs. For lawyers themselves such work is similarly important in giving purpose and meaning to their professional lives. Our inability to enlist more attorneys in public service represents a significant lost opportunity for them as well as for the public.
We have missed similar opportunities with law students. In 1996, the American Bar Association amended its accreditation standards to call on schools to “encourage students to participate in pro bono activities and to provide opportunities for them to do so.” These revised ABA standards also encourage schools to address the pro bono obligations of faculty. Despite such initiatives, pro bono still occupies a relatively marginal place in legal education. Although most law schools support pro bono in principle, only about 10 percent require any service by students and only a handful impose specific requirements on faculty. At some of these schools the amounts demanded are quite minimal: less than 20 hours by the time of graduation. While almost all institutions offer voluntary programs, their scope and quality vary considerably. About a third of schools have no law-related pro bono projects or have projects that, when combined, involve fewer than 50 participants. In others, only a small minority of each class is involved. In short, most students do not have public service in law as part of their educational experience.

How to enlist more lawyers and law students in pro bono services represents one of the greatest challenges for the American legal profession. The discussion that follows gives a brief overview of the rationale for pro bono work and the strategies—mandatory or voluntary—most likely to promote it.

The Rationale for Pro Bono

The primary rationale for pro bono contributions rests on two premises: first, that access to legal services is a fundamental need, and second, that lawyers have some responsibility to help make those services available. Access to law is a right that protects all other rights. It is particularly critical for the poor, who often depend on legal entitlements to meet basic needs such as food, housing, and medical care. Moreover, social science research confirms that public confidence in the legitimacy of legal processes depends heavily on opportunities for direct participation. In most circumstances, those opportunities are meaningless without access to legal assistance. Our justice system is designed by and for lawyers, and lay participants who attempt to navigate without counsel are generally at a disadvantage. Thus, inequalities in legal access compound other social inequalities and undermine our commitments to procedural fairness and social justice.
While most lawyers acknowledge that access to legal assistance is a fundamental interest, they are divided over whether the profession has some special responsibility to help provide that assistance, and if so, whether the responsibility should be mandatory. One contested issue is whether attorneys have obligations to meet fundamental needs that other occupations do not share. According to some lawyers, if equal justice under law is a societal value, society as a whole should bear its cost. The poor have fundamental needs for food and medical care, but we do not require grocers or physicians to donate their help in meeting those needs. Why should lawyers’ responsibilities be greater?

One answer is that the legal profession has a monopoly on the provision of essential services. Lawyers have special privileges that entail special obligations. Attorneys in the United States have a much more extensive and exclusive right to provide legal assistance than attorneys in other countries, and the American bar has closely guarded that prerogative. Restrictions on lay competition have helped to price services out of the reach of many consumers. Under these circumstances, it is not unreasonable to expect lawyers to make some pro bono contributions in return for their privileged status. Nor would it be inappropriate to expect comparable contributions from other professionals who have similar monopolies over the provision of critical services.

An alternative justification for imposing special obligations on lawyers stems from their special role in our governance structure. As a New York bar commission report explained, lawyers provide “justice [. . .] nearer to the heart of our way of life . . . than services provided by other professionals. The legal profession serves as indispensable guardians of our lives, liberties and governing principles.” Because lawyers occupy such a central role in our justice system, there is also particular value in exposing them to how that system functions, or fails to function, for the have-nots. Pro bono work offers many attorneys their only direct contact with what passes for justice among the poor. To give broad segments of the bar some experience with poverty-related problems and public interest causes may lay critical foundations for change.

A final justification for pro bono work involves its benefits to lawyers individually and collectively. Those benefits extend beyond
the enormous personal satisfaction that can accompany such work. Particularly for young attorneys, pro bono activities can also provide valuable training, trial experience, and professional contacts. Through such activities lawyers can develop capacities to communicate with diverse audiences and build problem-solving skills. Involvement with community groups, charitable organizations, and public interest causes is a way for attorneys to expand their perspectives, enhance their reputations, and attract paying clients. It also is a way for the bar to improve the public standing of lawyers as a group.

For all these reasons, the vast majority of surveyed lawyers believe that the bar should provide pro bono services. However, as noted earlier, only a minority in fact offer such assistance and few of their efforts aid poor clients. The reasons do not involve a lack of need. Studies of low-income groups find that over four-fifths of their individual legal problems remain unaddressed, and many collective problems go unremedied. Yet although many lawyers acknowledge the need for greater access to legal assistance, they generally do not view pro bono requirements as an appropriate response.

**Pro Bono Requirements: A Response to Critics**

Opponents to mandatory pro bono service raise both moral and practical objections. As a matter of principle, some lawyers insist that compulsory charity is a contradiction in terms. From their perspective, requiring service would undermine its moral significance and compromise altruistic commitments.

There are several problems with this claim, beginning with its assumption that pro bono service is “charity.” As the preceding discussion suggested, pro bono work is not simply a philanthropic exercise; it is also a professional responsibility. Moreover, in the small number of jurisdictions where courts now appoint lawyers to provide uncompensated representation, no evidence indicates that voluntary assistance has declined as a result. As to lawyers who do not volunteer but claim that required service would lack moral value, Georgetown law professor David Luban has it right: “You can’t appeal to the moral significance of a gift you have no intention of giving.”

Opponents’ other moral objection to mandatory pro bono contributions involves the violation of lawyers’ own rights. From critics’
vantage, conscripting attorneys is a form of “involuntary servitude” and a taking of property without just compensation.

Neither the legal nor the moral basis for such objections is convincing. A well-established line of precedent holds that Thirteenth Amendment prohibitions extend only to physical restraint or a threat of legal confinement, and that uncompensated public service requirements are permissible as long as the amounts are not unreasonable. From a moral perspective, requiring the equivalent of an hour a week of uncompensated assistance hardly seems like slavery. Maryland law professor Michael Millemann puts the point directly:

It is surprising, surprising is a polite word, to hear some of the most wealthy, unregulated, and successful entrepreneurs in the modern economic world invoke the amendment that abolished slavery to justify their refusal to provide a little legal help to those who in today’s society, are most like the freed slaves.

The stronger arguments against pro bono obligations involve pragmatic rather than moral concerns. Many opponents who support such obligations in principle worry that they would prove ineffective in practice. A threshold problem involves defining the services that would satisfy a pro bono requirement. If the definition is broad and encompasses any charitable work for a nonprofit organization or needy individual, then experience suggests that poor people will not be the major beneficiaries. Most lawyers have targeted their pro bono efforts to friends, relatives, or matters designed to attract or accommodate paying clients, such as hospitals and museums. By contrast, if a pro bono requirement is limited to the low-income clients given preferred status in the ABA’s current rule, then that definition would exclude many crucial public interest contributions, such as work for environmental or civil rights organizations. Any compromise effort to permit some but not all charitable groups to qualify for pro bono credit would bump up against charges of political bias.

A related objection to mandatory pro bono requirements is that lawyers who lack expertise or motivation to serve underrepresented groups will not provide cost-effective services. From critics’ perspective, having corporate lawyers dabble in poverty cases is an unduly expensive way of providing what may be incompetent or insensitive assistance. The performance of attorneys required to accept uncom-
pensated appointments in criminal cases does not inspire confidence that unwillingly conscripted practitioners would provide adequate representation. And requiring all attorneys to contribute minimal services of largely unverifiable quality cannot begin to satisfy this nation’s unmet legal needs. Worse still, opponents argue, token responses to unequal access may deflect public attention from the fundamental problems that remain and from more productive ways of addressing them. Preferable strategies might include simplification of legal procedures, expanded subsidies for poverty-law programs, and elimination of the professional monopoly over routine legal services.

Those arguments have considerable force, but they are not as conclusive as critics often assume. It is certainly true that some practitioners lack skills and motivation to serve those most in need of assistance. But the current alternative is scarcely preferable. If a matter is too complex for a nonspecialist lawyer, then those who cannot afford any attorney are unlikely to do better on their own. To be sure, providing additional government subsidized legal aid by poverty lawyers would be a more efficient way of increasing services than relying on reluctant dilettantes. But the budget increase that would be necessary to meet existing demands does not seem plausible in the current political climate. Nor is it likely, as critics claim, that requiring pro bono contributions would divert attention from the problem of unmet needs. Whose attention? Politicians who have succeeded in curtailing legal aid funds do not appear much interested in increasing representation for poor people, whether through pro bono service or government-subsidized programs. And as earlier discussion suggested, exposing more lawyers to the needs of poverty-stricken communities might well increase support for crucial reform efforts.

Moreover, mandatory pro bono programs could address concerns of cost-effectiveness through various strategies. One option is to allow lawyers to buy out of their required service by making a specified financial contribution to a legal aid program. Another possibility is to give credit for time spent in training. Many voluntary pro bono projects have effectively equipped participants to provide limited poverty-law services by offering relatively brief
educational workshops, well-designed materials, and accessible back-up assistance.

Inevitable Trade-offs

Of course, the capacities of even the best designed pro bono programs—volunteer or mandatory—should not be overstated. By the time individuals launch a legal career it is generally too late to alter certain personal traits and experiences that affect public service motivations. If these formative influences are lacking, pro bono programs may have limited impact.

Yet while the potential effectiveness of such programs should not be overestimated, neither should it be undervalued. Well-designed strategies by law schools, bar associations, and law firms could significantly affect pro bono commitments. A wide array of research indicates that people who receive a specific request for aid, or direct personal exposure to the needs of others, have much higher rates of assistance than those who do not. Calling on lawyers to provide services, and offering opportunities that match their interests, is likely to increase participation. Providing face-to-face exposure to the human costs of social problems could prove similarly important. As Arthur Koestler put it, “Statistics don’t bleed.” Pro bono commitments can be further reinforced by educational efforts that focus attention on the urgency of unmet needs and on the profession’s obligation to respond. Other incentives could include awards, publicity, recognition on students’ academic transcripts, and credit toward lawyers’ billable hour requirements. The point of all these efforts should be to help participants see pro bono service as a crucial part of their professional identity.

How effective these strategies would prove in motivating lawyers and law students is difficult to predict. To determine whether mandatory pro bono programs make sense we need more experimentation and more research on the few local programs now being administered. But in the absence of such data there is a strong argument for trying pro bono requirements, even if they cannot be fully enforced. Most obviously, such requirements would make a failure to contribute services morally illegitimate, and reinforce the message that such contributions are not only a philanthropic opportunity, but
also a professional obligation. Requiring service would also support lawyers who want to participate in public interest projects but work in organizations that have failed to provide adequate resources or credit for these efforts. As to lawyers who have no interest in participating, a rule that allowed financial contributions to substitute for direct service could materially assist underfunded legal aid organizations. And at least some individuals who would participate only under a mandatory but not voluntary program are likely to become converts to the cause and to provide assistance beyond what a minimum requirement would demand.

The potential disadvantages of compelling service are equally clear. By diminishing participants’ sense that they are acting for altruistic reasons, a pro bono requirement could erode commitment and discourage some individuals from contributing above the prescribed minimum. And if adequate programs are not in place to train participants, accommodate their interests, and monitor their performance, the results could be unsatisfying for clients as well as participants.

Similar trade-offs are likely under voluntary pro bono initiatives. Their advantages are readily apparent. By reinforcing participants’ sense of altruism, such programs may foster deeper moral commitments than mandatory approaches. In addition, while those compelled to serve may lack adequate choices or motivation, those who volunteer are likely to pick an area of practice where they are competent or wish to become so. On the other hand, if purely elective programs fail to attract widespread participation they undermine the message that pro bono service is a professional responsibility. In the absence of a formal requirement, some law firms and law schools may remain unwilling to provide appropriate pro bono resources or credit. And individuals who might learn most from direct exposure to unmet needs may be least inclined to volunteer.

Any adequate assessment of these trade-offs will require much more comparative review of mandatory and voluntary programs than is currently available. However, the demonstrated limitations of voluntary programs in attracting widespread involvement argue for more experimentation with mandatory alternatives.
Starting with Students

The primary justifications for pro bono service by law students parallel the justifications for pro bono service by lawyers. Most leaders in legal education agree that such service is a professional responsibility and that their institutions should prepare future practitioners to assume it. Advocates of law school pro bono programs believe that public service experience as a student encourages future involvement, and that it has independent educational value. What limited evidence is available supports those views, although it is by no means conclusive. Schools with pro bono requirements have found that between two-thirds and four-fifths of students report that their experience has increased the likelihood that they will engage in similar work as practicing attorneys. However, no systematic studies have attempted to corroborate such claims by comparing the amount of pro bono work done by graduates who were subject to law school requirements and graduates who were not. Nor do we have research comparing the effectiveness of such required programs with well-run volunteer opportunities.

Yet there are reasons to support pro bono in law schools whatever its effects on later public service. As stated above, these initiatives have independent educational value. Like other forms of clinical and experiential learning, participation in public service helps bridge the gap between theory and practice, and enriches understanding of how law relates to life. For students as well as beginning lawyers, pro bono work often provides valuable training in interviewing, negotiating, drafting, problem solving, and working with individuals from diverse backgrounds. Aid to low-income clients provides exposure to the urgency of unmet needs and to the law’s capacity to cope with social problems. Students can also get a better sense of their interests and talents, as well as a focus for further coursework and placement efforts.

Despite these benefits, only about a quarter to a third of students participate in law-related pro bono programs. In addition, average time commitments are quite modest and often seem intended primarily as resume padding. Yet about two-thirds of law school deans report satisfaction with the level of pro bono participation at their schools. Given the absence of involvement among most students and
the absence of policies or data concerning faculty, that level of satisfaction is itself somewhat unsatisfying. But it is scarcely surprising. Why should deans see a problem if no one else does? And at most institutions, no one is complaining. Nor is the extent of any problem plainly visible. ABA accreditors do not ask for specific information on pro bono contributions by students and faculty. The lack of this information makes it easy for administrators to draw unduly positive generalizations from involvement that is easily visible and especially vivid. High profile cases by faculty or student clinics, or widespread participation in public interest fund-raising events, are likely to skew perceptions in positive directions.

Similarly, although most alumni and central university administrators undoubtedly support public service in principle, they have not translated rhetorical support into resource commitments. Public service initiatives generally seem less pressing than other budget items more directly linked to daily needs and national reputations. National rankings, such as those by *U.S. News and World Report*, have become increasingly important. And not only are pro bono opportunities excluded from the factors that determine a school’s rank, they compete for resources with programs that do affect its position.

Meeting these challenges is no small task, and appropriate strategies will vary across institutions. Designing an effective program requires schools to assess their own priorities, resources, community networks, faculty support, and student culture. But certain strategies are likely to prove beneficial no matter what kind of program is in place.

The most obvious and essential initiatives must come from law school administrations. They need to provide adequate resources, recognition, and rewards for public service. At a minimum, as the Commission on Pro Bono and Public Service Opportunities of the Association of American Law Schools (AALS) has recommended, law schools should seek to make available for every student at least one well-supervised pro bono opportunity and ensure that the great majority of students participate. The AALS and ABA should also require specific information about pro bono participation as part of law school accreditation and membership review processes.
Moreover, pro bono strategies need to be part of a broader effort to increase professional responsibility for public interests. As research on legal education has long noted, the “latent curriculum” at most law schools works against that sense of responsibility. Concerns regarding legal ethics and access to justice are not well integrated in core courses. Traditional teaching methods offer a steady succession of hard cases and doctrinal ambiguities that leave many students skeptical at best and cynical at worst: “There is always an argument the other way and the devil often has a very good case.” Legal coursework too often seems largely a matter of technical craft, divorced from the broader concerns of social justice that led many students to law school.

Countering these forces will require a substantial commitment; public service initiatives are only part of the reform agenda necessary in legal education. Similarly, increases in lawyers’ pro bono work are only part of the answer to the nation’s unmet legal needs. Yet while we should not overstate the value of public service initiatives, neither should we overlook their potential. As City University of New York Law School Dean Kristin Glen notes, exposing individuals to pro bono and public interest opportunities “reinforces their best instincts and highest aspirations.” By making those opportunities a priority, lawyers and legal educators can reinforce the same aspirations in themselves.

Not Basic to Some

“There’s a lot of talk about self-esteem these days. It seems pretty basic to me. If you want to feel proud of yourself, you’ve got to do things you can be proud of.”

Oseola McCarty, Mississippi washerwoman who gained fame by donating $150,000 to the University of Southern Mississippi
Defending the “American People”
Anna Greenberg

“Perhaps over time, the public will see things for what they are. But as it is, there is no escaping the fact that Bill Clinton’s Year of Lies—told and re-told, not believed but accepted—has been an ignoble moment for a great people.”

— William J. Bennett

Condemnations of the views of the American public, with which we were flooded during the Clinton/Lewinsky affair, are neither new nor surprising. Scholars, pundits, and policymakers have long bemoaned the vagaries with which the public reacts to scandals, international incidents, and partisan bickering. They note that the public is cynical about and distrustful of our political institutions, yet simultaneously ignorant of policy details. They criticize the public’s inconsistent demands for bigger and smaller government, pork barrel spending and lower taxes, and a right to privacy coupled with the regulation of social mores. Political theorist Jeffrey Friedman goes so far as to downplay the importance of elections, asserting that they should not be considered mandates since the majority of voters are only “dimly aware” of candidates’ philosophies and policy positions.

Certainly it is not difficult to find evidence supporting the claims that Americans know nothing about politics, change their minds easily, and hold ideologically contradictory policy positions. As Larry Bartels tells us, “the political ignorance of the American voter is one of the best documented data in political science.” But what if the real problem stems from the way we conduct polls and from the elites who sit in judgment of the public? In other words, perhaps the empirical truths that seem rather damning of the typical voter are really just artifacts of the process.
What’s Wrong with the Public

There are three basic theses that underlie the standard critique of public opinion: the ignorance thesis, the irrationality thesis, and the fickleness thesis. I will examine each in turn and then discuss why we might be skeptical about them.

The Ignorance Thesis. A recent Washington Post headline declared that Americans have “Not A Clue,” indicating that they fail to understand how well our country is doing (e.g., the crime rate is actually falling, the economy is performing well, and teenage pregnancy is declining). An extensive review of national sample survey data in What Americans Know about Politics and Why It Matters shows that in every knowledge domain, citizens on average score below the 50 percent mark. The authors note, for instance, that in 1974 only 22 percent of America’s citizens could identify Gerald Ford’s party; in 1985 only 31 percent of the public could define affirmative action; and in 1988 only 46 percent of our nation could point out Japan on a map.

Bemoaning our collective ignorance, in fact, is a venerated tradition. As Walter Lippmann wrote in his 1922 classic The Phantom Public:

We must assume as a theoretically fixed premise of popular government that normally men as members of a public will not be well informed, continuously interested, nonpartisan, creative or executive.... We cannot, then, think of public opinion as a conserving or creating force directing society to clearly conceived ends....

As such, Lippmann and others contend, we cannot expect a well-informed public to offer informed views, let alone a coherent mandate to our political leadership.

The Irrationality Thesis. Do Americans support contradictory and inconsistent policy positions? Many think so. The stability of, or even improvement in, President Clinton’s job approval ratings in the wake of the Lewinsky scandal sparked outrage and disbelief among pundits and opinion makers. For many, it was inconceivable that the public could condemn prevarication and adultery, yet support his performance as president. Evidence abounds that the public supports ideologically contradictory policies such as increases in domestic spending on the social safety net and, simultaneously, cuts to the federal budget deficit and the elimination of social welfare programs.
This sort of irrationality raises doubts about the existence of a coherent belief system in the general public. The foundation of this claim is found in Philip Converse’s classic, “The Nature of Belief Systems in the Mass Public,” in which the author argues that he finds no evidence of attitude “constraint,” or beliefs logically tied together by ideological constructs such as conservatism or liberalism. With the exception of party identification, moreover, he finds no temporal stability on even highly contested issues. As he puts it, “large portions of an electorate do not have meaningful beliefs, even on issues that have formed the basis for intense political controversy among elites for substantial periods of time.”

The Fickleness Thesis. Analysts heralded Pennsylvania’s election of Harris Wofford to the U.S. Senate in 1990 as a sign of popular demand for reform of the health care system. The issues of access, quality of care, and the affordability of health care occupied a central part of the Clinton campaign agenda and administration. But this was soon followed by a hemorrhaging of support for reform efforts in the face of negative advertising by the insurance industry and other opponents. David Whitman, author of The Optimism Gap, asserts that Americans’ support for policies such as health care reform is “mile-wide, inch-deep” and that “the voters’ commitment to such civic issues is shallow.”

This view is rooted in a theoretical perspective called the “elite” theory of public opinion formation. As John Zaller argues in his seminal work The Nature and Origin of Mass Opinion, people do not articulate predetermined responses to survey questions. Rather, survey respondents generate answers “off the top of their heads” or “construct opinion reports in response to the particular stimulus that confronts them.” As he sees it, while Americans do hold basic political predispositions such as party identification, their views are heavily influenced by the content of elite debate and their ability to comprehend and assimilate this political information.

What’s Wrong with the Elites

Is this a fair and accurate rendering of the state of public opinion in the United States? I believe the answer is ‘no.’ There are reasons to believe that the pathologies of American public opinion are a product of the tools we use to conduct our polls and of the growing gap between the way the elite and the mass public think about politics. In
other words, survey instruments do a poor job of capturing the complexity of how the mass public thinks about politics, and the partisan categories and ideological language we employ in our surveys and political discourse frequently make little sense to a public accustomed to thinking about politics and policy-making in shades of gray rather than black and white.

Consider the ignorance thesis. The measures of political knowledge employed are usually “factual” in nature. In other words, surveys ask people to identify their representatives and local officials or answer basic civic questions such as the number of electors in the electoral college. This measurement choice begs the question, “Is it fair to expect someone without children to know the name of the head of the local school board?” Moreover, is the identification of politicians the most important political fact people should care about?

There is evidence, in fact, that the public does understand political issues when they are relevant to their daily lives, and have a fairly sophisticated way of talking about them. Jennifer Hochschild demonstrates this political facility in her work, What’s Fair. By employing in-depth, lengthy interviews and allowing respondents to use their own words, her respondents were able to discuss concepts such as the redistribution of wealth and policies toward the poor. She argues that people understand such complex issues by relating them to the circumstances of their own lives, for instance their financial situation or occupational status. More recent research conducted by Steven Kull and I.M. Destler shows that the public can express coherent views in areas traditionally considered a repository of American ignorance—for example, foreign affairs. They show in their book, Misreading the Public, that the American public expresses internationalist views toward foreign involvement, despite the assumptions policymakers make about the public’s isolationist tendencies.

The fact that people do not retain the details of policy minutiae may represent a rational response to “information costs.” As Anthony Downs observes in his classic An Economic Theory of Democracy, acquiring information about politics takes time and resources; people quite rationally rely on heuristics or shortcuts in order to efficiently make political decisions. Information shortcuts can be supplied by local opinion leaders including family members, coworkers, or friends, eliminating the need to carry around the details of policy debates. For
example, in America’s conservative churches, clergymen alerted their congregations about the “partial birth abortion” debate, while religiously conservative interest groups supplied candidate score cards to inform parishioners how their representatives voted on the issue. Parishioners need not seek out information or acquire policy expertise on abortion because they have trusted sources to communicate with them on issues they care about.

The “irrationality” and “fickleness” evident in survey response, moreover, may reflect the fact that Americans are basically moderate in their political beliefs. Alan Wolfe, in his book One Nation After All, shows that “middle-class” Americans express middle-of-the-road views on a range of policy issues that deeply divide political elites. He finds that middle-class Americans neither condone homosexuality nor want to deny gays their basic civil rights. They abhor welfare dependency, but want to preserve the social safety net. The abortion debate also provides a nice example of this political moderation on the part of the American public. A bare majority of the electorate can be characterized as pro-choice though this support is highly dependent on the question wording. Yet, when presented with a variety of circumstances under which a woman might decide to abort a fetus, such as economic constraints or the mental health of the mother, support for abortion declines precipitately. One could interpret these data as indicating shallowness of support for abortion—or, instead, as support for the legal right combined with an aversion to a procedure perceived to be undertaken lightly.

While Americans demonstrate moderation, America’s political parties are becoming ideologically extreme. As David King has shown, there is increasing party unity in Congress and a concurrent decline in the number of centrist legislators. King finds, moreover, that party activists embrace ideological labels and resist challenges to their core beliefs in important political battles such as convention platform fights. At the same time, voters are less partisan than in the past and less likely than activists are to call themselves liberal or conservative. This ideology gap means that while terms such as “conservative” or “liberal” connote substantive meaning to elites, they have little relevance to the general public. As E.J. Dionne Jr. puts it in Why Americans Hate Politics, “The false choices posed by liberalism and conservatism make it extremely difficult for the perfectly obvious preferences of the American people to express themselves in our politics.”
Despite the complexity of gauging ideology, public opinion in the aggregate is relatively stable over time. Benjamin Page and Robert Shapiro find relatively little change since the early 1970s on both domestic and foreign policy. They show, for example, opinion stability on issues ranging from support for education spending and fighting crime to opposition to funding foreign aid. More recently, President Clinton’s job performance ratings proved relatively immune to scandal and impeachment coverage, much to the amazement of the political and media establishment. (Which led Congressman Henry Hyde to declare: “Poll taking is an art, not a science.”) John Zaller, revising some of his claims, argues with respect to the Lewinsky scandal that the public is more impervious to media frenzies than he previously thought.

It is important, finally, to consider that public opinion research in the hands of political consultants is a tool for shaping public opinion. Sophisticated measurement techniques tap core values, prejudicial fears, and optimistic hopes, in an effort to discover how to sway, persuade, and convert. We should not be surprised, therefore, when the public shifts in response to campaigns designed to change its collective mind. The decline in support for health care reform is instructive in this regard. The invocation of “more bureaucracy” and “more government” by Republican policymakers and other opponents of reform contributed to a rightward shift away from the Clinton plan. Lawrence Jacobs and Robert Shapiro argue that rather than reflecting the public’s shallow commitment, declining support for health care reform rested precisely on the calculated understanding by the Republicans and the insurance industry that Americans are ambivalent about whether the government should be involved in health care—and, if so, to what degree. Public opinion, therefore, reflects the preferences and biases of the political class as much as it reflects the public’s own desires.

**Elites: Heal Thyselves**

It is ironic that many of the pathologies of the mass public lamented by policymakers and opinion leaders are, in part, a result of the incentives elites have to obscure their positions, their efforts to shape opinion to their own ends, and the standard measurement techniques they employ. We worry that our democracy rests on a shaky foundation of collective ignorance, apathy, and cynicism, while
ignoring the ways our representatives and political operatives are complicit in creating such a state of affairs. Instead of lamenting ignorance and irrationality, it is worth thinking about how to make politics relevant to the public. Then the compelling question becomes, “Do our policymakers and political leaders really want to incorporate these voices into our political debates?”
An Appeal to Hollywood

On July 21, a bipartisan coalition released an “Appeal to Hollywood,” a petition to the entertainment industry signed by more than 50 prominent Americans, including two former presidents and a Nobel Peace Prize winner (full list at end of text). The appeal is an effort of the Media Social Responsibility Project of The George Washington University Institute for Communitarian Policy Studies, in cooperation with the offices of William J. Bennett and Senators Sam Brownback, Kent Conrad, Kay Bailey Hutchison, Joe Lieberman, and John McCain. Patrick Glynn is the director of the project. Citizens can become signers of the appeal on-line at www.media-appeal.org or by printing their name, city, and state on a card or letter and sending it to Media Appeal, 2130 H St. NW, Suite 703, Washington, DC 20052. Thus far, nearly 5,500 have joined as cosigners of the appeal.

American parents today are deeply worried about their children’s exposure to an increasingly toxic popular culture. Events in Littleton, Colorado, are only the most recent reminder that something is deeply amiss in our media age. Violence and explicit sexual content in television, films, music, and video games have escalated sharply in recent years. Children of all ages are now being exposed to a barrage of images and words that threaten not only to rob them of normal childhood innocence, but also to distort their view of reality and even undermine their character growth.

These concerns know no political or partisan boundaries. According to a recent CNN-USA Today-Gallup poll, 76 percent of adults agree that TV, movies, and popular music are negative influences on
children. Seventy-five percent report that they make efforts to protect children from such harmful influences. Nearly the same number—73 percent—say shielding children from the negative influences of today’s media culture is “nearly impossible.”

Moreover, there is a growing public appreciation of the link between our excessively violent and degrading entertainment culture and the horrifying new crimes we see emerging among our young: schoolchildren gunning down their teachers and fellow students en masse, killing sprees inspired by self-indulgently violent films, teenagers murdering their babies only to return to dance at the prom.

Clearly, there is no simple causation at work here. Many factors are contributing to the crisis engulfing many of our children—negligent parenting, ineffective schools, divorce and family disintegration, and the ready availability of firearms. All are important, and all should be a part of our national conversation on this problem. But surely no one can argue that our entertainment culture should be exempt from the discussion.

Among researchers, the proposition that entertainment violence adversely influences attitudes and behavior is no longer controversial; there is overwhelming evidence of its harmful effects. Numerous studies show that degrading images of violence and sex have a desensitizing effect. Nowhere is the threat greater than to our at-risk youth—youngsters whose broken homes or disadvantaged environments make them acutely susceptible to acting upon impulses shaped by violent and dehumanizing media imagery.

Many factors, including the drive for profit in an increasingly competitive media marketplace, are contributing to the downward spiral in entertainment and the disappearance of even minimal standards.

In the past, the entertainment industry was more conscious of its unique responsibility for the health of our culture. For 30 years, television broadcasters lived by the National Association of Broadcasters (NAB) Television Code, which detailed broadcasters’ responsibilities to the community, to children, and to society and prescribed specific standards. For many years this voluntary code set boundaries that enabled television to thrive as a creative medium without causing undue damage to the bedrock values of our society.
In recent years, several top entertainment executives have spoken out, laudably, on the need for minimum standards and, more recently, on the desirability of more family-friendly programming. But to effect real change, these individual expressions must be translated into a new, collective affirmation of social responsibility on the part of the media industry as a whole.

As parents all of us, too, have a major responsibility to supervise our children’s access to the entertainment media—be it television, films, music, videos, video games, or the Internet. Allowing children unsupervised access to today’s media is the moral equivalent of letting them go play on the freeway. Parents should limit TV viewing hours. They should know what programs their child is watching, what music he or she is listening to, what films he or she is attending, what videos he or she is renting, what video games he or she is playing, and what web sites he or she is surfing on the Internet.

While most parents are concerned about the media’s influence, some, unfortunately, neglect these critical obligations. But today even the most conscientious parent cries out for help from an industry that too often abdicates its responsibility for its powerful impact on the young.

Therefore we, the undersigned, call upon executives of the media industry—as well as CEOs of companies that advertise in the electronic media—to join with us, and with America’s parents, in a new social compact aimed at renewing our culture and making our media environment more healthy for our society and safer for our children.

We call upon industry leaders in all media—television, film, music, video, and electronic games—to band together to develop a new voluntary code of conduct, broadly modeled on the NAB code.

The code we envision would (1) affirm in clear terms the industry’s vital responsibilities for the health of our culture; (2) establish certain minimum standards for violent, sexual, and degrading material for each medium, below which producers can be expected not to go; (3) commit the industry to an overall reduction in the level of entertainment violence; (4) ban the practice of targeting adult-oriented entertainment to youth markets; (5) provide for more accurate information to parents on media content while committing to the creation of
“windows” or “safe havens” for family programming (including a revival of TV’s “Family Hour”); and, finally, (6) pledge the industry to significantly greater creative efforts to develop good family-oriented entertainment.

We strongly urge parents to express their support for a new voluntary code of conduct directly to media executives and advertisers, whether through calls, letters, faxes, or e-mails, and by becoming signers of this appeal on-line at our website, www.media-appeal.org. And we call upon all parents to fulfill their part of the compact by responsibly supervising their children’s media exposure.

We are not advocating censorship or wholesale strictures on artistic creativity. We are not demanding that all entertainment be geared to young children. Finally, we are not asking government to police the media. Rather, we are asking the entertainment industry to assume a decent minimum of responsibility for its own actions and to take some modest steps of self-restraint. And we are asking parents to help in this task, not just by taking responsibility for shielding their own children, but also by making their concerns known to media executives and advertisers.

Hollywood has an enormous influence on America, particularly the young. By making a concerted effort to turn its energies to promoting decent, shared values and strengthening American families, the entertainment industry has it within its power to help make an America worthy of the Third Millennium. We, leaders from government, the religious community, the nonprofit world, and the private sector—and members of the entertainment community—challenge the entertainment industry to this great task. We appeal to those who are reaping great profits to give something back. We believe that by choosing to do good, the entertainment industry can also make good—and both the industry and our society will be richer and better as a result.
Signers:

Steve Allen
William J. Bennett, Co-Director, Empower America
David Blankenhorn, President, Institute for American Values
Sissela Bok, Distinguished Fellow, Harvard Center for Population Studies
Frederick Borsch, Bishop, Episcopal Diocese of Los Angeles
L. Brent Bozell III, Chairman, Parents Television Council
Senator Sam Brownback
Bill Bright, Founder and President, Campus Crusade for Christ
Jimmy Carter
S. Truett Cathy, CEO and Founder, Chick-Fil-A, Inc.
Lynne V. Cheney, Senior Fellow, American Enterprise Institute
Tim Collings, Professor, Technical University of British Columbia
Senator Kent Conrad
Stephen R. Covey, Co-Founder and Vice Chairman, Franklin Covey Company
Michael Cromartie, Vice President, Ethics and Public Policy Center
Mario Cuomo, Former Governor of New York
John J. Dilulio Jr., Professor of Politics, University of Pennsylvania
Don Eberly, Director, The Civil Society Project
Amitai Etzioni, Professor, George Washington University
Vic Faraci, Senior Vice President, Warner Brothers Records
Gerald R. Ford
Elizabeth Fox-Genovese, Professor of Humanities, Emory University
William Galston, Professor, University of Maryland
Mandell Ganchrow, M.D., President, Union of Orthodox Jewish Congregations
Norton Garfinkle, Chairman, Oxford Management Corporation
Robert George, Professor of Jurisprudence, Princeton University
George Gerbner, Professor of Telecommunications, Temple University
Patrick Glynn, Director, Media Social Responsibility Project, Institute for Communitarian Policy Studies, George Washington University
Os Guinness, Senior Fellow, The Trinity Forum
Robert Hanley, Founder and President, Entertainment Fellowship
Stephen A. Hayner, President, InterVarsity Christian Fellowship
Andy Hill, President of Programming, Channel One Network
Gertrude Himmelfarb, Professor Emeritus of History, City University of New York
Mark Honig, Executive Director, Parents Television Council
Wade F. Horn, President, National Fatherhood Initiative
James Davison Hunter, Professor of Sociology and Religious Studies, University of Virginia
Senator Kay Bailey Hutchison
Kathleen Hall Jamieson, Dean, Annenberg School for Communications, University of Pennsylvania
Naomi Judd
Jack Kemp, Co-Director, Empower America
Rabbi Daniel Lapin, President, Toward Tradition
Carol Lawrence
Thomas Lickona, Professor of Education, SUNY Cortland
Senator Joe Lieberman
Senator John McCain
E. Michael McCann, District Attorney, Milwaukee County, WI
Michael Medved, Film Critic
Thomas Monaghan, President, Ave Maria Foundation
Richard John Neuhaus, President, Institute on Religion and Public Life
Armand M. Nicholi, Jr., M.D., Clinical Professor of Psychiatry, Harvard Medical School
Michael Novak, Resident Scholar, American Enterprise Institute
Sam Nunn, Former U.S. Senator
Neil Postman, Professor, New York University
Alvin Poussaint, Director, Media Center, Judge Baker Children’s Center
General Colin Powell (ret.)
Eugene Rivers, Co-Chair, National Ten Point Leadership Foundation
Kevin Ryan, Director, Center for the Advancement of Ethics and Character, Boston University
General Norman Schwarzkopf (ret.)
Glenn Tinder, Professor of Political Science Emeritus, University of Massachusetts at Boston
C. DeLouise Tucker, Chair and Founder, The National Political Congress of Black Women
Joan Van Ark, Actress, Producer, Director
Jim Wallis, Editor, Sojourners, Convener, Call to Renewal
David Walsh, President, National Institute on Media and the Family
Pete Wehner, Executive Director of Policy, Empower America
Jerry M. Wiener, M.D., Emeritus Professor of Psychiatry and Pediatrics, George Washington University
Elie Wiesel, Professor in the Humanities, Boston University
James Q. Wilson, Emeritus Professor, UCLA
Alan Wolfe, University Professor, Boston University
Daniel Yankelovich, President, The Public Agenda
Legal Ethics and "Real” Ethics

Jonathan Groner


A criminal defense lawyer learns in confidence from his client, who is about to be tried for murder, that the client committed not only the crime he is charged with but also another brutal, and unsolved, slaying. A law firm associate is asked by her boss to write an opinion letter of dubious validity intended to convince the purchaser of a building that the firm’s client, which plans to sell the building, is not responsible for any toxic waste it may contain. An attorney employed by a corporation finds out that company executives know they are manufacturing an unsafe automobile—and that they plan to continue doing so despite objections from the engineers in the factory.

How should a lawyer respond to dilemmas of this type? For each of these conundrums the discipline known as legal ethics provides an answer that has been worked out by learned authorities and elucidated by the courts and by lawyers’ disciplinary bodies. But, as Richard Zitrin and Carol M. Langford note in their intriguing book, the answers are not always the ones that ordinary citizens who consider themselves ethical human beings would choose. Part of the reason for this is that each of these hypothetical cases, and many
similar ones that can easily be envisioned, present a conflict between important community-oriented values and a bedrock principle of legal ethics: the duty to represent the client zealously within the bounds of the law. “There is a palpable tension,” the authors write, “between the rules of legal ethics and other important principles of our society: telling the truth, being fair and compassionate, seeking justice, being courageous, acting as a moral human being.”

Under prevailing court rules and interpretations, clients, whether criminal defendants, property owners, or car makers, have always enjoyed the opportunity to hire lawyers whose loyalties run exclusively to them, and lawyers have been held to the standard that except in the most extraordinary of circumstances, the client is supposed to come first. This principle enshrines important social values—that everyone, especially the least powerful, is entitled to a champion, and that through the struggle between two zealous advocates the truth will likely emerge. Yet society also cherishes the goals of punishing and deterring crime, rewarding truth telling and preventing misrepresentations, and ensuring the safety of the public. Would the community be justified in asking lawyers occasionally to further, or at least not to hinder, those causes, even if they may conflict with the narrow interests of their clients? Questions like these help explain why many “moral” or “ethical” people may not agree with the answers that legal ethics supply.

The conventional answers of legal ethics, as Zitrin and Langford (both professors of legal ethics) point out, tilt in favor of the clients’ immediate needs. Client confidentiality and the right to counsel in a criminal case argue against disclosure of the past homicide in the first example above. In the second instance, the law firm associate cannot misrepresent facts or law, but in her letter about toxic waste she can and should vigorously press the client’s viewpoint if it has a degree of support in scientific literature. The corporate lawyer for the automaker can quit his job in protest, but it must be a silent protest; he may not issue a public outcry against corporate immorality. Blowing the whistle violates the confidentiality rules.

Zitrin and Langford, however, are not fully satisfied with the traditional answers. They cite with considerable interest, though not with full approval, the view of a well-known criminal law professor
who, years ago, proposed a new rule that would deem it “improper for an attorney who knows beyond a reasonable doubt the truth of a fact established in the state’s case to attempt to refute that fact through . . . evidence . . . or argument.” In other words, the client should not be entitled to the services of a lawyer who is prepared to argue a point that he knows beyond a reasonable doubt is false.

The line between zealous advocacy and the pursuit of falsehood was highlighted recently in the highly publicized trial of five New York City policemen in the station house brutalization of Abner Louima, a Haitian immigrant. The chief perpetrator, Officer Justin Volpe, was criminally charged with raping Louima analy with a wooden stick while another officer held him down. Volpe’s criminal defense attorney, Marvyn Kornberg, at first vociferously argued to the jury in the trial last May that Louima’s grave internal injuries, which required immediate surgery, resulted from consensual anal sex rather than from an assault with a blunt instrument—and indeed that the assault, as charged, was inconsistent with his injuries. Three weeks later, however, Volpe pleaded guilty to the crime, forsaking the “defense” of consent.

Kornberg’s arguments sparked a public outcry—as well as condemnation from lawyers for some of Volpe’s co-defendants. One was quoted in the New York Law Journal as saying that he “didn’t want to be in the same courtroom with Justin Volpe,” in view of Kornberg’s “outlandish and outrageous theories” that could have spilled over and led to jury convictions of the other defendants as well. But note: this was a tactical, rather than a moral, condemnation.

Kornberg did more than simply deny his client’s guilt. He advanced an alternative theory of the case that cast the complaining witness, Louima, in a sensationally false and (in the eyes of many) derogatory light. Later events made it clear that Kornberg had no basis for his allegations. It appears that he advanced the defense in the belief that no third-party witnesses would come forward to controvert it, and that the trial would eventually come down to Volpe’s word against Louima’s, a chance that Kornberg was willing to take. When other officers broke the traditional “code of silence” and testified against Volpe, the game was up and Kornberg folded his cards.
Is a criminal defendant entitled to a lawyer who will stoop to this kind of ploy, and how should society’s disapproval of it be registered? When Kornberg made the argument, the public condemnation was greater than the outrage in legal circles. But in the July 1999 issue of the New York Professional Responsibility Report, a new journal of legal ethics, Marvin Frankel, a former federal judge, argues that lawyers too need to be concerned about tactics of this type. Frankel writes that “the ill repute of our profession is not enhanced when a privileged few who can pay a retainer can purchase the unfettered imagination of lawyers to conceal the truth from jurors.” Noting that the code of legal ethics “supplies only limited or nugatory sanctions against such performances,” Frankel writes that the public outcry should serve lawyers “as a signal that we should do better.”

Frankel points out, in fact, that an existing provision of attorney disciplinary rules might prohibit certain extreme behavior such as Kornberg’s. A lawyer is not allowed to “state or allude to any matter . . . that will not be supported by admissible evidence.” Depending upon what Volpe told his lawyer about the events in the station house, that rule may apply here. But the broader considerations—the conflict between the needs of the client and the needs of society—require a good deal of additional thought.

Individual, Community, and Humanity: Marrying Liberalism and Republicanism

Ronald Beiner


Like many intelligent and thoughtful liberals, Richard Dagger thinks that the debates between liberals and communitarians or between liberals and civic republicans have posited a set of unattractively one-sided alternatives, and his purpose is directed towards trying to repair the breach. (There are antecedents for this project of
synthesizing liberalism and republicanism in the work of legal theorists such as Cass Sunstein and Lawrence Solum.) More particularly, Dagger thinks that critics of rights-based liberalism, while their criticisms of the excesses of rights discourse are partly warranted, are too quick to throw the baby out with the bathwater. So he wants to defend a less individualistic, more civic-minded notion of rights that allows us to retain the baby (the concept of rights) while getting rid of the bathwater (the community-busting intransigence that often accompanies rights claims).

The first step in the argument is to revise and enlarge the notion of autonomy so that it does not yield what Mary Ann Glendon calls “the rights-bearer as a lone autonomous individual.” Here Dagger does a good job of showing that we need to be socially equipped to live a self-governed life, and therefore the “lone autonomous individual” is a myth. Following a similar argument by Charles Taylor, the point here is not to offer a communitarian debunking of liberalism, but rather, to leaven the liberal idea of autonomy with communitarian insights.

Of course, the rights that concern Dagger are not legal rights bestowed by a particular state, but moral rights that apply to all human beings. How do we weigh the duties corresponding to these universal human rights (for instance, the right not to starve) against duties owed to citizens in our own political communities? That is, what is the moral relationship between (parochial) obligations to one’s fellow citizens and (universal) human rights asserted by human beings inhabiting other political communities? And are there reasons grounded in philosophical morality (if so, what are they?) to accord priority to civic obligations over universalistic obligations? These are questions that any theory of citizenship must address.

Dagger thinks he has a convincing answer to this conundrum. He defines political community as a cooperative enterprise where each citizen’s efforts to live an autonomous life depends on assistance lent, in a manifold variety of ways, by innumerable other members of one’s civic community. This results in the idea of a web of civic reciprocity according to which it is a matter of “fair play” (we could of course also call this a “sense of justice”) that we acknowledge the contribution that others make to our autonomy by working in turn to assist fellow
citizens in their efforts to live a more autonomous life. These civic obligations do not absolutely trump obligations to the rest of humanity, but they do provide prima facie reasons to give extra weight to what we owe our fellow citizens. The upshot is a theory of “republican liberalism” that tries to give equal weight to rights and responsibilities. “Republican liberalism ties individual rights to civic duties by way of reciprocity and fair play. Those who enjoy the benefits of a cooperative enterprise, such as the rights guaranteed by a political order, must also bear their share of the burdens of the enterprise.”

**Establishing, but Limiting, Obligation**

This theory of civic reciprocity at the same time makes available a theory of political obligation (a theory of why we are obliged to obey the laws that define the political order), since the system of legal norms that the state requires us to observe (for instance, with respect to citizens’ fiscal obligations to the state) is an institutional concretization of the web of reciprocity that Dagger associates with political community as a cooperative enterprise for mutual benefit. This argument is developed in opposition to philosophical anarchists and hyper-liberals who reject a general obligation to accept political authority. In contrast to more rigorously liberal (that is, voluntaristic) accounts of political obligation, such as that of A. John Simmons, Dagger insists that being bound to a political community as a cooperative scheme doesn’t rest upon a deliberate act of volition on the part of a contracting individual; rather, we “grow into” political communities where obligations develop as we are imperceptibly drawn into the web of civic benefits conferred by the political order.

Now thoroughgoing communitarians will be reluctant to make a theory of political obligation central to their thinking about political community because they see acts of civic engagement and solidarity as arising not from what one is (legally) obliged to do but from what one does spontaneously as expressing and fulfilling one’s collective identity. But Dagger thinks communitarians go too far here, in a way that imperils liberty and autonomy; he writes: “If a community is tightly knit, as it presumably must be to satisfy the constitutive conception [argued for by Michael Sandel], its standards and practices will likely admit little or no challenge. . . . The situated self may thus be as cramped and crippled as the Chinese lady’s foot to which
Mill referred in *On Liberty.*” To counter communitarian challenges to the strong emphasis placed upon individual autonomy within his account of civic membership, Dagger makes the point that being concerned with gains to one’s own autonomy and not only with civic duties needn’t entail an utter instrumentalization of political community. What we need, he says, is a vision of political community that “embraces both instrumental and constitutive elements” and that therefore both liberalizes communitarianism and communitarianizes liberalism. We should not be “forced to choose between a thoroughly instrumental vision within which everyone’s sole concern is ‘What’s in it for me?’ and a thoroughly constitutive vision within which everyone’s constant preoccupation is ‘doing what’s best for the group.’ There is a middle ground between these two visions.”

Once this more or less Rawlsian theoretical framework is laid out (Rawlsian because it defines political society in terms of fair conditions of social cooperation), Dagger goes on to discuss the obstacles to civic virtue as well as ways of enhancing civic cooperation. Dagger focuses on three main sets of problems: how to conceive policies in regard to education that would promote both civic virtue and autonomy; what strategies to pursue in order to increase political participation and combat political apathy; and how to cope with problems in the structure of modern urban life that prevent the city from being “the true home of citizenship.” Although Dagger doesn’t claim a full treatment of these issues, the aspects of “republican-liberal” politics that he does treat are discussed with clarity and insight.

Interestingly, in chapter 6 Rousseau gets enlisted as a republican liberal (as opposed to an illiberal republican, which is what he is generally taken to be) by means of an argument that Rousseau’s general will—identifying what one wills as a citizen in abstraction from what one desires as a private individual—”performs much the same function as” Rawls’s veil of ignorance. Also very interesting is the argument in chapter 11 that the Rawlsian version of liberalism is, contrary to what Rawls himself suggests, closer to perfectionist liberalism than to neutralist liberalism, and therefore Rawlsian liberalism “is strongly suggestive of republicanism,” even though Rawls himself would not necessarily rush to embrace this interpretation of his work. Evidently, if there is to be a “marriage” of liberalism and republicanism, then republicans like Rousseau will have to be shown to be more
liberal than they are generally taken to be, and liberals like Rawls will have to be shown to be more republican than they are generally taken to be.

The arguments in this book, both interpretive and analytical, are consistently careful, modest, astute, and helpful. The version of liberalism offered is certainly an attractive one, and Civic Virtues very effectively makes the point that the virtues of citizenship must be an abiding theme for all students of political philosophy, those who follow Rawls as much as those who follow Rousseau. Dagger’s book deserves to be read by all those who are interested in enlarging the boundaries of liberalism in the direction of a more communitarian politics.

What Men Need from Marriage
Linda J. Waite


Marriage in Men’s Lives is a courageous and innovative book. Courageous because it tackles a politically and socially charged issue—marriage as a social institution—at a time when texts on the family portray marriage as just one of any number of equally valuable lifestyle choices. Innovative because it looks closely at the ways in which a key social institution affects individuals: in this case, the ways in which marriage affects men.

Steven Nock, a professor of sociology at the University of Virginia, begins by discussing what he calls “normative marriage”—distinguished by free choice, maturity, heterosexuality, husbands as head of the household, fidelity/monogamy, and parenthood—and the role it plays in male self-understanding. Nock argues that adolescent boys face certain challenges in becoming men that adolescent girls do not face in becoming women. According to Nock, “masculinity is precarious and must be sustained in adulthood. Normative marriage does this. A man develops, sustains, and displays his mascu-
line identity in his marriage. The adult roles that men occupy as husbands are core aspects of their masculinity.” Put differently, the behaviors expected of married men as husbands, according to Nock, are the same behaviors expected of husbands as men. So getting married and successfully doing the things that husbands do allows men to achieve and sustain their masculinity.

If marriage provides a mechanism through which men establish and maintain their masculinity, Nock argues, marriage should have consistent and predictable consequences on men’s lives, and normative marriage will have different consequences than other forms of marriage. For evidence of the impact of marriage on men, Nock looks at their adult achievement, their involvement, participation, and engagement in social life and organizations, and their expressions of generosity or philanthropy. He argues that marriage causes men to become more successful, to participate in social life, and to become more philanthropic. This is a bold claim, one Nock tests by using data from a large national survey that tracks thousands of adolescents as they move through young adulthood, and combining the data with sophisticated statistical models to separate changes that accompany aging from those that happen uniquely in marriage. To measure men’s adult achievement, Nock examines annual income, annual weeks worked, and occupational prestige. Social participation is determined by analyzing time spent on housework, social contacts, and organizational involvement. Finally, Nock measures generosity with gifts to nonrelatives and loans to both relatives and nonrelatives.

The results, in brief, are as follows: In those categories measuring achievement, when men marry they rise on all measures. In the area of social participation, married men become more family-centered, spending more time with their relatives, less time with friends, and less time in bars. Marriage also increases men’s contact with church services and church events, and with coworkers. Finally, when it comes to generosity, married men give fewer and smaller gifts and loans to nonrelatives, and more and larger loans to relatives. In addition to these changes, Nock observed that with marriage, men also become somewhat more traditional (e.g., husbands spend less time doing housework than the same men did as bachelors).
As for the specific subcategory of “normative marriages,” Nock found that moves toward these marriages increase men’s achievements, social participation with family and religious organizations, and generosity to relatives above and beyond that which can be linked to marriage generally. Concurrently, movement toward normative marriages also creates a greater reduction in the time men spend on housework.

Thus we have a picture in which the increase in overall responsible behavior by men that marriage seems to engender is accompanied by a shift toward traditional gender roles. Nock acknowledges this criticism, one voiced most loudly by feminists. But while conceding that coercion and gender inequality underlie traditional marriage, he argues that the relationship should also be seen as one of dependency, and that dependency is not necessarily a problem in and of itself. Mutual dependency is a powerful cohesive force holding marriages together and increasing commitment, says Nock. In fact, marriage gets much of its power from the interdependency that allows each spouse to specialize. Thus arise certain questions: Can perceptions of inequality, typically women’s perceptions of powerlessness, be reduced without weakening or destroying the solidarity of marriage? And can marriage still serve to establish and reinforce men’s masculinity, which men do by being protectors and providers for their families, when men share the role of provider with their wives?

Nock answers these crucial questions in the affirmative, advocating a new, equitable model of marriage—a new normative marriage. This new marriage bargain would call on men to work, but not require that they make more than their wives. As part of this bargain, even if husband and wife have very different incomes or one has no income at all for a period, they must recognize themselves both as dependents in their joint project—the family. But to achieve this alternative vision of the “new family,” dependencies must be freely chosen, not coerced. Nock points out that this new arrangement requires nothing more than “a way of seeing things differently.” Although we have tended to focus on the financial dependence of wives and children on husbands, we have paid less attention to the very substantial emotional and logistic dependency of husbands on wives. Many wives in Nock’s new normative marriage will also provide a significant share of family income. Husbands will more often care for home and children.
Both of these shifts will change the way we view the family. We need to accomplish this change in perception—and build communitarian support for it. By setting new terms for the debate about the future of the family, especially about what it means for men and where they are without it, Nock starts us down this road.

Especially Noted


Social policy in the United States, especially in recent years, has largely been guided by the liberal assumption of the autonomous individual: self-reliant men and women left alone to do with their lives as they see fit. Discrediting the validity of this self-understanding, Mitchell exposes hidden broad systems of governmental and social support that help maintain both the position and the “self-made” image of the well-to-do. He also shows that, unlike our institutions, our intuitions regarding fairness display an awareness of human vulnerability and our reliance on others.


Is the “Asian values” argument within the international human rights debate a valid response to cultural imperialism, or just a rhetorical tool used by certain governments to justify authoritarian policies? With contributions from scholars throughout Asia, and a few from the West, this volume seeks to carve out a middle answer.


How is globalization affecting the nature of immigration in the United States? Is the process of “becoming an American” different now than it was in the early part of the century? Should it be? This
collection of essays from scholars across the country and across the political spectrum—with each essay accompanied by a response—addresses these and other questions surrounding immigration, nationalism, and citizenship.


With advances in polling, consumer-oriented politics are ascendent. While the shortcomings of such a passive model of democracy are readily apparent, solutions are not. The author presents five principles he sees as vital to functioning democratic communities—inclusion, comprehension, deliberation, cooperation, and realism—and provides a practical guide to their implementation.
A survey by the National Center on Addiction and Substance Abuse at Columbia University reveals the importance of fatherhood. Unfortunately, it also reveals some of the shortcomings of American fathers:

- Teenagers living in two-parent families who have a fair or poor relationship with their father are at a 68% greater risk of smoking, drinking, or using drugs compared to all teens living in two-parent households. In contrast, teens living in a household headed by a single mother have only a 30% increased risk of smoking, drinking, or using drugs (again, when compared to all teens living in two-parent households).

- Seventy-one percent of teens report having an excellent or very good relationship with their mother. Only 58% say the same about their relationship with their father.

- More than twice as many teenagers say that, when it comes to the topic of drugs, it is easier for them to talk to their mother than their father (57% versus 26%).

- Of those teens who have never used marijuana, 29% credit their mother with their decision, while less than half that amount (13%) credit their father.

- While 45% of teens have discussed drugs with both parents, 15% have had such discussions only with their mother, while 4% have done so only with their father.

- In cases where a teen relies solely on one parent when they have an important decision to make, mothers are three times more likely to be that one parent (27% versus 9%).

- Who is more demanding in terms of grades, homework, and personal behavior? Their mother, say 45% of teens; 39% say their father.
Where Have You Gone Hildy Johnson?

William Powers

Journalists live in a culturally iffy place these days. Society doesn’t know what to think about us anymore. Are we friend or foe? A blessing or a plague? Knowing this, and cursed with terribly shaky egos, we don’t know what to think of ourselves, either. In the mirror we see a vague, shifting image that on bad days looks, well, fiendish. Are we really that awful?

The latest illustration of our predicament is the movie *Dick*, a delightful farce based on Watergate. The movie’s premise is that the *Washington Post* didn’t really bring down the Nixon presidency; instead, the film credits two 15-year-old girls who happened to witness the Watergate break-in and other crimes, and gave the story to the newspaper.

That the movie intends to send up journalism as it sends up Nixon is evident in the first scene, which occurs in the present on a television show we are meant to recognize as Larry King’s. The guests are reporters Bob Woodward (Will Ferrell) and Carl Bernstein (Bruce McCulloch), both played as witless louts, à la *Saturday Night Live*.

King’s first question: Who is Deep Throat?
Woodward: Well, first of all, we’re not telling you. Second of all, I was under the impression that I would be the only guest tonight.

Bernstein: Guess you’re not, Bob.

Woodward (to King): A lot of bigger names than you have asked us that.

Bernstein: I don’t think we would ever reveal it on a tiny show like this.

But then Bernstein nearly does reveal it, and Woodward scolds him. They wind up in a clownish mêlée, with Woodward shouting at his companion in history, “You smell like cabbage!”

It’s a hilarious scene. I’ve watched it twice—at inside-the-Beltway movie houses—and the audience loved it both times. Surprisingly, no effort is made to have the fictional Woodward and Bernstein resemble their real-life namesakes. The actors also don’t behave like the famous reporters, who are not known for bickering or rivalry, or for lording it over the likes of Larry King. (I used to work for Woodward, and we’re friends. I’ve met Bernstein a few times and didn’t notice the cabbage problem.)

But this is satire, and as such it uses specific people and events for broader purposes. Like any historical farce, Dick is less about history than about the way we live and think today. “As always, the past is drafted to serve present needs,” writes Village Voice film critic J. Hoberman in a review of Dick. The movie’s treatment of Woodward and Bernstein says a lot about what has happened to journalism since—and partly because of—the story that made them famous. They are emblems of a profession that has been altered, intrinsically and perceptually, in the past few decades. The movie tells us much about where journalists stand.

“It really has nothing to do with Mr. Woodward and Mr. Bernstein personally,” says Michael Schudson, a communications professor at the University of California (San Diego) and the author of the 1992 book Watergate in American Memory. They serve “as icons of today’s Washington journalists, who might make hundreds of thousands of dollars and be visible on television as well as on the printed page, and be on the lecture circuit making more money than the people they
report on. This is a huge change. There were bits of that in the past, but a huge explosion of it since Watergate.”

What we’re talking about is social class. For decades, most journalists occupied a very particular place on the social map, and nowhere was this clearer than in the movies. Reporters were basically working stiffs—often of lower-class backgrounds and not well-paid—but working stiffs with a few differences. First, they had read a lot more than your average longshoreman, and could more than hold their own in dialogue with society’s top dogs—millionaires, politicians, generals. Second, their work gave them a certain influence over events, which meant they had frequent dealings with the top dogs. Those old-time scribes lived on a social cusp, moving easily between worlds that were otherwise separate, and the tension often yielded great material. In old movies such as The Front Page (1931), His Girl Friday (1940), and The Philadelphia Story (1940), reporters were always social underdogs, and thus naturally sympathetic characters.

This is not to say they were heroes. One of the great myths about fictional reporters is that they used to be good guys because their journalism was essentially good, and as journalism has lost its sheen, so have the hacks. In fact, the early decades of film gave us plenty of odious newshounds, because the press itself has always had its odious side. Three years after 1948’s Call Northside 777, in which Jimmy Stewart played the classic noble journalist interested only in truth and justice, Ace in the Hole gave us Kirk Douglas as a thoroughly manipulative, dishonest newspaperman.

In fact, the reputation of the press was perhaps worse 60 years ago than it is today. “The tabloid press was hated in the twenties, thirties, and forties,” says Joe Saltzman, a journalism professor at the University of Southern California who teaches a class called “The Image of the Journalist in Popular Culture.” Saltzman says he maintains a database of some 10,000 movies with journalists as characters. He points to a 1931 movie called Five Star Final, which stars Edward G. Robinson as a villainous reporter: “The last shot of that film is the newspaper in the gutter, with mud being thrown on it, and there’s a street cleaner who’s scooping it up out of the gutter. The idea of journalists as evil people, real scoundrels, goes back to the beginning of film.”
But even when journalists were portrayed as evil, they remained the central figures in the old press movies, which were often written by former reporters. They also tended to be played by hugely popular movie stars, says Saltzman, “so no matter what they did, you applauded them.” By the 1960s, this had changed. Non-journalists were writing most of the journalism movies and they made reporters into much less sympathetic minor characters. Often reporters were nameless and seen in packs chasing the popular movie stars for whom the audience was pulling. This trend lasted decades, reaching a climax in *The Right Stuff* (1983), in which a troupe of clowns played the reporters covering the astronauts. *All the President’s Men* not only restored the status of journalists, it took them to new, unprecedented levels of prestige.

In a sense, the movie accelerated a process that was already under way, thanks to journalists’ increasing prominence on television. In the real world, reporters were no longer just bookish, ill-paid, lovable malcontents. The most successful of them made lots of money and acquired real power. Although this group still represents a small minority, it’s an extremely visible and influential one that helps determine how the country perceives journalists. The crusading, selfless reporter has remained a stock movie character into the nineties (see *The Pelican Brief*), but alongside that figure stands a new one—the power journalist, whose social standing exceeds that of most politicians and corporate titans, and almost equals that of movie stars.

The ambition for such status at any cost was the subject of one of the memorable and savage journalist movies of the nineties: *To Die For*, starring Nicole Kidman. And the culture’s broad skepticism about the new journalists, their motives, and the way they use their power is on display in most new movies with a media plot. “What’s happened, of course, in real life is that journalists used to be middle-class, and used to hate the rich and go after the rich and powerful,” says Saltzman. “But now many journalists are rich enough to live with the rich and famous. . . . Diane Sawyer is so broken up over John-John’s death, she can’t report it. . . . Mike Wallace—his neighbors are the rich and famous.”

In the 1934 movie *It Happened One Night*, Clark Gable played Peter Warne, one of the most likable reporters in film history. By chance, he
meets Ellen Andrews (Claudette Colbert) on a train. She’s an heiress who has run away from her domineering father, and her romantic life is a national obsession. “LOVE TRIUMPHANT!” is among the front-page banner headlines that the newspapers run on her escapades. Warne is a loser journalist, a nobody who initially worms his way into Andrews’s life simply to get her story. In contemporary terms, he would be lowlife tabloid scum. But watching the movie, even today, he’s Our Hero from start to finish. Partly this is because he’s Clark Gable. But it’s also because Ellen Andrews has all the wealth and fame anyone could hope for, and Peter Warne doesn’t.

How far we’ve traveled since then. Recently, the New York Times Magazine ran a caustic essay on Woodward by Frank Rich. The subject was Woodward’s journalism, but the piece opened with tart references to his fame and wealth. The phrase “millionaire author” appeared twice in the first paragraph, and the status envy was palpable.

When asked why they go after journalists and portray them as villains, Oliver Stone and other filmmakers say it’s because journalism has gone bad. However, because the Watergate story is among the trade’s glories, not its sins, the way Dick spoofs Woodward and Bernstein is revealing. It suggests that the culture’s critique is not just about bad journalism; it’s about how high some journalists have risen socially. The moment they joined the upper class, they became suspect. It was society’s inevitable, and entirely human, reaction.
From the Libertarian Side

Bring Your Favorite Mammal

Reliving a bit of times past, the Lincoln, Rhode Island, school district recently planned to hold their annual Ladies’ and Gentlemen’s Choice events. Phrased in seemingly innocuous language, invitations were sent out telling girls “to bring the special gentleman of your choice (over 18) to a Story Book Ball.” Invitations were also sent out to boys directing them to “bring your favorite lady (over 18) to a Pawtucket Red Sox Game.” The result of these invitations is that Lincoln is now in the middle of a cultural tug-of-war, with extreme political correctness on one side and a desire to maintain some conventional traditions on the other.

According to the Boston Globe, the Rhode Island chapter of the American Civil Liberties Union (RICLU) attacked the events, claiming that their gender specific nature “smacks of sexism.” Shouldering the complaints of a mother whose daughter’s biological father refused to go, a lesbian couple who felt the event excluded their child, and a few others, the RICLU director wrote a letter to the school superintendent urging the town to begin a “serious review” of such activities because they unnecessarily isolate some children who do not fit in the traditional model of a nuclear family. In addition, the letter asserts, “Not all girls want to be Cinderella [and] not all boys want to be baseball players.”
Ironically, the dance had formerly been called the “Father-Daughter Dance” and was changed to “Ladies’ Choice” by local PTA members who were concerned that a little girl whose father had recently died would feel the type of isolation the RICLU is worried about. In another note of irony, this was the first year the mother-son event centered around a baseball game—a stereotypical “boys” event. In years past excursions had included movies and bingo.

The RICLU’s bulky solution to name the event “as being for a child and a favored adult” does not sit well with many Lincoln citizens. As one parent commented, perhaps renaming it the “Parental Unit-Post Embryo” dance would provide the inclusion the RICLU seeks.

**When the Second Amendment Doesn’t Work, Try the Kitchen Sink**

In an effort to reduce the number of guns on the street, several city police departments across the United States have initiated gun buy-back programs. One such program was run by the Cook County (Illinois) Sheriff’s department, which in two weekends collected more than 3,300 guns, including one AK-47 assault rifle and an Uzi submachine gun. Citizens who participated received $50 or a $75 gift certificate. In a show of support for such programs, President Clinton recently proposed spending $15 million to expand these efforts.

Seemingly, this is a story of a city government program effectively addressing a serious problem. Not so, according to Matthew Beauchamp, chairman of the Chicago Libertarian Party. The Chicago Sun-Times reports that Beauchamp has sued Sheriff Michael Sheahan in order to stop the programs. In a U.S. District Court lawsuit Beauchamp claims not only that the programs do not reduce crime, but also that they “give money to people to upgrade their weapons.”

Beauchamp further asserts that the Sheriff’s office needs a federal firearms license to purchase weapons and that they are guilty of breaking the law by not asking for identification from the sellers. A spokesman for the U.S. Bureau of Alcohol, Tobacco, and Firearms, addressing the charges, noted that the Gun Control Act does not apply to government offices.
From the Authoritarian Side?

Buchanan—In His Own Words, and Those of His Friends

After all of the debate surrounding Pat Buchanan’s views on WWII, immigration, Jews, etc.—with some condemning him and others saying he has been unfairly represented—we thought we’d let him and those he seeks to ally himself with speak for themselves.

In a column he wrote last November, Buchanan noted that non-Jewish whites are underrepresented, in proportion to the population as a whole, at the nation’s elite universities. His facts are correct. Buchanan’s analysis? “As Hispanics, Asians, African American [sic] and Jewish Americans also vote overwhelmingly Democratic, the picture that emerges is not a pretty one. A liberal elite is salving its social conscience by robbing America’s white middle class of its birthright and handing it over to minorities, who just happen to vote Democratic.”

And what of his political bedfellows as he courts the Reform Party? In September, Buchanan had lunch with Fred Newman, founder in 1979 of the quite left New Alliance Party and once head of a group called “Jews for Farrakhan.” With the New Alliance Party now defunct, Newman is currently active in the Reform Party. So what does Newman stand for? As reported on the *American Spectator* website, Newman has called Jews the “storm troopers of decadent capitalism against people of color the world over.”

Is Buchanan authoritarian? Who knows. Is he racist and/or anti-Semitic? Consider the evidence.

Hopefully Stormin’ Norman Likes Big Bird

Responding to Littleton and other recent events that have placed a spotlight on the impact of the mass media (movies, television, and recordings), David Lowenthal, a professor of political science at Boston College, is calling for regulation. In “The Case for Censorship,” which ran in the *Weekly Standard*, Lowenthal claims that the mass media has “immersed us in violence . . . habituated us to the most extreme brutality, held it up as a model and surrounded us by images of hateful human types so memorable as to cause a psycho-
logical insecurity that is dangerous.” Despite the extremist tone of such a quote, Lowenthal for the most part presents a levelheaded case, and seeks to address the expected objections to his suggested regulations.

Responding to the “freedom of the press” argument, Lowenthal claims that the Founding Fathers (guided by Sir William Blackstone) opposed censorship not because they thought all publishing should be allowed, but because they believed adequate punishment could be achieved after publication. This after-the-fact approach took power out of the hands of censors and placed it in the courts. And exactly what material should be punishable? “Blackstone called abuses of the press ‘libels,’ and among the types he listed were ‘immoral libels,’ the forerunner of obscenity.” It is only in this century, Lowenthal argues, that such thinking was abandoned: “In cases involving left-wing attacks on the draft and on our whole system of government, these justices [Holmes and Brandeis] substituted their own ‘clear and present danger’ test for the prevailing Blackstonian position that the press could not be lawfully used to encourage violence and lawlessness.” Thus Lowenthal asks us to return to the older standard, noting that dangers need not be “clear and present” to be real.

But even if the courts returned to the older standard of what was legally harmful, “prior restraint”—censorship—is opposed even by the Blackstonian position. True, says Lowenthal, but times have changed. While the press the Framers had in mind—books, pamphlets, etc.—circulated slowly and could be taken out of circulation, today’s mass media go out at once all over the country. Thus prior restraint has a justification that it didn’t have 200 years ago.

Lowenthal admirably attempts to address other difficult questions, such as who would decide what to censor (he recommends we consider distinguished citizens such as Jimmy Carter, Elie Wiesel, and Norman Schwarzkopf) and how we could prevent censorship from being abused by politicians. But despite the seeming credibility of Lowenthal’s case, it ignores what one might call the “slippery slope uniqueness” of the First Amendment. In many areas of the law, “notching” (wherein steps are meticulously and thoughtfully formulated to avoid creating a slippery slope) can work. However, as our experience with hate speech regulations has shown, for something as
volatile as speech, notching has proven impossible. Lowenthal’s solution would set the stage for McCarthy-like figures to prey on Americans’ fears of moral decay. There are plenty of candidates eager for such a chance; they do not need a loophole in the First Amendment to help them.

From the Community

A Scarlet Arrow

When Halfmoon, New York was faced with this summer’s drought, the town at first instituted an alternate day limit on water sprinkling and car washing. As the drought worsened, the town’s council decided to impose a ban on all outdoor water use. To help enforce the measure, roadways in front of first-time violator’s homes were marked with a large blue spray-painted arrow. Successive violations would cost the violator a fine, with tickets ranging from $150 to $250.

It turns out the monetary fines were scarcely needed. As reported in the Albany Times Union, the threat and use of the arrows seemed to be all that was needed. “It really cut the usage right down,” noted Frank Tironi Jr., the local water superintendent. Water consumption was reduced by one-third, the level of the town’s water wells stopped dropping, and the town was able to greatly reduce the quantity of water it was purchasing—at emergency-inflated prices—from nearby Troy. And only one ticket was actually issued.

Not surprisingly, not all Halfmoon residents were happy with this policy. According to councilman James Bold, a number of residents complained that the arrows were an unreasonable attempt to cause shame. And some citizens, ignoring both the appeals to the common good and the threat of penalties, informed officials that they would continue watering their yards whether or not they were fined. Industrious Halfmoonites set their lawn timers to run between midnight and 4 a.m. Fortunately for the community, the superintendent’s office received numerous calls from irate neighbors narking on their indulgent water-consuming neighbors.
Manna from the Community

After years of watching their apartment building deteriorate, Mary Wright and four other senior citizens looked for help. The building, located in the Washington, D.C. neighborhood of Shaw, had crumbling walls and ceilings, and homeless people (having easy access due to an unlocked front door) squatting in empty apartments. The landlord, who had ceased maintaining the building and paying taxes, was essentially absent.

As reported by the American News Service, Wright and company decided to go to Manna, Inc., a nonprofit company that specializes in developing affordable housing. After six years, Manna was able to obtain grants to implement the necessary renovations, which would eventually cost more than $1 million. The completed building, with three two-bedroom units and thirteen one-bedroom units, is owned cooperatively by the seniors. Of course, while the conditions are dramatically better, the cost is a little higher: the residents had been paying $153 a month, but the new plan required that the seniors pay $500 as an initial payment, with a subsequent $285 monthly mortgage.

Rachel Mears
Václav Havel and Moving Beyond Idealism

Václav Havel continues to be one of the most admirable political figures in the world. An honest intellectual who served prison time for courageously challenging the communist regime in Czechoslovakia, he has led his country as president for a decade since his country’s “Velvet Revolution.” He continues to express surprise at finding himself president, since until he took office his profession was writer.

In office Havel has spoken throughout the world expanding on several ambitious themes: society is in crisis; ideology is to be mistrusted; political theory is little more dependable; virtue needs a “transcendental anchor”; there is morality in everyday life. These propositions contribute to his thesis in “Beyond the Nation-State” (Summer 1999). There he contends that in the new century, nation-states will shrink in power as “the human race [comes] to the realization that a human being is more important than a state.” This will “antiquate the idea of non-intervention—that is, the concept of saying that what happens in another state . . . is none of our business.”

Havel sees the authority of the state flowing downward and upward. By downward he means closer to home—to families, neighborhoods, villages, regions, religious groups. These he calls “environments of our self-identification”; readers of this journal call them communities. This is all familiar and welcome. It is when Havel muses about the upward flow of authority and function that his argument becomes problematic. It depends on a mystical conviction that ordi-
nary people, unencumbered by sophisticated theory, see right and wrong clearly and will somehow inspire grand multinational alliances to intervene when the rights of individuals are threatened.

The vision lacks a program. (That is a criticism President Havel gets at home all the time. There is no shortage of hard-boiled politicians in the Czech Republic who see him as magisterial, poetic, candid, silver tongued, and unrealistic.) As long as people treasure freedom, Václav Havel will be revered for leading the idealistic, peaceful, and successful revolution that threw communism out of his country. But that done, the ordinary work of government requires the invention of institutions that will draw people to accomplish public purposes. Indeed, most of policy-making should be understood as institutional design.

In that regard, I would like to hear a debate between Havel and James Madison, who remains the most inventive political scientist who ever drew breath in this country. Madison, like Havel, was concerned with how very large groups of people living in a vast territory could govern themselves. He thought it obvious folly to depend on spontaneous public-spiritedness. He also thought it possible that the state need not be overbearing or corrupt. Before his time an “extended republic” was generally held to be impossible. Self-interested behavior and factions would do it in. Madison’s great insight was that given appropriate institutional arrangements, factions could discipline each other. Though some public-spiritedness could be expected (“the people will have virtue and intelligence”), the central feature of his design was to play self-interest against itself. That idea underlies the separation of powers and federalism found in the U.S. Constitution. Furthermore, the first ten amendments of that document, the Bill of Rights that Madison eventually came to favor, make the government the protector of the individual—contrary to Havel’s pre-1990s experience and contrary to his expectation for what can be expected of the state.

Madison lacked Václav Havel’s oratorical skills and his ability to instill optimism and idealism. Still, by comparison with the chief designer of the American republic, Václav Havel seems romantic and impractical, recognizing the Tocquevillian point that not all social goods must be accomplished by government, but underestimating
the necessity of designing arrangements that submit factions to Madisonian jujitsu.

John E. Brandl
University of Minnesota.

Two Cheers for the Nation-State (and Three for Religious Faith)

Václav Havel makes a praiseworthy appeal to human freedom and human rights over and against the interests of the state. He rightly insists that “human liberties constitute a higher value than state sovereignty.” He properly identifies the “blind love for one’s own state” as a source of much human suffering. And, as a firsthand witness to the abuse of state power, his arguments carry moral force.

Yet, in his strategy to safeguard individual liberty, Havel blithely imagines a world of borderless societies, knit together by technology and shared values. Putting the likelihood of such a world aside for a moment, there is a serious problem with this vision: it neglects the way that ideology has fueled much of the aggression—internal and external—of this century. The engine of Soviet repression was as much the blind commitment to an idea—economic determinism—as it was the idolization of the state. Substitute biological determinism in Nazi Germany and you have the same problem. It is not the nation-state per se, but regimes adrift in moral relativism, that unleash such horrifying assaults on human dignity.

Havel also gives insufficient attention to the function of a vibrant civil society in restraining the state. Strong families, schools, churches, charitable agencies, civic groups, reform movements—all of these help create a buffer between the citizen and the state. This, of course, is what so captivated Tocqueville about America. “Nothing, in my opinion, is more deserving of our attention than the intellectual and moral associations of America,” he wrote. Without them, he concluded, “the task of the governing power will therefore perpetually
increase, and its very efforts will extend it every day.” A sovereign state with a large, looming government is indeed a threat to liberty. A sovereign state with a limited government and a moralized civic culture is not—and America is proof of it.

Indeed, one critical reason that Americans have mostly avoided idolizing the state is our commitment to religious liberty. As social thinker Os Guinness has noted, the Founders’ great gamble was the elimination not only of the monarchy, but also of the state church—two of Europe’s most stabilizing social forces. What would replace them? What would put a check on the state and yet prevent liberty from degenerating into license?

Religious freedom. Only faith can finally sustain America’s experiment in ordered liberty, for laws cannot replace the bedrock of personal and social morality, inspired by faith, that freedom requires. Only faith can assert the God-given dignity of the individual against the claims of the state. Only faith— independent of government control yet wholly obedient to transcendent ideals—can stand in prophetic judgment against the state. “The logic of Christian faith,” writes political scientist Glenn Tinder, “works toward liberty irresistibly.”

Havel’s claim that state sovereignty too often becomes a shield for the violation of human rights is of course correct, but it is no argument for wishing nation-states away. In the end, he presents us with a false choice: hypernationalism or a borderless, global melting pot. Yet surely there is such a thing as a healthy love of country. Moreover, Havel is much too sanguine about culturally diverse nations merging through trade, technology, and a common understanding of human freedom. And so he dares to envision a “global civil society” and a “stratified planetary societal self-organization.”

Not on this side of eternity. As long as there are rogue states with the will and the power to work evil, there will need to be independent democratic ones, armed not only with firepower, but with the moral courage to resist them.

Joe Loconte
The Heritage Foundation
Avoiding False Idols

The 21st century, Czech president Václav Havel contends, will witness the end of “blind love for one’s own state—a love that does not recognize anything above itself, finds excuses for any action of the state simply because it is one’s own state, and rejects anything else simply because it is different.” He’s right, and the evidence is all around us, even on the sports page. In August, the golfer Tiger Woods balked at accepting blindly a spot on the United States team that would play against European golfers for the tradition-laden Ryder Cup. When asked why he did not put country first, he responded, “You play for your teammates, your captain, your wives and girlfriends. [Then] flag.” Flag—country—was fifth.

The major religions of the 20th century have not been Christianity, Islam, Buddhism, or whatever. They have been nationalism and Marxist internationalism. Millions have sacrificed their lives for one or the other. Neo-nationalists and neo-Marxists (often emphasizing race rather than class) will howl into the next century, but the “blind love” Havel speaks of—another name for it is idolatry—is dead.

Havel, however, is not so profound in describing what we will pledge alliance to once the flag is no longer the object of prime worship. That’s because he does not get to the most important factor until the last sentence of his analysis: “Let me conclude my remarks on the state and on the role it will probably play in the future with the following statement: While the state is a human creation, humanity is a creation of God.” That sentence should be at the beginning, because in the beginning God created heaven and earth. Not so much later man forfeited the heaven on earth that the Garden of Eden represented and began trying to build heaven his own way. Nationalism and Marxism have been our century’s attempts to build heaven, but just as the Tower of Babel came crashing down long ago, so national socialism fell in Berlin in 1945 and international socialism displayed its failure when the Berlin Wall became rubble in 1989.

Havel is right when he talks about the functions of the state going downward and upward. If we are to have liberty in the next century, we need decentralization, so the tasks the state now performs will devolve to the various organs of civil society. Families, civic associations, professions, businesses—these institutions need to gain more
self-government, and the sooner the better. Sooner, however, is not the same as instantaneous. As in the children’s game where rods are pulled from the base of a structure and piled on top until the structure becomes topheavy and topples, so worship of the state has led to atrophy of civil society in many countries. The challenge will be to pull the rods off the top and reinsert them down below, and that has to be done slowly and carefully.

But Havel’s prescription for moving some national functions upward, toward international organizations, is dangerous. “We must make the entire vast structure of the United Nations less bureaucratic and more effective. We must deliberate on how to achieve real flexibility in the decision making of UN bodies…. [W]e should ensure that all the inhabitants of our earth regard the United Nations as an organization that is truly theirs . . . .” This is dangerous unless the acknowledgment of God at the end of Havel’s essay, and some agreement on who God is, comes before any move toward internationalization.

Without such an understanding, we may trade national tyrannies for international tyranny—and such a tyranny would fight hard against the devolution of state power to civil society that Havel proposes. Universal declarations of rights can quickly turn into declarations that equality is god and that freedom (which often leads to inequality) must be fought. It’s time to put away our idols. Havel has done so, but by opening the door to international princes he may inadvertently be threatening 21st century liberty.

Marvin Olasky
Acton Institute for the Study of Religion and Liberty

Globalization’s Other Side

In “Beyond the Nation-State,” Václav Havel takes a piece of fairly conventional wisdom—that the nation-state is losing its place as the preeminent form of human organization—and gives it a provocative
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turn by placing it in a context that has importance for the communitarian discussion. Havel frames his discussion in two dimensions. He acknowledges the horizontal, historical dimension of affairs as a realm of contingency, brute power, and the struggle for advantage. This is the foreground of political affairs, the familiar cognitive terrain of self-styled realists. Havel pointedly describes much of the 20th century in starkly realist terms, but insists that there is a background dimension that gives depth and point to the Hobbesian struggle in the foreground.

This second dimension of human affairs is not historical but transcendent. But for Havel it provides the ground of history, its standard of significance. It is the source of Havel’s central idea: the concept of humanity and therefore of human rights. Transcending the nation-state is necessary for Havel because of the demands emanating from the transcendent dimension of human experience, not because of any supposed “historical necessity.”

At the same time, Havel sees the power of the transcendent appeals of “principle” and conscience at work within history. His own career is eloquent testimony to this fact. But here there is a problem, perhaps a conundrum. How is the “spirit of humanity” Havel invokes to develop confidence and penetrate deeply unless it can be embodied in functioning institutions? For all their limitations, do not the welfare-state polities represent the furthest advance to date of the principles of solidarity and justice as institutionalized realities?

Yet, today, these polities are under threat. The weakening of national states, at least in the West, is spurred not just by renewed subnational chauvinisms, let alone by the appeal of transnational organizations, but chiefly by the Darwinian forces of transnational markets. This, and not just the nation-state, has to be addressed in order for the spirit of humanity to triumph.

William M. Sullivan
Carnegie Foundation for the Advancement of Teaching

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CONTRIBUTORS

RONALD BEINER is a professor of political science at the University of Toronto. He is author of *Philosophy in a Time of Lost Spirit: Essays on Contemporary Theory*.

E.J. DIONNE JR. is a syndicated columnist with the *Washington Post* and a senior fellow at the Brookings Institution. His article is reprinted with permission, © 1999, Washington Post Writers Group.

ALAN EHRENHALT is the executive editor of *Governing Magazine* and author of *The Lost City: The Forgotten Virtues of Community in America*.

AMITAI ETZIONI is author, most recently, of “The Monochrome Society,” in the Fall 1999 issue of *The Public Interest*.

ANNA GREENBERG is a professor of public policy at Harvard University’s Kennedy School of Government and a visiting scholar at the Pew Research Center for the People and the Press.

JONATHAN GRONER is an editor at *Legal Times* and an attorney.

HANS JOAS is a professor of sociology and North American Studies at the Free University of Berlin. He is author of *The Genesis of Values*. English translation forthcoming in 2000.

JOHN LEO is a contributing editor and columnist for *U.S. News and World Report*.

WILLIAM POWERS is media critic for the *National Journal*.

DEBORAH L. RHODE is a professor at Stanford Law School and the director of Stanford’s Keck Center on Legal Ethics and the Legal Profession. She is author of *Professional Responsibility: Ethics by the Pervasive Method*. Her essay is adapted from the W.M. Keck Foundation Award and Lectureship in Legal Ethics and Professional Responsibility of the American Bar Foundation.

LINDA J. WAITE is co-director of the Alfred P. Sloan Center on Parents, Children, and Work at the University of Chicago. She is co-author, with Maggie Gallagher, of *The Case for Marriage* (forthcoming, Harvard University Press).