

The Responsive Community

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Individualism and Civic Renewal

Michael K. Briand

Americans have been turning away from institutional politics for decades. There has been an across-the-board decline in the percentages of people who vote, trust government, and identify with political parties. Today, many think involvement with political institutions is pointless. They believe politics doesn't work. It doesn't work because it is unresponsive to the interests and concerns of ordinary citizens. Government is no longer "of, by, and for the people."

At least partially in response to this development, there has more recently been a broad call for civic renewal, for a reinvigoration of those forms of organization with horizons that go beyond just individual or family interests. But while this call comes from almost all corners of the political spectrum, advocates of civic renewal have quite different goals in mind. Roughly speaking, the advocates can be divided into three groups, each of which responds differently to the question, "Does government matter?"

The first group seeking civic renewal, the "new progressives," wish to reconnect people to government in new and better ways. They worry about the implications of the prevailing antipathy to institutional politics. They argue that because representative government carries the constitutional authority to exercise power on behalf of the people, if we wish to continue to have a democracy and the benefits it

bestows, we must devise and promote ways for citizens to reconnect with its established institutions.

A second group believes government itself is the source of deteriorating civic attitudes. At times they seem skeptical about any form of politics, but they have a special dislike for institutional politics at the federal level. This group includes folks who believe that the size, scope, and power of the federal government is a chief cause of the weakening in recent times of “civil society,” and as such constitutes the primary obstacle to the revitalization of those organizations and practices that once gave American communities such a robust public life.

Third, there are those who regard government as at best tangentially relevant; they are concerned chiefly with the renewal of our social institutions and practices. For this group, which includes at least some communitarians, social and community institutions and practices take priority over government and politics. Some of its members may wish to see government rehabilitated, but as part of a broader effort to build healthier, stronger communities.

As these divergent attitudes toward government make clear, the current enthusiasm for civic renewal masks deep disagreements. As one leader in the civic renewal movement remarked recently, “we are back at square one—the whole question of what government can and should do is up for grabs.” Indeed, I would argue that we are not even at square one. The roots of our disagreement go deeper than the question of the proper scope of government. They go to philosophical issues concerning the nature of the individual. In the absence of a fruitful reconsideration of these issues, our differences over the need for and role of government in a democratic society will remain a substantial stumbling block in the way of a civic renewal that includes the relegitimation and revitalization of our democratic political institutions.

What Does the Public Think?

In an article in the *Atlantic Monthly*, political scientist William Schneider contends that the battleground of American politics is the white middle class. Schneider continues: “Two broad themes seem to characterize the politics of the white middle class. One is pragmatism,

the characteristically American notion that whatever works must be right. . . . The second theme of middle-class politics is populism. Not populism of the left or populism of the right but a generalized resentment of elites and establishments.”

These themes manifest themselves in attitudes toward government. “The New Deal political culture,” Schneider writes, “is essentially collectivist and redistributive: use my tax money to help those less fortunate.” But that is not what most people want. Turning to the work of California historian Kevin Starr, Schneider argues that “[t]he kind of government people want and expect is the public-works culture that has its roots in the older progressive tradition. The essential idea is that government should provide universally available benefits and services like public education, water resources, and highways: use my tax money in ways that will benefit me, along with everybody else.”

As Schneider observes, although Democrats in the 1990s have emphasized “consensual values, values shared by the whole of society—peace, prosperity, growth, national security, freedom”—this strategy has not (so far) changed people’s opinions of government and institutional politics. Both political parties are less pragmatic and less populist than they were prior to the 1960s. Under pressure from elite activists, they continue to push issues in which conflicting values are prominent, “issues that pit ‘us’ against ‘them.’” Not surprisingly, in view of their pragmatism and populism, “middle-class voters no longer feel entirely comfortable in either party.” And because of this discomfort, it is not surprising that they hold negative attitudes toward government and institutional politics in general. Is there any way out of this dilemma?

Individualism

A useful first step might be to understand and face up to the deep-rootedness of the problem, which originates not in the political disputes of the 1930s or the 1960s, but in the ideas, beliefs, and practices that have shaped the political culture of America throughout its history. These can be summed up in the notion of *individualism*. The term “individualism” encompasses several different propositions. One is *ontological individualism* (sometimes called “atomism”), the

view that the ultimate reality in the human world is the individual person. A second is *axiological individualism* (or “subjectivism”), which holds that all value—all that is good—is individually determined, and hence subjective. Third, *moral individualism* asserts that the well-being of the individual person is of paramount moral importance. Finally, *political individualism* makes the individual person the final authority in matters having to do with the organization and conduct of public life.

We cannot go into a detailed discussion here of the origins, consequences, and implications of these various forms of individualism, or the connections between them. I will only note that compelling arguments have been made that, the undoubted merits of moral and political individualism notwithstanding, ontological and axiological individualism have had, and continue to have, a pernicious effect on our democratic way of life. In large measure they are responsible for the fact that, as Tocqueville observed, “individualism, at first, only saps the virtues of public life; but in the long run it attacks and destroys all others.”

Consider a prevalent strain of individualism born in the American West. Between the Civil War and World War II, the federal government extended its control over vast areas of the West. But it was physically, socially, and culturally distant. As the historian Frederick Jackson Turner has written, despite the benefits the federal government brought Westerners, it often seemed more like a foreign imperial power than the agent of a “self-directing people . . . insistent that the procedure [for making public decisions] should be that of free choice, not of compulsion.” What is important to note here is the effect that the experience of government had on the ideal of individualism. In the West of the late 19th and early 20th centuries, individualism understood as a vision of a “self-directing people” mutated into an attitude of hostility toward government. The same evolution has occurred in the rest of the country during the past 30 years. For many Americans, politics has come to mean the nasty business of dealing with an alien, bureaucratic state.

On the other side of the ideological divide are people who view government as an indispensable tool for protecting and promoting the public interest. When these folks look at politics, they see a

struggle between individuals selfishly pursuing their personal aims and society democratically trying to regulate behavior that has harmful consequences. In “How to Be a North American,” the political philosopher Alasdair MacIntyre describes the resulting polarization this way: “On the one side there appear the self-defined protagonists of individual liberty, on the other the self-defined protagonists of planning and regulation.” There is one thing upon which the contending parties agree, “namely that there are only two alternative modes of social life open to us, one in which the free and arbitrary choices of individuals are sovereign, and one in which the bureaucracy is sovereign, precisely so that it may limit the free and arbitrary choices of individuals.” Viewing American democracy as a stark choice between (anti-government) individualism and (pro-government) communalism does not bode well for the cause of civic renewal in our country. What, then, are we to do?

Cooperation

Daniel Kemmis, the former mayor of Missoula, Montana, suggests an answer. In his book, *Community and the Politics of Place*, Kemmis reminds us that when most people lived on farms they often needed each other’s help to do things they couldn’t do for themselves—put up a new barn, for example. In time, they discovered other things for which they needed each other’s help: building a school and hiring a teacher, constructing a road, building a church and hiring a pastor, and so on. If there was something a person could not do by himself, he had no choice but to rely on others. When the neighbors lent their help, it wasn’t simple charity on their part, it was part of an exchange. They gave help in return for the help they knew they could count on when they needed it. In other words, people developed relationships that were built on reciprocity.

Can we re-learn the lesson of the original American frontier—that the experience of working together enables us to rely on each other, and that by doing so we can accomplish good things that would be difficult if not impossible to accomplish alone? It will not be easy. As Kemmis notes, politics “has not generally presented itself as a choice between individualism and cooperation so much as a battle between individualism and regulatory bureaucracy. Cooperation [has become] a third, largely ignored, alternative.” Moreover, our communities

today are much larger, more complex, and more diverse than those of earlier eras. We must confront problems that are far-reaching and deep-rooted. We cannot re-create the simpler world of frontier America. Demographically, economically, technologically, we can't go home again.

Easy or not, the rejuvenation of cooperation is vital to democratic governance. "Citizens," Kemmis observes, "do not become capable of democratic self-determination by accident. . . . Forming [civic] character requires the context of practices in which the coincidence of personal concern and the common welfare can be experienced." Fortunately, whenever cooperation occurs—even when entered into purely out of self-interest—people find it surprisingly rewarding, both in itself and for the good things it makes possible. As people learn to cooperate, Kemmis observes, "they discover in their new pattern of relationship a new competence, an unexpected capacity to get things done."

What, then, is the contemporary equivalent of a barn-raising? What we need are undertakings that produce results that people can point to with satisfaction and say, "We did that," and that would not occur without their joint effort. A community that through the joint effort of its members substantially reduces the incidence of violent crime, or that achieves a dramatic improvement in the educational performance of their children, is a community that knows how to cooperate.

Fortunately, cooperation for mutual benefit is compatible with the pragmatism and populism that underlie Americans' political beliefs and attitudes. Cooperation accomplishes things—it "works." It benefits everyone, not just a few. And it locates power, authority, and efficacy in the hands of ordinary citizens, not just experts and other elites. Cooperation is what citizens voluntarily and self-interestedly engage in when they accept responsibility for themselves, for their fellow citizens, and for their communities. Cooperation rejects neither government nor personal freedom. Rather, it transforms the way we view them, presenting them not as categorical opposites but as indispensable elements of a healthy democratic way of life.

Cooperation is thus a door to the future, a door we open by retrieving from our past the lesson we learned when cooperation was

not an option, but a necessity. Today we are far less dependent on one another, at least in the ways our forebears were. But we still do depend on each other. And we may need each other again someday in ways that today we cannot imagine.

Government: Getting Back to the Fundamentals

Robert Kuttner

Across the street from my house, our local public school is getting some improvements. The playing field that slopes down toward the street, turning into rivers of mud every spring, at last has been shored up with a concrete retaining wall. The playing field is finally level and newly green. At first I was worried about the ugly five-foot wall, but they've even laid some handsome stonework over the concrete. And one morning I noticed that, overnight, some attractive plantings had appeared in front of the stone wall.

This is, of course, courtesy of the Brookline, Massachusetts, taxpayers, of whom I am one. It is also courtesy of the group of parents who pushed for these improvements for five years. I no longer have school-age kids, but how marvelous to see the public sector doing something thoughtfully and well—even if it did require significant prodding.

My relatively affluent town can certainly afford this. But for 20 years, ever since local taxpayers in rich and poor towns alike began revolting against property taxes driven skyward by inflation, small public amenities like these have been deferred and denied. We've gotten used to the idea that things public should be vaguely shabby. Nationally, too, this has been a dry season for public improvements. The idea has been rampant that only the private sector contributes to our individual and collective well-being, while the public sector is a drain. Civilian public investment is now at the lowest share of gross domestic product in three decades.

But surely this view is short-sighted. Our public spaces and public improvements are part of what makes our economy efficient and our common life attractive. In Boston, the “Big Dig” is the largest public works project in America. One of the nation’s ugliest elevated six-lane highways is being moved underground, creating new prime downtown development land and parkland and opening up vistas to Boston Harbor. Though completion is years away, one notorious highway bottleneck has already been cleared, cutting my own commute in half. For all of the chaos, the project is a wonder.

On a recent visit to Chicago, I noticed a sparkling array of public improvements courtesy of the Daley administration. Mayor Daley, who is fond of ornate ironwork and flower boxes, has showered the downtown with both. He took a fair amount of grief for spending public dollars on what some considered frills, but these amenities are good for business, and they energize the city’s self-confidence. His honor also initiated a new era of public art, most recently in the form of hundreds of whimsical statues of cows, which have delighted locals and tourists alike. Happily, few of Chicago’s public improvements are sponsored by this or that corporation. They are genuinely public and proud of it.

In New York, visiting a friend in Brooklyn Heights, I was introduced to one of the city’s small marvels, the Brooklyn Heights Promenade. This is a pedestrian walkway about eight blocks long with a glorious view of New York harbor from the Brooklyn side. The promenade has a feeling of timelessness, but it dates only to the 1950s, when New York’s master planner, Robert Moses, came up with the idea of covering an ugly stretch of expressway with something functional, small, and beautiful. Soon, an underused area of warehouses and parking lots below the promenade will become another public park. The development of the park is being carried out in careful consultation with community residents.

The 19th century was the golden age of public planning for public spaces. It was the era when our splendid parks were laid out and saved from private land-grabbing. In the late 20th century, many of these functions were turned over to private developers.

Now, ironically, there is a backlash against “sprawl.” But sprawl is another word for the absence of public planning and public invest-

ment. If we want our metropolitan areas to use space more efficiently so development is more compact and open spaces stay open, some public planning process is required. It invariably will interfere with some scheme of some private developer, and it invariably will require public resources. To date, only one large metropolitan area—Portland, Oregon—has reclaimed enough public authority to have a truly effective anti-sprawl program.

Some of our downtowns are already looking brighter, but nationally an immense backlog of public parks, schools, subways, and squares is in need of refurbishment. Paradoxically, a period of unprecedented private affluence is exactly the right time to reclaim what is necessarily public.

A Nation of Minorities?

Amitai Etzioni

The young CEO felt strongly that “soon all America will look like California” and that we must prepare ourselves, employees, and fellow citizens for life in a diverse, “multicultural” America. The occasion was a “sensitivity” training workshop, which seeks to teach managers how to prepare their underlings to deal with people of different social backgrounds.

The CEO’s demographic acumen was quite keen. Much of America, and not only California, is being diversified. A growing number of immigrants from Latin America and Asia are settling in communities far away from both the Mexican border and the Pacific coast, in places such as Wasaua, Wisconsin and Storm Lake, Iowa. This population movement has led some commentators to argue that America in the foreseeable future will become a country in which European-Americans are a minority and Americans of other ethnic and racial backgrounds are the majority. Demographer Martha Farnsworth Riche wrote an article for the prestigious *American Demographics* entitled, “We’re All Minorities Now,” stating that “the United States is undergoing a new demographic transition: it is becoming a multicultural

society. . . . [Soon] it will shift from a society dominated by whites and rooted in Western culture to a world society characterized by three large racial and ethnic minorities.” A special issue of *Time* magazine dedicated to envisioning our ethnic future declared that “. . . America is moving toward an era when there may be no ethnic majority, with whites just another minority.”

Such visions of America are belied by elementary statistics. If the present trends continue, there will be a white majority in the United States for at least a whole generation and longer. For instance, by the year 2030 whites will still constitute 60.5 percent of all Americans, hardly a minority. Over more than a generation, from 1995 to 2030, the proportion of blacks in the population is expected to increase by a mere 1.1 percent and that of Asians by 3.3 percent. The increase in the Hispanic population in the same time period is believed to be much heftier: a substantial 8.7 percent. Still, all said and done, the share of the non-Anglo population would grow—over 35 years—by not more than 13.1 percent. Those who venture still deeper into the future, disregarding that such long-run predictions are often woefully off the mark, still foresee a white majority (albeit barely so) in the faraway year 2050. Regardless, such analysis misses the point. *The main question is not what the pigmentation of future Americans will be, but how they will relate to one another.*

A New Amalgam

One fact, often overlooked in this context, is that as America steams forward, far from being more splintered along racial and ethnic lines, surprisingly strong bonds of intermarriage are evolving, which bridge the divisions that diversity advocates like to sharpen. (In earlier ages, people were inclined to tolerate working with and living next to people of different backgrounds, but were troubled when their children married a person from a different racial or ethnic background. These feelings have not disappeared, but have weakened considerably.) One out of 12 marriages in 1995 (8.4 percent) were interracial/ethnic marriages. Intermarriage between Asian-Americans and whites are particularly common, and marriages between Hispanic-Americans and whites are also rather frequent, while such marriages with African-Americans are the least common. All in all, intermarriages of all kinds are on the rise. Since 1970, the proportion

of marriages among people of different racial or ethnic origin has increased by 72 percent and is expected to rise in the future.

That is, while there may well be more Americans of non-European origin, a growing number of the American white majority will have a Hispanic daughter or son-in-law, an Asian stepfather or mother, and a whole rainbow of cousins. Sociologists stress that such intermarriages are of special importance for community building precisely because they create particularly intimate bonds not merely for the married couple but also for their extended families.

What Is Latino? Who Is Asian?

The very notion that there are social groups called “Asian-Americans” or “Latinos” is a statistical artifact reflecting the way social data are coded and reported. The notion is promoted by ethnic leaders who have anointed themselves to speak for (and to try to fashion and perpetuate) distinct social groups, and is a shorthand the media finds convenient. Most of the so-called Asian-Americans do not see themselves as, well, Asian-Americans, and many resent being labeled this way. Many Japanese-Americans do not feel a particular affinity to Filipinos or Pakistani-Americans, or to Korean-Americans. And the feelings are reciprocal. Paul Watanabe, of the Institute for Asian American Studies at the University of Massachusetts, himself an American of Japanese descent, remarks, “There’s this concept that all Asians are alike, that they have the same history, the same language, the same background. Nothing could be more incorrect.”

Most Americans of Asian heritage would rather be identified by the country of their origin. Setsuko Buckley, a Japanese language teacher at Western Washington University, points out that, “Asian-Americans need to be divided into Japanese-Americans or Chinese-Americans or Korean-Americans—just because they want to be. Even Southeast Asians are different from each other—Vietnamese, Thai, Cambodian—and they should have the option of being called what they want.” On the other side of the continent, the social categories are not any different. A study of a New York City high school, conducted by Queens College sociologist Pyong Gap Min, found that most young Americans of Korean origin do not consider themselves Asian-American but Korean-American.

William Westerman of the International Institute of New Jersey complains about Americans who tend to ignore the cultural differences among Asian nations, which reflect thousands of years of tradition. He wonders how the citizens of the United States, Canada, and Mexico who move to Europe would feel if they were all treated as indistinguishable “North Americans.”

The same holds for the so-called Latinos, including three of my sons. Americans of Hispanic origin trace their origins to many different countries and cultures. Eduardo Diaz, a social-service administrator puts it this way: “[T]here is no place called Hispanica. I think it’s degrading to be called something that doesn’t exist.” A Mexican-American office worker remarked that when she is called Latina it makes her think “about some kind of island.” Many Americans from Central America think of themselves as “mestizo,” a term that refers to a mixture of Indian and European ancestry. Among those surveyed in the National Latino Political Survey in 1989, the greatest number of respondents chose to be labeled by their country of origin, as opposed to pan-ethnic terms such as “Hispanic” or “Latino.”

The significance of these and other such data is that far from dividing the country into two or three hardened minority camps, we are witnessing an extension of a traditional American picture: Americans of different origins identifying with groups of other Americans from the same country—at least for a while—but not with any large or more lasting group.

Multiculturalism or American Creed?

Above all, it is a serious mistake to believe that because American faces may appear a bit more diverse a generation from now (if one goes by skin color or the shape of one’s eyes) that most Americans of different social backgrounds will follow a different agenda or hold a different creed than the white majority. For example, a 1992 survey found that although most Americans (79 percent) favor “fair treatment for all, without prejudice or discrimination,” the numbers for blacks and Hispanics are even higher (86 percent and 85 percent, respectively). Similarly, a poll of New York City residents shows that the vast majority of respondents considered teaching “the common heritage and values that we share as Americans” to be “very impor-

tant.” Again, minorities endorse this position even more so than whites: 70 percent of whites compared with 88 percent of Hispanics and 89 percent of blacks.

On numerous issues the differences among various Hispanic groups are as big or bigger than between these groups and “Anglo” Americans. A study by Louis DeSipio found that while 42 percent of Cubans and 51 percent of Anglos agreed with the statement that US citizens should be hired over noncitizens, 55 percent of Puerto Ricans and 54.7 percent of Mexicans adopted the same position. Quotas for jobs and college admissions were favored only by a minority of any of these four groups studied, but Cubans differed from Mexicans and Puerto Ricans more (by 14 percent) than from whites (by 12 percent).

The fact that various minorities do not share a uniform view, which could lead them to march lock-step with other minorities to a new America (as some on the left fantasize) is also reflected in elections. Cuban-Americans tend to vote Republican, while other Americans of Hispanic origin are more likely to vote Democratic. Americans of Asian origin cannot be counted on to vote one way or another, either. For instance, of the Filipino-Americans registered to vote, 40 percent list themselves as Democrats, 38 percent as Republicans, and 17 percent as independent. First-generation Vietnamese-Americans tend to be strong anti-Communists and favor the Republican party, while older Japanese and Chinese-Americans are more often Democrats.

We often encounter the future first in California. In a 1991 Los Angeles election for the California State Assembly, Korean-American, Filipino-American, and Japanese-American candidates ran, splitting the so-called “Asian-American” vote, not deterred by the fact that they ensured the election of a white candidate. Candidates of all kinds of backgrounds may carry the day in next century’s America, but the notion that all minorities, or even most members of any one minority, will line up behind them, is far from a safe bet.

While African-Americans are clearly the least mainstreaming group, there is a growing black middle class, many members of which have adopted rather similar life styles and aspirations to other middle-class Americans. Even if one takes all African-Americans as a group, one could be swayed too far by the data on the great differences in the

ways whites and blacks perceived the O.J. Simpson trial and other matters directly concerning racial issues. When it comes to basic tenets of the American creed, the overwhelming majority of blacks strongly accept them. For instance, a national survey asked in 1994: “a basic American belief has been that if you work hard you can get ahead—reach your goals and get more.” Sixty-seven percent of blacks responded “yes, still true,” only ten percent less than whites. Most blacks (77 percent) say they prefer equality of opportunity to equality of results (compared to 89 percent of whites). When it comes to “do you see yourself as traditional or old-fashioned on things such as sex, morality, family life, and religion, or not,” the difference between blacks and whites was only 5 percent, and when asked whether values in America are seriously declining, the difference was down to one percentage point. Roughly the same percentages of blacks and whites strongly advocate balancing the budget, cutting personal income taxes, and reforming Medicare. Percentages are also nearly even in responses to questions on abortion and marijuana.

In an extensive national survey, conducted at the University of Virginia, James Davison Hunter and Carl Bowman found that “. . . the majority of Americans do not engage in identity politics—a politics that insists that opinion is mainly a function of racial, ethnic, or gender identity or identities rooted in sexual preference.” While there were some disagreements on specific issues and policies, this study found more similarities than discrepancies. Even when asked about such divisive issues as the direction of changes in race and ethnic relations, the similarities across lines were considerable. Thirty-two percent of blacks, 37 percent of Hispanics and 40 percent of whites feel these relations are holding steady; 36 percent, 53 percent, and 44 percent feel they have declined, respectively. (The rest feel that they have improved.) That is, on most issues, four out of five Americans—or more!—agreed with one another, while those who differed amounted to less than 20 percent. No anti-anything majority here.

A Community of Communities

All this does not mean that diversity is a figment of the overblown imagination of a bunch of left-liberals and small bands of political leaders. But the changes in America’s demographics do not imply that the American creed is being or will be replaced by something called

“multiculturalism.” The American creed always had room for pluralism of *sub*-cultures, of people upholding some of the traditions and values of their countries of origin, from praying to playing in their own way. But this pluralism was, is, and must be one that is bounded by a shared framework if America is to be spared the kind of ethnic tribalism that tears apart countries as different as Yugoslavia and Rwanda, and raises its ugly head even in well-established democracies such as Canada and the UK.

Which social, cultural, and legal elements constitute the framework that holds together the diverse mosaic? A commitment by all parties to the democratic way of life, to the Constitution and its Bill of Rights, and to mutual tolerance. It is further fortified by a strong conviction that one’s station in life is determined by hard work and saving, by taking responsibility for one’s self and one’s family. And most Americans still share a strong sense that while we are different in some ways, in more ways we are joined by the shared responsibilities of providing a good society for our children and ourselves—one free of racial and ethnic strife—and providing the world with a model of a country whose economy and polity are thriving. Indeed, we came in different ships, but we now ride in the same boat.

“Yes to the market economy, no to the market society.”

Slogan of the administration of
French Prime Minister Lionel Jospin

ESSAYS

Tort Law and the Communitarian Foundations of Privacy

Robert C. Post

The origins of the common law tort of invasion of privacy lie in a famous article on “The Right to Privacy,” published in 1890 by Samuel Warren and Louis Brandeis. Arguing powerfully for legal recognition of “the right to privacy, as a part of the more general right to the immunity of the person—the right to one’s personality,” the article sparked the development of the modern tort, which has now evolved into four distinct branches: unreasonable intrusion upon the seclusion of another, unreasonable publicity given to another’s private life, appropriation of another’s name or likeness, and publicity that unreasonably places another in a false light before the public. Given Warren and Brandeis’s language, and the brief descriptions of the four branches, it is easy to see why privacy is commonly understood as a value asserted by individuals against the demands of a curious and intrusive society.

In this essay, however, I shall analyze the tort of intrusion, and to a lesser extent the tort of public disclosure, and attempt to demonstrate that the tort of privacy does not simply uphold the interests of individuals against the demands of community, but instead safeguards rules of civility that in some significant measure constitute both individuals and community. The tort rests not upon a perceived

opposition between persons and social life, but rather upon their interdependence. It is an interdependence that makes possible both human dignity and human autonomy, which paradoxically complement each other and can exist only within the common embrace of community norms.

The Tort of Intrusion: Privacy, Civility, and Personality

We can most easily approach this subject through the tort of intrusion, which has an analytically simple structure. This structure can be made visible by considering the elementary case of *Hamberger v. Eastman*. *Eastman* was decided by the New Hampshire Supreme Court in 1964 and constituted the state's first official recognition of the tort of invasion of privacy. This case is particularly instructive because it is so entirely unexceptional and representative in its reasoning and conclusions. The plaintiffs were a husband and wife who alleged that the defendant, their landlord and neighbor, had installed an eavesdropping device in their bedroom. The plaintiffs claimed that as a result of the discovery of the eavesdropping device they were "greatly distressed, humiliated, and embarrassed," that they sustained "intense and severe mental suffering and distress, and had been rendered extremely nervous and upset." The court had little difficulty in finding that, "by way of understatement," the type of intrusion suffered by the plaintiffs "would be offensive to any person of ordinary sensibilities." It did not matter, said the court, that the plaintiffs could not establish that the landlord or anyone else ever listened to the eavesdropping device, since the gravamen of the plaintiffs' cause of action rested solely on the intrusive installation of the device.

At first glance *Eastman* tells a rather simple story. "Marital bedrooms," as the United States Supreme Court observed in *Griswold v. Connecticut* (the first of its modern constitutional right to privacy cases), are "sacred precincts" in which we rightfully expect privacy. An invasion of that privacy is, returning to *Eastman*, "an injury to personality. It impairs the mental peace and comfort of the individual and may produce suffering more acute than that produced by a mere bodily injury." The plaintiffs in *Eastman* experienced just such suffering, and the function of the tort is to provide redress for that injury.

In all probability this story, with its narrow focus on actual mental suffering, accurately reflects how the vast majority of judges and lawyers understand the tort of invasion of privacy. But the limitations of this focus become apparent once it is understood that the eavesdropping device in *Eastman* was not defined as an invasion of privacy merely because the plaintiffs were in fact discomforted, but rather because the installation of the device was “offensive to any person of ordinary sensibilities.” Or, in the later language of the *Second Restatement of Torts*, the placement of the eavesdropping device was actionable because it “would be highly offensive to a reasonable person.”

The “reasonable person” is a figure who continually reappears in American common law. The important point about the reasonable person is that he is no one in particular. He is rather, as the commonly used text by Harper and James would have it, “an abstraction” who embodies “the general level of moral judgment of the community, what it feels ought ordinarily to be done.” Thus in *Eastman* the installation of the eavesdropping device is transformed into an actionable invasion of privacy because the general level of moral judgment in the community finds it highly offensive for landlords and neighbors to spy on marital bedrooms. A plaintiff is entitled to seek redress for “injury to personality” because of this judgment. This legal structure typifies the tort of intrusion. It rests on the premise that the integrity of individual personality is dependent upon the observance of certain kinds of social norms.

This premise is quite common in sociological thought. For our purposes, the most systematic and helpful explication of the premise may be found in the writings of Erving Goffman. In his 1967 article, “The Nature of Deference and Demeanor,” Goffman defines rules of deference as specifying conduct by which a person conveys appreciation “to a recipient or of this recipient, or of something of which this recipient is taken as a symbol, extension, or agent.” Rules of demeanor specify conduct by which a person expresses “to those in his immediate presence that he is a person of certain desirable or undesirable qualities.” Taken together, rules of deference and demeanor constitute “rules of conduct which bind the actor and the recipient together” and “are the bindings of society.” Elaborating on these concepts, Goffman writes,

Each individual is responsible for the demeanor image of himself and the deference image of others While it may be true that the individual has a unique self all his own, evidence of this possession is thoroughly a product of joint ceremonial labor, the part expressed through the individual's demeanor being no more significant than the part conveyed by others through their deferential behavior toward him.

According to Goffman, then, we must understand individual personality as *constituted* in significant aspects by, to return to the language of *Eastman*, the rules of decency recognized by the reasonable man. It follows that violations of these rules can damage a person by discrediting his identity and injuring his personality. I shall call such rules "civility rules," and I shall call the personality that would be upheld by these civility rules "social personality."

The Reciprocal Constitution of Community and the Individual

The concept of social personality points simultaneously in two distinct directions. On the one hand, the actual personalities of well-socialized individuals should substantially conform to social personality, for such individuals have internalized the civility rules by which social personality is defined. It is for this reason that the tort of intrusion, even though formally defined in terms of the expectations of the "reasonable person," can in practice be expected to offer protection to the emotional well-being of real plaintiffs.

But, on the other hand, civility rules can also be said to define the community which the reasonable person inhabits. They constitute the special claims that members of a specific community have on each other by virtue of their common membership in a community. In this sense, civility rules define the unique shape and identity of a community. Thus even if particular plaintiffs are not well-socialized and hence have not suffered actual injury because of a defendant's violation of civility rules, the law nevertheless endows such plaintiffs with the capacity to bring suit, thereby upholding the normative identity of the community inherent in the concept of social personality.

This interpretation of the tort explains what would otherwise be a puzzling aspect of its legal structure. Most torts require allegation and proof that the violation of a relevant social norm has actually caused some form of harm or damage. For example, if you drive your car carelessly and have an accident, a lawsuit against you for negli-

gence can succeed only if it establishes that your negligent behavior has actually caused some demonstrable injury. The basic idea is “no harm, no foul.” But the tort of invasion of privacy is qualitatively different. An intrusion on privacy is *intrinsically* harmful because it is defined as that which injures social personality. Thus, in contrast to the usual cause of action for negligence, the privacy tort enables a plaintiff to make out a case without alleging or proving any actual or contingent injury, such as emotional suffering or embarrassment. The most plausible interpretation of this legal structure is that the tort empowers plaintiffs to use the law to uphold the vision of community identity implicit within social personality.

In upholding this vision, however, individual plaintiffs also serve their own interests in participating within community life. This can be seen in the not infrequent cases where juries use the pretext of “psychic and emotional harm” to return particularly large verdicts, even though there is little objective evidence available to support them. The *Second Restatement* characterizes such damages as “vindicating” a plaintiff. To say that the plaintiff in an invasion of privacy suit requires vindication, however, is to imply that he is somehow in need of exoneration. But this implication is puzzling, for the plaintiff has been the victim, not the perpetrator, of a transgression.

The shame of the victim, however, is made explicable by the fact that he has been denied respect, and his status as a person to whom respect is due has consequently been called into question. Since, as noted earlier, the boundaries of a community are marked by the special claims which members of that community have on each other, the defendant’s disregard of the plaintiff’s claim to be treated with respect potentially places the plaintiff outside of the bounds of the shared community. The plaintiff can accordingly be vindicated only by being reaffirmed as a member of the community. It is plausible to interpret the seemingly excessive damages that sometimes characterize invasion of privacy actions as such an affirmation, which occurs through the simultaneous enrichment of the plaintiff and the punishment of the defendant.

Privacy and Civility: Some Theoretical Implications

We have come a long way, then, from the first simple story we were able to tell about the *Eastman* case. The underlying structure of

the privacy tort is as much oriented toward safeguarding rules of civility as it is toward protecting the emotional well-being of individuals. This understanding of the tort has several important theoretical implications, both for the concept of privacy and for the functioning of the law.

The Normative Nature of Privacy. The concept of privacy that underlies the tort is quite different from the “neutral” concept of privacy that some commentators have proposed, and that attempts to define privacy in purely descriptive and value-free terms. Ruth Gavison, for example, has defined privacy as a gradient that varies in three dimensions: secrecy, anonymity, and solitude. She believes that an individual’s loss of privacy can be objectively measured “as others obtain information” about him, “pay attention to him, or gain access to him.” Similarly, Robert Merton, in his functional analysis of privacy, uses the neutral definition of privacy as “insulation from observability.” In both cases, the presence or absence of privacy is thus a fact capable of ascertainment without regard to normative social conventions.

A neutral concept of privacy has certain obvious advantages and uses. It is useful, for example, in the cross-cultural analysis of privacy, because it creates an object of analysis that is independent of the various perceptions of the cultures at issue. But whatever the virtue of such neutral definitions of privacy, they are most certainly not at the foundation of the common law. The privacy protected by the common law tort cannot be reduced to objective facts like spatial distance or information or observability; it can only be understood by reference to norms of behavior. A defendant who stands very close to a plaintiff in a crowded elevator will not be perceived to have committed an intrusion; but the case will be very different if the defendant stands the same distance away from a plaintiff in an open field.

The privacy protected by the common law is thus intrinsically contextual and normative. This is true even where the concept of privacy is used to refer to particular spaces, like a bathroom or a home, from which others may be excluded. At issue with regard to such places are the forms of respect that they command. This point is made by Goffman in the essay “The Territories of the Self.” Goffman defines a territory as a “field of things” or a “preserve” to which an individual

can claim “entitlement to possess, control, use, or dispose of.” Territories are defined not by neutral factors, like feet or inches, but instead are contextual. Their boundaries have a “socially determined variability” and depend upon such “factors as local population density, purpose of the approacher, . . . character of the social occasion, and so forth.”

Privacy and the Autonomous Self. Goffman’s central point is that territories, defined in this normative way, are vehicles for the exchange of meaning; they serve as a kind of language through which persons communicate with one another. We indicate respect for a person by acknowledging his territory; conversely, we invite intimacy by waiving our claims to a territory and allowing others to draw close. An uninvited embrace, for example, can be experienced as a demeaning indignity, because it violates a territory. But if we waive that very same bodily territory, we can signify human compassion or desire.

Goffman’s analysis suggests that by lending authoritative sanction to the territories of the self, the tort of intrusion preserves the ability of individuals to speak through the idiom of territories. This ability, as Goffman notes,

is somehow central to the subjective sense that the individual has concerning his selfhood, his ego, the part of himself with which he identifies his positive feelings. And here the issue is not whether a preserve is exclusively maintained, or shared, or given up entirely, but rather the role the individual is allowed in determining what happens to his claim.

An individual’s ability to press or to waive territorial claims, his ability to choose respect or intimacy, is deeply empowering for his sense of himself as an independent or autonomous person. Of course, some norms, like those prohibiting murder, cannot be waived by the consent of individuals. But the norms policed by the intrusion tort are different. They mark the boundaries that distinguish respect from intimacy, and their very ability to serve this function depends upon their capacity for being enforced or waived in appropriate circumstances. In the power to make such personal choices inheres the very essence of the independent self. This mysterious fusion of civility and autonomy lies at the heart of the intrusion tort.

The above point bears significant relevance to a debate familiar to readers of this journal. Liberals stress those aspects of the self that are independent and autonomous. Communitarians emphasize those aspects that are embedded in social norms and values. In the case of the intrusion tort, however, this debate is miraculously transcended, for the tort presides over precisely those social norms that enable an autonomous self to emerge.

The Legal Enforcement of Civility Rules. Our analysis so far has assumed that the common law incorporates civility rules from society in some relatively unproblematic way. This assumption, however, requires at least two important qualifications. First, social life is thick with territorial norms. For obvious reasons, however, the law can protect only a small subset of these norms. The common law itself claims to enforce only the most important of them, only those whose breach would be “highly offensive.” This selection criterion serves the interest of legal institutions, which otherwise would be inundated with trivial lawsuits. It also, and somewhat less obviously, preserves the flexibility and vitality of social life, which undoubtedly would be hardened and otherwise altered for the worse if every indiscretion could be transformed into formal legal action.

Second, and more importantly, it is something of a fiction to speak of a single, homogeneous community within a nation as large and diverse as the United States. There is every reason to expect that civility rules regarding privacy will differ among ethnic, religious, class, or other social groups. It is said, for example, that Warren and Brandeis wrote their famous article because Warren, a genuine Boston Brahmin, was outraged that common newspapers had had the effrontery to report on his private entertainments. As such the class content of the privacy norms advanced by the article is plain. In a world in which privacy norms are heterogeneous, however, the common law must choose which norms to enforce. And this choice cannot be avoided by an appeal to the judgment of the “reasonable person,” for it must first be determined to which community the reasonable person belongs.

Despite the necessity of this choice, the tort of intrusion nevertheless conceptualizes the civility rules it enforces as, to use the words of Talcott Parsons, “universalist norms, applicable to the society as a whole rather than to a few functional or segmental sectors, highly

generalized in terms of principles and standards.” Whether this claim to universalist status is justified, however, cannot be determined from the mere fact of doctrinal assertion. It could be that the civility rules enforced by a judicial decision genuinely express generally accepted norms in a society. I doubt, for example, if anyone would seriously question *Eastman’s* assertion that eavesdropping on marital bedrooms constitutes a serious violation of generally accepted civility rules. But it is also possible that the civility rules enforced by particular decisions may be hegemonically imposed by one dominant cultural group onto others.

This suggests that care must be taken in evaluating the universalist pretensions of the tort of intrusion. Under conditions of cultural heterogeneity, the common law can become a powerful instrument for effacing cultural and normative differences. The significance of this effacement, however, lies not only in its hegemonic consequences, but also in the commitment that it reveals to the task of constructing a common community through the process of authoritatively articulating rules of civility. The common law tort purports to *speak for* a community. Yet this very ambition to authoritatively forge a community simultaneously requires the common law to displace deviant communities. Under such conditions, community and hegemony necessarily entail each other.

The Tort of Public Disclosure: Defining the Private

The tort of public disclosure is violated whenever one, in a highly offensive way, gives publicity to matters involving the private life of another that are not of legitimate public concern. The tort differs from intrusion because it regulates speech rather than behavior, and because it gives a plaintiff the ability to penalize a defendant’s connections to third parties with whom the defendant wishes to communicate. The tort is quite complicated, and much of pertinence to our theme can be said about it.

Suffice it to say here, however, that, as with the tort of intrusion, public disclosure does not depend upon neutral or objective measures of privacy. Instead the tort draws upon community norms that concern the flow of information in modern society. These norms, like those that define private space, have (again citing Goffman) a “so-

cially determined variability” and are sensitive to such factors as the “character of the social occasion,” the purpose, timing, and status of the person who makes the disclosure, the status and purposes of the addressee of the disclosure, and so on. We can learn from the tort that information about a debtor, which may be perfectly appropriate to disclose to his employer, banker, or wife, would be tortious to disclose to his neighbors. Information that may be widely known in some circles, may be inappropriate to reveal in others.

Information, then, is confined within boundaries that are normatively determined. These boundaries function analogously to those that define the spatial territories analyzed by Goffman. And indeed Goffman specifically notes that one kind of territory is an “information preserve,” which contains the “set of facts about himself to which an individual expects to control access,” and which is “traditionally treated under the heading of ‘privacy.’” Goffman’s point is that just as individuals expect to control certain spatial territories, so they expect to control certain informational territories. Because the boundaries of an individual’s informational space are “relative to the customs of the time and place, and . . . determined by the norm of the ordinary man,” the tort of public disclosure functions to maintain those civility rules that establish information preserves in the same way that the intrusion tort upholds the civility rules that define spatial territories.

Information preserves, like spatial territories, provide an important framework for the development of individual personality. Just as we feel violated when our bedrooms are invaded, so too we feel demeaned by the inappropriate disclosure of private information. Courts enforcing the public disclosure tort see themselves as protecting persons from (using language from numerous cases) “indecent and vulgar” communications that would “outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities,” or that would have the effect of “degrading a person by laying his life open to public view,” or that would threaten plaintiffs with a “literal loss of self-identity.”

The civility rules that delineate information preserves must therefore be understood as forms of respect that are integral to both individual and social personality. They comprise an important part of the obligations that members of a community owe to each other. This

perspective helps to clarify a perplexing feature of the public disclosure tort. The tort has always seemed somewhat strange because a plaintiff can recover damages for the public disclosure of “private” facts only by widely rebroadcasting those same facts through an official adjudicative process. If the public disclosure tort is understood merely as a mechanism for protecting the secrecy of private facts, it would seem to be entirely self-defeating. But if the tort is instead understood as a means of obtaining vindication for the infringement of information preserves, the disclosure of information in the course of a judicial action may be of only secondary importance so long as a plaintiff is ultimately reintegrated as a respected member of the community.

Conclusion: The Fragility of Privacy

The common law tort of invasion of privacy offers a rich and complex picture of the social texture of contemporary society: The tort safeguards the interests of individuals in the maintenance of rules of civility. These rules enable individuals to receive and to express respect, and to that extent are constitutive of human dignity. The rules also embody the obligations owed by members of a community to each other, and to that extent define the substance and boundaries of community life. And in the case of intrusion, these rules also enable individuals to receive and express intimacy, and to that extent are constitutive of human autonomy.

Norms of civility subsist only in certain forms of social interaction. Modern functional rationality, for example, runs roughshod over such norms. Stanley Diamond has eloquently documented how the modern state has “cannibalized” the “spontaneous, traditional, personal, [and] commonly known” aspects of “custom.” This tension between the prerogatives of state power and the norms of communal life is plainly visible in our Fourth Amendment jurisprudence, which attempts to subordinate the conduct of state law enforcement officials to the community’s normatively sanctioned expectations of privacy, while simultaneously balancing against these expectations the government’s compelling interest in dealing with breaches of public order. In this balance it is not uncommon for the instrumental needs of the state to override community norms. Civility norms are also inconsistent with the rational accountability characteristic of the public

sphere. We expect to know everything of pertinence about our public figures, whether or not this knowledge would be compatible with a decent civility.

Because civility norms are so susceptible to being displaced by other forms of social organization, they are extremely fragile. This fragility stems not merely from our ravenous appetite for the management of our social environment, but also from the undeniable prerogatives of public accountability. The plain fact of the matter, however, is that we are fully human only because we inhabit a certain normative reality, which depends upon a form of communal existence that is increasingly subject to preemption. Our very dignity inheres in that existence, which, if not acknowledged and preserved, will vanish, as will the privacy we cherish. To use the language of sociology, the question for us ought always to be where and how we wish to preserve the communal forms of *Gemeinschaft*, in the face of the demanding and imperial functional prerogatives of *Gesellschaft*.

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The Negative Effects of Cohabitation

Linda J. Waite

Americans often talk as if marriage were a private, personal relationship. But when two people live together for their own strictly private reasons, and carve out their own, strictly private bargain about the relationship, we call that relationship not marriage but “cohabitation.” In America, it is now more popular than ever. More men and women are moving in together, sharing an apartment and a bed, without getting married first. The latest Census Bureau figures show four million couples living together outside of marriage (not counting gay couples), eight times as many as in 1970. And many more people have cohabited than are currently doing so; recent figures show that almost two-thirds of young adult men and women chose to cohabit first rather than marry directly.

Most cohabitations are quite short-lived; they typically last for about a year or a little more and then are transformed into marriages or dissolve. Although many observers expected the United States to follow the path blazed by the Nordic countries toward a future of informal but stable relationships, this has not happened. We see no sign that cohabitation is becoming a long-term alternative to marriage in the U.S. It has remained a stage in the courtship process or a temporary expediency, but not typically a stable social arrangement. Thus, by resembling marriage in some ways and differing from it in others, cohabitation brings some but not all of the costs and benefits of marriage.

The Cohabitation Deal versus the Marriage Bargain

Cohabitation is a tentative, non-legal coresidential union. It does not require or imply a lifetime commitment to stay together. Even if

one partner expects the relationship to be permanent, the other partner often does not. Cohabiting unions break up at a much higher rate than marriages. Cohabitors have no responsibility for financial support of their partner and most do not pool financial resources. Cohabitors are more likely than married couples to both value separate leisure activities and to keep their social lives independent. Although most cohabitators expect their relationship to be sexually exclusive, in fact they are much less likely than husbands and wives to be monogamous.

A substantial proportion of cohabiting couples have definite plans to marry, and these couples tend to behave like already-married couples. Others have no plans to marry and these tentative and uncommitted relationships are bound together by the “cohabitation deal” rather than the “marriage bargain.” In fact, couples may choose cohabitation precisely because it carries no formal constraints or responsibilities.

But the deal has costs. The tentative, impermanent, and socially unsupported nature of cohabitation impedes the ability of this type of partnership to deliver many of the benefits of marriage, as does the relatively separate lives typically pursued by cohabiting partners. The uncertainty about the stability and longevity of the relationship makes both investment in the relationship and specialization with this partner much riskier than in marriage. Couples who expect to stay together for the very long run can develop some skills and let others atrophy because they can count on their spouse (or partner) to fill in where they are weak. This specialization means that couples working together in a long-term partnership will produce more than the same people would working alone. But cohabitation reduces the benefits and increases the costs of specializing—it is much safer to just do everything for yourself since you don’t know whether the partner you are living with now will be around next year. So cohabiting couples typically produce less than married couples.

The temporary and informal nature of cohabitation also makes it more difficult and riskier for extended family to invest in and support the relationship. Parents, siblings, friends of the partners are less likely to get to know a cohabiting partner than a spouse and, more important, less likely to incorporate a person who remains outside

“the family” into its activities, ceremonies, and financial dealings. Parents of one member of a cohabiting couple are ill-advised to invest in the partner emotionally or financially until they see if the relationship will be long term. They are also ill-advised to become attached to children of their child’s cohabiting partner because their “grandparent” relationship with that child will dissolve if the cohabitation splits up. Marriage and plans to marry make that long-term commitment explicit and reduce the risk to families of incorporating the son- or daughter-in-law and stepchildren.

The separateness of cohabitators’ lives also reduces their usefulness as a source of support during difficult times. Julie Brines and Kara Joyner, writing in the *American Sociological Review*, argue that cohabitators tend to expect each person to be responsible for supporting him or herself, and failure to do so threatens the relationship. The lack of sharing typical of cohabitators disadvantages the women and their children in these families relative to the men, because women typically earn less than men and this is especially true for mothers.

Another drawback of cohabitation is that it seems to distance people from some important social institutions, especially organized religion. Most formal religions disapprove of and discourage cohabitation, making membership in religious communities awkward for unmarried couples. The result is that individuals who enter a cohabitation often reduce their involvement in religious activities. In contrast, people who get married and those who become parents generally become *more* active. Finally, while young men and women who define themselves as “religious” are less likely to cohabit, those who do cohabit subsequently become less religious.

Cohabitation has become an increasingly important—but poorly delineated—context for child rearing. One quarter of current stepfamilies involve cohabiting couples, and a significant proportion of “single-parent” families are actually two-parent cohabiting families. The parenting role of a cohabiting partner toward the child(ren) of the other person is extremely vaguely defined. The non-parent partner—the man in the substantial majority of cases—has no explicit legal, financial, supervisory, or custodial rights or responsibilities regarding the child of his partner. This ambiguity and lack of enforceable claims by either cohabiting partner or child makes investment in

the relationship dangerous for both parties and makes “Mom’s boyfriend” a weak and shifting base from which to discipline and guide a child.

What Cohabitation “Produces”

As the previous section showed, marriage fosters certain behavioral changes—by both the couple and those around them—that cohabitation simply doesn’t encourage: each partner can specialize; in-laws can get involved; children and their parent’s spouse can invest in a mutual relationship; and so on. What, though, are the empirical results of these behavioral changes, and of the many other ways in which the two options differ?

Before seeking to answer this question, it must first be acknowledged that cohabiting couples, especially those with no plans to marry, tend to differ from married couples even before the cohabitation begins. Living with someone rather than marrying attracts people less committed to marriage, and less likely to be successful at it. Thus, selection of people with less to offer a partner and less to gain from marriage accounts for some of the poorer outcomes of cohabitators. But, as we shall see, at least some of the evidence suggests that cohabiting itself also contributes to those outcomes.

Domestic Violence. A recent Census Bureau report speculated that perhaps so many children were being born to unmarried mothers because women were avoiding marriage out of fear of domestic violence and child abuse. Is this a reasonable fear? My own analysis of data from the 1987/88 National Survey of Families and Households shows that married people are about half as likely as cohabiting couples to say that arguments between them and their partner had become physical in the previous year (eight percent of married women compared to 16 percent of cohabiting women). When it comes to “hitting, shoving, and throwing things,” cohabiting couples are more than three times more likely than the married to say things get that far out of hand. One reason cohabitators are more violent is that they are, on average, younger and less educated. But even after controlling for education, race, age, and gender, people who live together are 1.8 times more likely to report violent arguments than married people.

It matters a great deal, however, whether cohabiting couples have definite plans to marry. Engaged cohabitators are no more likely to report violence than married couples, but cohabitators with no plans to marry are *twice* as likely to report couple violence as either married or engaged couples. Women in uncommitted cohabiting relationships seem to be especially at risk of violence directed toward them. The well-being of married *and engaged* cohabiting couples is substantially higher on this dimension than uncommitted cohabiting couples. Some researchers suggest that commitment to the relationship and to the partner reduces violence. These differentials seem to support that view.

Sex. Sex appears to be a key part of the cohabiting “deal.” According to the 1992 National Health and Social Life Survey, cohabiting men and women make love on average between seven and seven and a half times a month, or about one extra sex act a month than married people. But cohabiting men and women are less likely than those who are married to be monogamous, although virtually all say that they expect their relationship to be sexually exclusive. Renata Forste and Koray Tanfer find in the National Survey of Women that four percent of married women had a secondary sex partner compared to 20 percent of cohabiting women and 18 percent of dating women. Women’s behavior changed dramatically when they married, with a huge decline in the chances of having a secondary sex partner. Forste and Tanfer conclude that marriage itself increases sexual exclusivity; cohabitation is no better than “dating” on this dimension.

Housework. Women who are living with men tend to do more housework than women living alone or with other women. A recent study by Scott South and Glenna Spitze shows that once they take into account the presence of children and others and characteristics of the partners, married women spend 14 hours more than married men do. Women who are cohabiting spend about ten hours more on housework than cohabiting men. On this dimension, then, cohabitation would seem to be a better deal for women than marriage. Some economists, however, would argue that husbands compensate their wives for their time in work for the family by sharing their income with them, while cohabiting women generally don’t share their

partner's earnings, so they may be doing extra housework without extra pay.

Wealth. Married couples link their fates—including their finances. This is a more attractive proposition if one's intended has a decent income and few debts. But if not, living together is a way to avoid taking on the debts—current or future—of the partner. It also allows couples to avoid the “marriage penalty” in tax code—an issue for two-worker couples with fairly equal incomes (but couples with unequal earnings could see tax benefits if they marry and share income). Since the income of one's spouse (but not one's cohabiting partner) is counted in determining eligibility for benefits under government programs like Food Stamps and the Earned Income Tax Credit, the implicit tax on marriage in these programs can be very high, as Eugene Steuerle, writing in this publication, has pointed out.

Selection of those with few resources into cohabitation—and/or the negative effects of the cohabitation bargain—combine to leave couples who are living together with relatively little money. LingXin Hao, writing in *Social Forces*, shows that among all families with children, cohabiting couples have the lowest average level of wealth, comparable to families headed by a single mother. Intact two-parent families and stepfamilies have the highest level of wealth, followed at a distance by families headed by a single father. Unlike single-parent families, cohabiting couples have two potential earners, so their very low levels of wealth are less expected. But expected or not, they are a cause for concern, especially for the children living in these families.

Emotional Well-Being. Marriage is, by design and agreement, for the long run. Married people, thus, see their relationship as much more stable than cohabiting couples do. And for any couple, thinking that the relationship is likely to break up has a dampening effect on the spirits. The result: cohabitators show lower psychological well-being than similar married people. Specifically, cohabitators report being more depressed and less satisfied with life than do married people. And according to sociologist Susan Brown, worrying that one's relationship will break up is especially distressing for cohabiting women with children, who show quite high levels of depression as a result.

Perhaps, however, cohabiting people are more depressed because depressed and dissatisfied people have trouble getting married. Not so, says Brown. She found that cohabitators' higher levels of depression are not explained by their scores before the start of the union. Rather it is a person's perception of the chances that the relationship will break up that seems to be the chief culprit in his or her poor emotional well-being.

Divorce. People often believe that living together in a “trial marriage” will tell potential partners something about what marriage would be like. The information gained could help couples make good choices and avoid bad ones; cohabiting before marriage could lead to better marriages later. Evidence from the National Survey of Families and Households shows how widespread this belief is. Most cohabitators say that making sure that they are compatible before marriage is an important reason that they wanted to live together.

But a large body of recent evidence now shows quite consistently that people who cohabit and then marry are much more likely to divorce than people who marry without living together. An initial conclusion might be that cohabitation changes people's attitudes in ways that make them less committed to the institution of marriage. However, research conducted by Lee Lillard, Michael Brien, and myself shows that people who cohabit have other characteristics that both lead them to cohabit in the first place and make them poor marriage material. Thus, in the case of divorce, selection would seem to account for the differences between marriage and cohabitation.

Recovering the Wheat without the Chaff

The cumulative evidence clearly suggests that compared to marriage, uncommitted cohabitation—cohabitation by couples who are not engaged—is an inferior social arrangement. Couples who live together with no definite plans to marry are making a different bargain than married couples or engaged cohabitators. The bargain is very much *not* marriage, and is “marriage-like” only in that couples share an active sex life and a house or apartment. Cohabiting men tend to be quite uncommitted to the relationship; cohabiting women with children tend to be quite uncertain about its future. Levels of domestic violence are much higher in these couples than in either

married or engaged cohabiting couples. Children in families headed by an unmarried couple do much worse than children in families with married parents. Uncommitted cohabitation delivers relatively few benefits to men, women, or children. This social arrangement also probably benefits communities less than marriage.

Clearly, the men and women who choose uncommitted cohabitation do not have the same characteristics as those who marry without first living together or who live together while planning their wedding. This selection into cohabitation of people less likely to build a successful marriage seems to account for their higher chances of divorce should they ultimately marry. But cohabitation itself seems to *cause* attitudes to change in ways inimical to long-term commitment, to damage emotional well-being, and to distance people from religious institutions and from their families. There is also some evidence that cohabitation is less beneficial for children than marriage is. And there is some suggestion that marriage—but not uncommitted cohabitation—reduces domestic violence.

If cohabitation is inferior to marriage, then we as a society would benefit from more of the latter and less of the former. Encouraging marriage over cohabitation involves undoing a whole series of legal and social changes that have undercut the privileged status of marriage. This doesn't mean we should encourage a return to the old model of marriage and the family. But in the justified effort to overcome the sexism and inflexibility of the "1950s" marriage, we may have been too willing to throw the baby out with the bathwater. If we wish to retrieve for more people the benefits that marriage delivers that cohabitation does not, it is important to begin the process of re-privileging marriage now.

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Are Rights Universal? The “Asian Values” Debate

Daniel A. Bell

Should we avoid making cross-cultural judgments and let each community rule on what is ethical? Or are there universal moral truths that speak to all of us? Daniel Bell takes a third position in this article. He develops his perspective through a dialogue between two fictitious characters. Sam Demo is an East Asia program officer for a fictitious U.S.-based nongovernmental organization named the National Endowment for Human Rights and Democracy (NEHRD). Joseph Lo is a Hong Kong businessman and human rights activist. We join the conversation in midstream.

JOSEPH LO: To be effective, human rights activists may need to pay more attention to local justifications for human rights.

SAM DEMO: Why do you think drawing on the resources of indigenous cultural traditions is any more likely to persuade East Asians—and their governments—of the value of human rights?

LO: It’s easier to work with examples. Are you familiar with the case of the persecution of the Al-Arqam Islamic group in Malaysia?

DEMO: Vaguely. I don’t know the details.

LO: This case was discussed by the Islamic legal scholar and human rights activist Abdullahi An-Na’im. In August 1994 the Malaysian government launched a systematic campaign to suppress the Al-Arqam group, in accordance with a ruling from the National Fatwa Council and a decree by the Ministry of Home Affairs. Al-Arqam was declared “deviationist,” and its leader, Ashaari Muhammad, was arrested and held without charge or trial. The group’s written, audio, and visual presentations were banned, and Malaysian Muslims were prevented from joining Al-Arqam or participating in any of its activities.

DEMO: Sounds pretty bad. I wonder why this case didn't arouse much concern in the West.

LO: Perhaps because Al-Arqam favored a relatively "fundamentalist" interpretation of Islam. People tend to forget that human rights are supposed to protect unpopular individuals and vulnerable groups. In any case, the interesting part is that the persecution of the group can be condemned on *Islamic* grounds. An-Na'im argues that the Malaysian government misused Islam for the purpose of condemning Al-Arqam and violating its rights. He notes, for example, that deviationism is unknown to any orthodox formulation of Islamic Shari'a law, and that the government failed to conform to the demands of the principle of legality and rule of law under Shari'a itself. Of course I'm not an expert interpreter of Shari'a, but I trust An-Na'im's judgment in these matters.

DEMO: Personally, I'd worry about using religious arguments to promote human rights. You're opening up a whole can of worms by mixing politics and religion.

LO: I'd worry more about what happens when you exclude religion from the political realm: the best way to nourish religious extremism is to stamp out the harmless expression of religious ideas. Besides, in this case, the can is already open. And once it's open, it's even more dangerous to abandon the cultural terrain to repressive governments. Human rights activists need to counter misuses of tradition with cultural arguments of their own.

DEMO: Is it really necessary to make such arguments? From what you say about this case, the Malaysian government's behavior can also be criticized by appealing to nonreligious political principles. The secular human rights activist, for example, can criticize the Malaysian government for denying a group of citizens their freedom of belief and for detaining them without charge or trial on the basis of a ruling from a council of religious scholars, hence violating the principle that religion not be used for political ends. Perhaps this secular activist could also invoke Article 27 of the United Nations International Covenant on Civil and Political Rights, which states that minorities shall not be denied the right to practice their own religion.

LO: But how persuasive are these secular justifications in a country dominated by a Muslim majority where rights are generally thought

to have theocentric foundations and where Islamic legal codes already shape family and criminal law? In this context, arguments that appeal to widely shared religious values are far more likely to be effective than arguments founded on the principle that a human rights regime mandates a strict separation between religion and the state.

DEMO: You may be right. But was An-Na'im's Islamic argument for human rights really effective?

LO: It's hard to know. One of the difficulties with human rights work is that it's often hard to measure progress. The test of success is often that nothing happens—no one is arrested, tortured, murdered, and so on. Perhaps An-Na'im's argument will make the government of Malaysia think twice about invoking Islamic law to justify human rights abuses the next time around.

DEMO: Maybe. But that's not enough to persuade the skeptics. I need to justify the way that I spend the NEHRD's funds, and I can foresee some problems if I fund some religious groups that purportedly help to promote human rights. I'd need to show more concretely that the benefits of this approach outweigh the risks.

LO: Let me try to think of something else. (short pause) Actually, there's a relatively clear case of success in Malaysia. A Malaysian sociologist named Norani Othman discussed the example of a non-governmental organization of Muslim women known as the Sisters of Islam, which tries to improve women's status in Malaysia. This group publishes and distributes booklets explaining how the Quranic conceptions of rights and duties of men and women in the family and in the economic and political spheres provide the basis for a more enlightened and egalitarian view of gender relations than the regressive ideas typically—and misleadingly—offered in the name of Islam itself. Sometimes the group intervenes directly with sympathetic officials in the Malaysian government to help formulate laws that improve women's status, and they've had some impact on legislation. In December 1993, for example, the group submitted a memorandum to the prime minister of Malaysia urging the federal parliament not to endorse the *hudud* law passed by the Kelantan state legislature. The *hudud* punishments included such troubling features as the inadmissibility of women as eyewitnesses and the implied endorsement of the

view that compensation for death or injury to a woman should be half of that for a man. Sisters of Islam argued against the endorsement of these punishments by rejecting the crude equation of *hudud* with Shari'a, and Shari'a with Islam, that helped to justify the Kelantan enactments. Apparently this was effective, because the federal parliament has stated that it will not pass the Kelantan *hudud* code. Othman argues that Sisters of Islam succeeded by creating awareness among some of the more powerful, modernist Muslim politicians that there is a valid Islamic argument to resist implementation of *hudud* laws in the contemporary context. If the group had limited its appeal to international human rights principles, it would almost certainly have lost the battle.

DEMO: I wonder if politicians really respond to moral arguments for human rights grounded in traditional culture. Except for the Ayatollah Khomeinis of this world, they're generally motivated by much more immediate practical concerns. And I doubt that religious dogmatists would respond to these arguments.

LO: Admittedly, there's not much we can do with pure *realpolitik* types or with religious dogmatists who seem to rule out in advance the possibility that they may revise their initial viewpoints in response to dialogue with others. But not all politicians are like that. And even in such cases, there may be some hope. I recently came across an interesting argument that Khomeini could have been persuaded to exculpate Salman Rushdie within the terms of Islam.

DEMO: You seem to be placing a lot of emphasis on persuading government officials to respect human rights. That will plug holes, but will it address the fundamental causes of injustice? Can it help those of us engaged in long-term human rights work?

LO: I didn't mean to imply that human rights work was just about pressuring government officials to redress human rights violations. Changes will be short-lived if the public at large isn't convinced of the value of new human rights. But for that to happen, it's best to ground new rights structures on those existing values and cultural reference points that have legitimacy for people on the ground. That's what the Sisters of Islam tries to do: its booklets on gender equality and Islam are meant to change attitudes toward women among members of the general public. The assumption is that building human rights prac-

tices on traditional cultural resources is more likely to lead to *long-term* commitment to human rights norms and practices.

DEMO: Fair enough, but I wonder how much these arguments about culture will matter to “Joe Six-Pack”

Lo (interrupting): “Joe Six-Pack?”

DEMO: I’m sorry, that’s an American expression. It refers to the ordinary guy who drinks beer, watches football on Sundays, and doesn’t spend much time reflecting upon deeper issues.

LO: It’s perhaps not the best analogy if we’re talking about the ordinary Muslim male. They’re not supposed to drink alcohol.

DEMO: Fair enough! But my point is that these arguments about culture tend to appeal primarily to intellectuals, and I’m not sure to what extent intellectuals make a political difference. In the United States, not many of these arguments about cultural traditions affect life outside of the academy.

LO: But things may be different in East Asia. In predominantly Islamic societies such as Malaysia, it’s not just intellectuals who care about cultural disputes: Islam shapes the way people lead their lives, and new religious interpretations can make a social and political difference. Nor would I write off the potential contributions of intellectuals. In societies that have been shaped by Confucianism, intellectuals play an important public role: they are granted large amounts of respect and prestige, and what they say often has an impact on society at large. Professor Han Sangjin, who teaches at Seoul National University, pointed out that university students in Korea played an important role in galvanizing opposition to military rule and in promoting human rights. The more general point is that cultural traditions can shed light not only on the most effective arguments for human rights, but also on the groups most likely to bring about human rights reforms.

DEMO: Hmm. That’s important for my organization, which must target funds to the groups most likely to bring about lasting human rights reforms.

LO: There’s another point that is relevant for those concerned with the effective implementation of human rights in the region: the impor-

tance of not being too abrasive in pushing for human rights in the region. Blanket criticism of human rights practices is often seen in East Asia as high-minded and self-righteous, even by critical intellectuals. Professor Joseph Chan, who teaches at the University of Hong Kong, expressed his irritation at Western human rights advocates and lawyers who attend international conferences on Asian values and human rights and launch into lengthy denunciations of the appalling human rights records of some Asian countries, as though their listeners are unaware of the violations in question or would want to defend them. What's the point of this grandstanding on human rights?

DEMO: I've been warned about that.

LO: Once again, cultural knowledge is useful: it can help to identify the right sort of attitude that should be displayed by the rights activist. Professor Onuma Yasuaki, who teaches international law at the University of Tokyo, stresses the point that modesty is highly prized in the East Asian region. Even if one believes in certain values, proselytizing for them is regarded as arrogant, uncivilized, and counterproductive.

DEMO: Fair enough. Actually, I'm not one of those brash Americans. I'm normally on the quiet side. Besides, I'm not supposed to antagonize my audience: the NEHRD's mission is to develop productive, mutually respectful relationships with locals to promote human rights in the long term. Still, I'd find it hard to be polite to a dictator whose regime tortures political prisoners.

LO: Even if you're addressing the "bad guys," it's often more effective to present your point of view in a quiet and modest manner. For example, criticism of human rights practices can be prefaced by criticism of human rights practices at home and sincere praise for certain aspects of the society under question. I recall a story that was told by Jeffrey Garten at a memorial service in Beijing for the late United States Secretary of Commerce Ronald Brown. Preparing for his first official trip to China two years ago, Secretary Brown had been warned that the merest mention of human rights to Chinese President Jiang Zemin would jeopardize the entire mission and scuttle negotiations over several big commercial deals. But Secretary Brown—as you know, an African-American in the largely white U.S. power structure—vowed nonetheless to raise the issue. After launching into a

sales pitch for one of the projects under discussion, Secretary Brown paused for breath and said, "Let me tell you something about myself." He went on to talk about his experience in the U.S. civil rights movement and continuing race discrimination in the United States. Neither he nor anyone else was in a position to preach, he said, "but it would really be to your advantage to do something about the abuses that occur here," he told President Jiang. "Don't do it for us. Do it for yourselves. Do it because you're a great country, because you're a great power." After a long pause, President Jiang said, "If you put it that way, I think we have something to talk about." Jiang eventually agreed to resume the human rights dialogue and told Secretary Brown that he could announce it that evening.

DEMO: Mmm, that's an interesting story. But Brown was notoriously smooth. I wonder if he was genuinely committed to human rights. These probusiness types tend to be motivated primarily by strategic concerns.

LO: In my experience, some businessmen really do care about human rights "deep in their hearts." Besides, it doesn't really matter, so long as the effect is to improve the human rights situation.

Justifiable Constraints on Western-Style Rights

LO: It's worth noting that every classroom in the French secular school system must display a copy of the 1789 French Declaration on the Rights of Man and Citizen. This document seems to have more emotional resonance in France than the Universal Declaration of Human Rights, just as ordinary Americans care more about the Bill of Rights in the U.S. Constitution. Needless to say, a proposal that the UDHR should have political priority over the French Declaration would be laughed out of existence in France. It's not just in Asia that the current "international" rights regime lacks credibility.

DEMO: Are *all* rights to be locally justified, in your opinion?

LO: Remember, I'm not talking about the right to life, the right not to be tortured, or other uncontroversial rights. I'm only talking about rights that are publicly contested in the international arena: social and

economic rights, the rights encompassed within family and criminal law, the rights of indigenous peoples, the participatory rights inherent in Western-style democratic practices, and so on. These may well need to be renegotiated. There's a need for genuine dialogue—including more input from the non-Western world—over the shape of a truly international human rights regime.

DEMO: Fair enough. However, it's worth pointing out that for dialogue and negotiation to be truly open, all participants in fact need a quite strong set of rights: the starving, those who fear arbitrary arrest, the uneducated, and victims of discrimination can't easily participate as equals in dialogues about rights. But let me just focus on one right that you seem to take for granted: the freedom of speech. This right can't be contested if you want to include the voices of minority viewpoints within traditions in the dialogue about rights. For example, you noted earlier that some contemporary interpreters of Islam argue that the Qur'an supports "modern" ideas about gender equality. But this is probably still a minority viewpoint within Islam. For such a reinterpretation to become widely accepted it needs to be buttressed by a U.S.-style right to free speech so that majority viewpoints can be challenged and eventually replaced by values more supportive of women's rights.

LO: That reminds me of a point made by Abdullahi An-Na'im. He said that the right to free speech is essential to guarantee the widest possible multiplicity of voices and perspectives on the meaning and implications of cultural norms and institutions. Without the freedom of speech, internal cultural discourse—and the same goes for cross-cultural dialogue—may be limited to the viewpoints of the most powerful sectors of the community.

DEMO: So we agree on the need to secure the freedom of speech, even if this right is publicly contested in the international arena. There's nothing to negotiate about the freedom of speech.

LO: I wouldn't go that far. At this East-West dialogue on human rights, everyone seemed to agree that the question of power—of who speaks for a tradition—is an important one, and that minority viewpoints must be given a say. No one questioned the need for a mechanism for change that allows for minority viewpoints to become dominant or, at least, politically relevant. But some participants questioned An-Na'im's

position that this necessarily translates into an absolute right to free speech. They expressed the view that there may be some justifiable constraints on free speech.

DEMO (raises voice): What's that supposed to mean?

LO: Let's take an example. Dr. Sulak Sivaraksa—a Buddhist scholar, prodemocracy activist in Thailand, and nominee for the Nobel peace prize—raised an interesting challenge to the freedom of speech. In 1991 the leader of the Thai military government, General Suchinda, pressed charges against Dr. Sulak for *lèse majesté* [the insulting of a monarch] and for defaming him in a speech given at Thammasat University. Fearing for his life, Sulak fled the country, but he returned in 1992, after the Suchinda government had fallen, to face the charges. In court, Sulak didn't deny that he had attacked the "dictator" Suchinda, but he did deny the charge of *lèse majesté*. He went out of his way to argue that he didn't stake his ground on an absolute right to free speech, and that he wouldn't affirm a right to insult the king and his royal family. Sulak also expressed his loyalty to the king and the royal family, referred to the many services he had performed for them, and argued that he had discussed the use of the charge of *lèse majesté* in current Thai political practice in order to highlight abuse and to point to the ways in which abuse might undermine the monarchy. In short, Dr. Sulak aimed to persuade fellow citizens that the dominant political system should be replaced with an alternative democratic political structure, but he made it explicit that he didn't want to challenge a mechanism for change that places a constraint on direct criticism of the Thai king.

DEMO: Was Dr. Sulak *really* expressing his love of the monarchy, or was his defense merely strategic?

LO: Who knows? I'm not privy to Dr. Sulak's inner world. But let's assume that he, like many Thais, would feel deeply offended, if not personally harmed, by an attack on the Thai king. Is there anything wrong with a mechanism for changing a cultural tradition that has constraints like this one, endorsed by both defenders and critics of the prevailing views?

DEMO: I worry about this line of argument. It's difficult for me to go along with the suggestion that cultural traditions can provide a

genuinely moral foundation for illiberal norms and political practices. This argument can be employed as an excuse to justify or “tolerate” the subjugation of members of cultural groups who’ve been denied the opportunity to reflect on and criticize norms of deference and humility to powerful leaders.

LO: Many East Asians think that humility is actually a virtue. Besides, I wouldn’t agonize too much over this issue. There probably aren’t too many other examples of illiberal constraints on challenges to prevailing cultural viewpoints endorsed by both political leaders and leading social critics.

DEMO: Still, your point is that a truly international rights regime shouldn’t include a right to free speech.

LO: It’s difficult to predict the outcome of a dialogue before it takes place. But were I to venture a guess, I’d say that most East Asians would prefer some constraints on free speech, perhaps in the form of libel laws to protect cultures from various forms of defamation and hate speech.

DEMO: It seems that my initial intuition may have been correct. Asian values in practice means curtailing Western-style liberal rights. It’s all about justifying state repression.

LO: Now you’re the one who’s exaggerating the East-West split. Charles Taylor pointed out that relatively uncontroversial laws against hate speech also exist in Canada. Expressions of anti-Semitism are against the law in Germany. These are still “liberal” countries, and there’s enough free speech for minority viewpoints to become dominant.

DEMO: But still, at the end of the day it comes down to the fact that proponents of Asian values favor restricting the set of rights typically enjoyed by members of liberal Western societies.

LO: That’s true to a certain extent. Another example is the right to privacy, which is often defended in liberal societies regardless of the social costs. Most East Asians, I suspect, won’t value this right to the same extent. Joseph Chan pointed out that in Singapore, the law empowers the police and immigration officers to perform a drug test on the urine of any person who behaves in a suspicious manner. If the

result is positive, rehabilitation is compulsory. Now, Western liberals would probably see this policy as an unjustifiable invasion of privacy, but this is far less controversial in Asia. Many would consider such a restriction on freedom to be a legitimate trade-off for the value of public safety and health.

DEMO: And I suspect many Americans would agree. The problem, however, is that it would probably violate the Fourth Amendment of the U.S. Constitution, which protects people against unreasonable search and seizure. And let me ask you, is that such a bad thing? A rights regime is supposed to protect unpopular individuals from the “rights-abusing” tendencies of majorities.

LO: But rights—if they’re to be meaningful in practice—must have *some* grounding in the local culture. In Singapore, even opposition parties don’t question the government’s policy on drug searches. They do criticize other aspects of “authoritarianism”—in particular, curbs on political freedoms—but this kind of restriction on one’s privacy is widely seen as necessary for promoting the common good, and opposition figures probably know they can’t get any political capital out of this issue.

DEMO: But perhaps only a politically authoritarian regime could impose such curbs on civil freedoms.

LO: Not necessarily. In democratic South Korea, each household is required to attend monthly neighborhood meetings to receive government directives and discuss local affairs.

DEMO: Really? Isn’t there opposition to this policy?

LO: Not much, and that’s my point. What may be viewed as a minor inconvenience in Korea would almost certainly outrage most U.S. citizens, and it’s quite likely—correct me if I’m wrong—that the U.S. Supreme Court would strike down a governmental policy that forced citizens to associate for political purposes of this sort as a violation of the First Amendment. Once again, most East Asians seem to be more willing to accept restraints on individual freedom in the name of serving the common good, perhaps as a legacy of the Confucian tradition.

Confucianism and Western Rights: Conflict or Harmony?

Hahm Chaibong

What are “Asian” values? In one of the representative Asian value systems, Confucianism, they are family, community, and an emphasis on morality in interpersonal relationships. They include respect for, and deference to, authority, as represented by parents, teachers, elders, and (here it becomes controversial) government and state. Discipline and responsibility also figure prominently in the constellation of Asian values. These are values that many in East Asia think are palpably lacking in the West and, at the same time, values that they think are in danger of disappearing from their own societies with the onset of industrialization and modernization.

Of course, the first thing one notices about these values is that few cultures or societies, if any, would deem them unimportant or not worth defending. Indeed, many critics of Asian values readily point out that these values are not particular to Asian cultures. They are values that even the most individualistic societies would also affirm, other things being equal.

However, contemporary advocates of Asian values are often greeted with suspicion, cynicism, and even scorn. Values that all cultures readily recognize as important have become the focus of a debate mired in polemics and mutual denunciation rather than an occasion for serious and substantive discussions on philosophy, ethics, and politics. Mistrust of the other’s motivations has so poisoned the atmosphere that a genuine effort to understand the opposing position has become the first casualty. How is it that such a state of affairs has come to prevail?

The Current State of the Debate

One factor contributing to the harsh tone of the debate is the particular history and character of liberalism, the foremost critic of Asian values. Modern liberalism is the product of a long ideological, political, and theoretical struggle with totalitarianism. It has learned from experience that attempts to affirm the state, community, nation, and class over the individual lead to disaster. As a result, liberals are deeply suspicious of attempts to privilege any authority over the individual. The fear is that diverging from a defense of the absolute rights of the individual will put society on the “road to serfdom.” Hence, it is not just that individual rights override other values when they come into mutual conflict. Rather, *any* talk of deference to authority—parental, governmental, or other—is considered anathema. Given this narrow vision of the individual as held by mainstream liberal critics, one can see that there is little room for compromise.

The trouble is that there are certain formulations of Asian values that make the liberals feel that their suspicions are justified. When they hear claims such as “Asian values emphasize discipline and authority rather than rights” or that “Western notions of rights are not appropriate for Asian societies,” alarm bells begin to sound. When such arguments are advanced by authoritarian and repressive political regimes, liberals have seemingly conclusive proof that Asian values justify anti-democratic politics and violations of human rights. When Confucianism is invoked as the theoretical basis for such values and practices, they become convinced that this time-honored political philosophy is nothing but an anti-democratic and authoritarian remnant of the past.

It is undeniable that Confucianism emphasizes discipline and responsibility rather than rights. However, it is not because Confucianism teaches that rights are less important than discipline and responsibility, but rather because the concept of “rights” is not a part of the Confucian discourse. The notion of human rights is, indeed, alien to Confucianism. This basic fact is the starting point of the Asian values debate.

So far, there have been two ways in which this fact has been used in the debate. On one hand, some politicians have used it to deny their

people certain basic rights. Such a straightforward application of the fact that Confucianism lacks the notion of human rights is, for many, proof that the term “Asian values” is nothing but a euphemism for political repression. On the other hand, those who wish to defend Confucianism against such abuses and willful misinterpretations have started to search for embryonic forms of the concept of “rights” in the Confucian canon. To them it is inconceivable that a great philosophical-ethical system such as Confucianism would have failed to articulate some form of the concept of human rights.

Neither of these approaches is satisfactory. Those who misuse Confucianism to justify oppressive political practices and regimes reveal either a willful or woeful misunderstanding of their subject. On the other side, the would-be defenders of Confucianism who set out in search of the concept of rights in the canon fail to grasp the epistemological terms of the debate.

Confucianism and State Power

To move beyond this fruitless debate, it is helpful to first note that Confucian political theory does not justify or condone those practices that liberals would regard as violations of human rights. In fact, one can go even further and say that, like liberalism, Confucianism is a political theory deeply suspicious of, and on constant guard against, governmental abuses of power. Given the place of Confucianism throughout East Asian history as the orthodoxy, it is easy to forget its essentially dissident or oppositional nature. However, even a cursory examination reveals its skepticism of political power and authority.

Confucianism does not seek to limit the power of the government by appealing to “human rights,” or by instituting legal mechanisms and procedures. In fact, it explicitly rejects the law as the best means for limiting the power of government and instituting a humane society. Confucius regarded legalism and proceduralism as insufficient or inappropriate for building an ideal society: “If you lead them by means of government and keep order among them by means of punishments, the people are without conscience in evading them. If you lead them by means of virtue and keep order among them by means of ritual, they have a conscience and moreover will submit.”

How, then, did Confucianism seek to limit abuses by the government? By fostering the development of the “Princely Man,” or the “Confucian Gentleman.” By educating people who would embody such virtues and values as *ren* (human heartedness, compassion), *yi* (justice), *li* (propriety, ritual), *zhi* (knowledge), and *shen* (trust), Confucians throughout the ages tried to institute barriers against the abuses of power on the part of the king, state, warlords, and aristocracy.

This might be a rather surprising claim for those to whom Confucianism and Confucian literati conjure up the image of a bureaucrat or “mandarin,” faithfully representing and serving the interests of the king and the state as well as those of his class. However, contrary to the popular image of the Confucian Gentleman as a mandarin, the relationship between the monarchy and the literati was much more complex and fraught with tension. The ideal goal of the Confucian scholar-bureaucrats was to serve a sagely king to whom they could fully give their loyalty and respect. They dreamed of a state where political power and moral imperatives became one. Beholden to such dreams, many Confucians tried to give their kings the benefit of the doubt when the latter exhibited human weaknesses. Tearful and heartfelt remonstrances to the king, not open denunciation and opposition, were deemed the appropriate way to protest. (In the days leading up to the brutal crackdown at the Tiananmen Square, there were many scenes between the student demonstrators and Party leaders which were strikingly reminiscent of this Confucian tradition. Of course, once the crackdown came, the nature of the protest changed dramatically and fundamentally.)

At the same time, all Confucians knew that they would never have a perfect king to serve. In fact, Confucianism starts from this premise. Much like the Platonic philosopher-king, a Confucian king was an ideal. As for the kings that were cited as models—the mythical sages, Yao and Shun—not only were they mythical, but in addition, human society was thought to have so deteriorated since their time that a return to that perfect age was no longer possible. Moreover, in the ideal a king did not gain the throne because he had the stronger army or because he was the son of the previous king, but because he was thought to possess those moral qualities worthy of a true king.

As such, there is little if anything in the Confucian tradition that would tell the Confucian Gentleman to give his loyalty blindly to his king. He knew that the king was not, and never could be, a sage. The one true sage who embodied all the virtues—Confucius—was never a king. The real kings of his age regarded him as a subversive at worst, and a harmless intellectual at best. Confucius was never able to hold a political post whereby he could put into practice those values that he so ardently believed in and preached. Throughout his life he wandered in search of a sympathetic ear among the many princes and rulers. Although he was cordially received by most rulers who had heard of his fame as a teacher, he was never invited to stay. He died convinced that the world that he had known would soon crumble and that those values he tried to uphold had little chance for survival. Thus, if the one person who was truly worthy of ruling was never able to, by implication all real kings were not worthy of their position and title.

This was the defining political wisdom of the Confucian literati. They knew that they had to compromise with reality. The reality was that powerful men with great martial virtues, not Confucian-civil ones, received the “mandate of heaven.” They also had to accept the fact that the sons of the kings and emperors would inherit the throne, regardless of their moral worthiness. However, accepting such a compromise did not mean that the Confucian Gentleman would simply become a functionary of the bureaucratic state and a servant of the king. On the contrary, because the king was not perfect, it became the duty of the Confucian scholar-bureaucrat to educate and guide the king. It was up to the Confucians to make up for the moral deficiencies on the part of the kings.

Although this sense of the Confucian Gentleman’s moral superiority vis-à-vis the king was always at least latent in Confucianism, it became quite explicit with the advent of Neo-Confucianism. At the hands of Chu Hsi (1130-1200), its greatest “synthesizer,” Neo-Confucianism took on the shape and form, both theoretical and institutional, which was to become the reigning orthodoxy of East Asia for the next seven hundred years. The hallmark of Neo-Confucian thought became the explicit assertion that individual men, through education and discipline, could “possess the Way,” and hence be able to govern. Neo-Confucianism made it quite clear that what made a person truly

worthy of rulership and government was not high or noble birth, or power and wealth, but morality which could only be gotten through self-discipline and years of study. Such “moral rigorism” imparted to the Confucian literati a sense of mission and self-importance, which was granted the king only with great reluctance, if ever.

The institutions of the civil service examination, the “Classics Mat,” and the Censorate were manifestations of the Confucian literati’s sense of moral superiority. The fact that they were selected for important bureaucratic posts through the rigorous examination system proved that their positions were indeed merited. It imparted to them a sense of objective superiority that even the emperors or kings could not contest or deny. The Classics Mat was the most direct means by which the Confucians tried to educate the princes. The king was to be instructed in the classics, from the day when he became the crown prince, by those Confucian scholars who were thought to have in their possession true knowledge of the Way. The Censorate’s duty was to tell the king what he was doing wrong. The assumption was that the king was fallible and that his faults and mistakes had to be constantly pointed out to him. During the Chosun kingdom of Korea (1392-1910), these two institutions became so entrenched and effective that the power of the king was drastically reduced, as the original designers of the institutions intended. Sometimes the king became so weak that the kingdom lacked the means to cope with the exigencies of government. The point to be emphasized is that this was the direct result, not an accidental by-product, of Confucian political philosophy and institutions.

To be sure, as Neo-Confucianism became entrenched as the orthodoxy over the centuries, its critical and oppositional stance towards the powers-that-be became more and more blunted. The literati increasingly took on the airs and trappings of an aristocracy, taking for granted their access to privilege and power. As a result, Confucianism and Confucian literati have come to be blamed, often with justification, for East Asia’s failure to effectively meet the challenges of modernization and Western imperialism beginning in the 19th century. Since then, Confucianism has lost—to nationalism, socialism, and communism—its status as the orthodoxy. However, with its fall from grace comes the opportunity to return to its roots. No

longer burdened by its close and automatic association with power and privilege, Confucianism is once again free to engage in dissent and criticism of the modern princes.

Claims to Universality

As noted earlier, many Confucian apologists, confronted with the criticism that Confucianism lacks the concept of human rights, set out to discover its equivalent somewhere in the canon, if only in an embryonic form. However, the way to defend Confucianism is not to show that it too has honored “rights” from the beginning, unbeknownst to itself. This is already to cede the debate to liberalism. Even if the concept of rights can be found in the canon, this only makes Confucianism a pale imitation of liberalism at best. In fact, if Confucianism too is shown to be a rights-based theory, the reasons for retaining it would actually be undercut. It would be better to embrace liberalism and try to indigenize it, rather than trying to preserve a poor imitation of it. After all, throughout world history “alien” philosophies have been accepted by civilizations, often producing dazzling new syntheses (Neo-Confucianism itself being an example). True, the inertia of a long tradition makes it difficult to effect a quick switch to a completely new worldview; but it would only be a matter of time.

The point is that there is no a priori reason why a tradition has to be preserved simply because it is a tradition. When philosophical and ethical systems are defended on nationalistic or other particularistic grounds, they quickly lose their force and theoretical vitality. When we make an ethical statement, we are making a universal statement. It is in the nature of ethical and moral judgments that they apply to all analogous contexts and situations regardless of “cultural” differences. To make an ethical judgment only to claim that it only applies to a certain culture is to deny its ethical character.

Confucians throughout history have espoused their philosophy because they thought it was “true,” not because it was Chinese or because it served some other particularistic purpose. The same, of course, has been the case with Christianity and liberalism. Pope John Paul II would never claim that Roman Catholicism is applicable only to Europeans and Latin Americans. Nor do liberals claim that human

rights are relevant only to Anglo-Saxons or Europeans. In fact, this is why we are having the Asian values debate in the first place. Many will say, and have said, that such pretensions to universality not only show the arrogance of the West, but also that they have been used to justify imperialism and colonial exploitation. This has clearly been the case. But one should note that it is only because of their claims to universality that they could be used for such purposes.

What I mean to say by making this rather obvious point is that the response to such claims to universality should not be a denunciation and a claim to particularism, as has typically been the case. Until now, the terms of the Asian values debate has come to be structured in such a way that its defenders have mostly resorted to condemning the imperialistic self-righteousness of the defenders of human rights while claiming the right to preserve one's particular culture. However, to claim that Confucianism is fit only for a particular people or nation is to commit a fundamental political and theoretical mistake.

The right way to defend Confucianism is to show that it defends those values that are promoted by the liberal notion of "human rights," but does so in its own terms. One needs to then go a step further by showing that Confucianism also defends and preserves important values that liberalism ignores. One should never abandon the claim to universality. Confucianism is not just for the Chinese, Singaporeans, Koreans, Japanese, etc. It is for all humanity. If one is not confident enough to make such an assertion, but instead defends Confucianism as merely a culture or tradition that should be respected and preserved simply because it is "mine" or "ours," Confucianism and other Asian values will never be able to contribute to the formulation of a truly universal ethics.

Conclusion

The Asian values debate has been raging for a decade now. It is time for it to move beyond the polemical stage. We need to take the debate away from those who have been using it to rationalize political repression, as well as from those who have been using it to engage in self-righteous liberal proselytizing. It needs to be made clear that Asian value systems such as Confucianism do not endorse or even tolerate political repression of the sort that liberals take pride in opposing.

Ultimately, liberals have to be more willing to study and understand Asian beliefs and traditions (that is, if they wish to participate in the debate). For their part, the advocates of Asian values need to arrive at a better understanding of how to go about advocating them. Once we become clear on these points, we can embark on the worthwhile project of inter-civilizational dialogue with an eye towards constructing a truly universal value system.

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Children in Charge

Gina R. Dalfonzo

In the film *Willie Wonka and the Chocolate Factory*, there are four children who, along with the hero Charlie, get to explore Mr. Wonka's amazing factory. These two boys and two girls are each the epitome of what most would call spoiled brats. While their parents are involved in their children's lives, it is primarily to either help the kid get what he or she wants, or to be there to try to fix things after the child messes up. It is a rather upside-down world, a point that the Oompa-loompas remind us of again and again.

But while these families were presented as parodies, and surely not as models worth emulating, today's culture seems to be having difficulty recognizing the difference. Take, for example, a May 1997 *Washington Post* story about a group of parents at a concert by shock rocker Marilyn Manson. The parents waited in a designated "quiet room" for their kids. As reporter DeNeen L. Brown wrote, "Each time a teenager was wheeled past the room from the mosh pit to the first-aid station down the hall, the parents raced to the door to make sure the afflicted was not theirs."

"I'm not happy at all about this," one parent told Brown, summing up the general feeling in the room. "If I had put down the law, he would not have been here. But then he would start acting out." In other words, the child was in control. This typifies the mindset of too many parents today, who believe that their role, rather than guiding their teen's or preteen's development, is to let them do whatever they want and pick up the pieces afterward.

Taking this child-in-charge approach one step further, one mother had sneaked her daughter out of the house after the girl's father had forbidden her to go. "We've got a very open relationship," she ex-

plained. “I don’t want her lying. I don’t want her going behind my back.” What curious moral guidance from a parent: “Don’t lie to me. If there is something that you want to do so much that you are willing to lie to be able to do it, let me know and I’ll help you carry out your deception.”

How Did We Get Here?

While the above example may be somewhat extreme and may not (yet) be a common occurrence in the real world, there is an alternate world in which it would be anything but the exception. This is the world of children’s and teenagers’ entertainment in the 1990s. In this world, children are in control because the majority of adults are stupid, corrupt, or nonexistent. There are no rules in this world, and no one for children to obey except themselves, because no one else is worth obeying.

Typical is the WB Network’s *Dawson’s Creek*, a product of Hollywood wunderkind Kevin Williamson and one of the top-rated teen shows. In it, adult activities range from selfish and irresponsible to downright criminal. The title character’s parents agree to an “open marriage.” His best friend’s father is in jail for drug distribution. A teacher engages in a steamy affair with a 15-year-old student and thanks him later for lying to the school board to get her off the hook. These teens are old before their time, but without the wisdom and experience of age—or any good role models—to help them make responsible choices. Nevertheless, they’re consistently more mature than the pathetic grown-ups around them.

Several other shows on the WB network—which is increasingly popular among preteens and teens—and elsewhere follow the same general pattern. This is not to say that all the adults are on par with a convicted drug dealer, but few could even remotely be considered mature role models. On *Felicity*, for example, everyone’s parents seem messed up in some way: we have a couple of standard repressive sticks-in-the-mud, a birth mother who first lied to and then rejected her daughter, and so on. On Fox’s new *Get Real*, one unexceptional character is a mother who felt uncomfortable saying anything to her 16-year-old son upon finding him one morning in bed with his girlfriend. And the upcoming *Malcolm in the Middle* appears determined to push the parental envelope as far as it can go. Among other

things, it is known in TV circles as the show with the often topless mom.

Of course, there are still several shows that feature wise and mature authority figures. *Cosby*, *7th Heaven*, *Sister Sister*, *Boy Meets World*, and the recently ended *Home Improvement* and *Promised Land* are just a few examples. The problem is that the trend is in the other direction, and it grows steadily every year. While many shows continue to follow the traditional family model, shows targeted exclusively at teens—and to some extent at their preteen brothers and sisters—are considered the wave of the future, and most adults on these shows are anything but mature.

More disturbing is the fact that even when parents and other adults are portrayed as loving and sensitive, the wise teen still knows that some things must be hidden from them—not just the kind of secrets shared between friends, but serious decisions that will affect the teenager's physical, emotional, and spiritual health. Consider an episode of UPN's *Moesha* in which the teenage heroine prepares to lose her virginity to her boyfriend. When her stepmother accidentally finds birth control devices, courtesy of the school clinic, in the girl's purse, Moesha pleads with her stepmother not to tell her father. Her stepmother reluctantly gives in, agreeing that he just "wouldn't understand." Never mind that her father is older and more experienced and might have valid reasons for not simply "understanding" his young daughter's premarital sexual activity. Yet when Moesha, who has declared herself "ready" throughout the show, finds out about her boyfriend's large number of past partners, she suddenly decides that she isn't ready after all. But for that last-minute discovery, she would have plunged into an experience with potentially damaging consequences—from which listening to her dad's apprehensions might have saved her.

The same kind of adult-child role reversal repeatedly shows up in the movies most popular among teenagers. According to the *New York Times*, "Some of the loudest roars of tween [preteen] approval at screenings of *Titanic* come not when Rose and Jack . . . finally connect romantically but when Rose makes a well-known obscene gesture and when she tells her mother to shut up." Although some might note that her mother was weak and selfish and deserved a rebuke, such a response misses the point. The problem is not simply that in teen-

oriented movies and television the advice of parents is ignored, as in the case of *Mo'Nisha*. Rather, the problem is, first, that the adults who are present are generally so lacking in character that they deserve to be ignored; and second, that the idea of granting a measure of respect to adults simply because they are adults, whether or not kids agree with them, is almost extinct in the entertainment world.

Last year's movie *Pleasantville* goes even further, with teens becoming the authority figures for adults, as a girl from the 1990s steps into a sitcom of the 1950s and teaches her new mom about the joys of masturbation and adultery. Similarly, in the popular 1999 teen movie *Cruel Intentions*, adolescents take on adult roles, completely controlling their own lives (and those of others, as the kids are based on the selfish and manipulative adult characters in the novel *Les Liaisons Dangereuses*). Adults, when mentioned at all, are "your gold-digging whore of a mother" or "your alcoholic, impotent father." One of the few adults shown is a snob and a racist. Again, the point here lies in the trend. Have there been films and television shows in the past in which the adults were pathetic and the children were essentially in charge? Certainly. But consider what were the most popular television shows—involving teens—among preteens and teens just a decade or two ago: *The Cosby Show*, *Happy Days*, *Welcome Back Kotter*, *Growing Pains*, *Family Ties*, *Little House on the Prairie*, *Eight is Enough*, *Different Strokes*, *The Facts of Life*. The differences between now and then are staggering.

While it's true that not all parents, teachers, and other authority figures are good people, much of contemporary entertainment would have us believe that almost none of them are. It is as if the entertainment industry wants children to grow up—not to act "adult," since adults aren't cool, but to assume the moral responsibilities of adulthood. The majority of kids on-screen are to all intents and purposes on their own, forced to formulate their own values and run their own lives with minimal adult guidance. They must make the decisions, but they lack experience and have no standards on which to base these decisions except their own feelings. The constant recurrence of this theme teaches children damaging and false lessons about their own decision-making abilities and the role of adults in their own lives. It is a message that undermines parental authority and tempts kids to see themselves as autonomous individuals, rather than dependent on

their families for support and guidance. Although the message is less noticeable than the “usual suspects” of sex and violence and therefore easier to overlook, it is essential that parents recognize it to understand fully the factors influencing their children’s outlook.

Roots of the Message

Cultural critic Gene Edward Veith has observed, “Whereas the folk culture was concerned to pass down traditional values and whereas the high culture was concerned with excellence, the pop culture was produced to be bought and sold.” This simple observation explains why Hollywood pays so much attention to teens. As Walt Disney Studios chairman Joe Roth acknowledged, “[Teenagers are] easier to market to, compared to the older audience, because their tastes are very specific. They don’t work; they don’t have families to raise. They’re available consumers with money.” And they tend to be particularly susceptible to advertisements and product placements, making them an exceptionally attractive audience for Madison Avenue and its clients.

Of course, teenagers have been a target audience for entertainers since before the bobby soxers swooned over Frank Sinatra. Yet the runaway success of such teen-themed movies as *Clueless* and *Scream* was a fresh reminder for today’s entertainment gurus of those truths summarized by Roth, and one that they were quick to grasp. Teen stars (or young adult stars playing teens) now dominate movie marquee, television screens, and magazine covers. The studios’ current favorite formula is to build a following for some young television actor and then to move him or her to the big screen to start cashing in. For instance, fans who regularly watch Sarah Michelle Gellar on *Buffy the Vampire Slayer* flocked to see her as a vixen who snorts cocaine and sullies reputations for fun in *Cruel Intentions*. (The makers of the movie admitted to skewing it to the teenage audience, despite its “R” rating.)

Determining that teens are a desired audience still leaves open the question of what they want to see. The answer is that what sells to today’s teenagers, even more than to those in the *Rebel Without a Cause* era, is the image of themselves as what author Patricia Hersch calls “a tribe apart”—a group of jaded young people looking out for themselves and each other. In a generation that has suffered so much

trauma from broken families and been given too much independence at too early an age, such a self-image is understandable. Yet, as shown above, it is also dangerous. Under the guise of building their self-confidence, such examples teach children and teenagers that adults are only there to rubber-stamp their choices and help them out a bit with the mechanics (as with Moesha in the school clinic), not to give them any real guidance. As to who is going to help them pick up the pieces when a decision has led to disaster, that's one of the few subjects on which the entertainment industry is silent.

Total independence for kids isn't just an idea advocated in the movies and on television. The concept is manifest in the very nature of today's media. "New technologies and the entertainment industry, combined with changes in family structure, have more deeply isolated grown-ups from teenagers," reports John Leland in *Newsweek*. In the wake of Littleton, parents, teachers, and much of society are taking a look at the world of the children entrusted to their care—and not recognizing what they see. In large part, this is because children and teenagers allowed to indulge in popular culture without any limitations have used it to create their own worlds, where authority figures aren't especially welcome.

This is why parents who eventually realize that they object to their kids' choices find it hard to lay down the law. Having allowed their kids complete power of choice for so long, many of them aren't sure they have the authority to take it away. In addition, too many baby-boomer parents have rationalized that their own tastes once shocked their parents, failing to notice that listening to rapper Eminem sing about slitting his dad's throat isn't quite the same as watching Elvis gyrate his hips.

Impact of the Message

Debates over the effects of entertainment on people have raged probably since entertainment began. But many makers of entertainment tend to talk out of both sides of their mouths on this subject. While they insist that there is no correlation between on-screen images and real-life behavior, they accept huge sums of money from advertisers who stake a great deal on the belief that what people see does influence what they do. As critic Michael Medved points out in his 1992 book, *Hollywood v. America*,

Corporate marketing experts invest considerable effort and expense in [product] placements because their research indicates that they are highly effective. . . . At the same time that everyone agrees that a two-second glimpse of a box of Tide can help the manufacturer, there is no acknowledgment that two hours of graphic gore can hurt the audience.

Even more hypocritical is the way the industry accepts praise for influencing people's positive choices but deflects blame for their negative ones. As Gregg Easterbrook writes in the *New Republic*,

Hollywood endlessly congratulates itself for reducing the depiction of cigarettes in movies and movie ads. Cigarettes had to go, the film industry admitted, because glamorizing them gives the wrong idea to kids. But the glamorization of firearms, which is far more dangerous, continues.

Movies inspire everything from fashion trends to career choices. Yet even as the Littleton massacre has prompted other members of the media to start taking a long, hard look at youth culture, Hollywood still refuses to accept any responsibility for inspiring a nihilistic, self-centered worldview in children. After years of tacitly acknowledging that kids are absorbed in a sex- and violence-obsessed popular culture, citizens, reporters, and members of Congress have turned on that culture and demanded that the entertainment industry explain itself. In response, the industry has professed itself shocked, *shocked* that anyone could consider it even partially responsible for young people's imitating characters whom many of them watch almost obsessively.

Kids themselves are honest about entertainment's effect on them. In interviews for a June 1998 *Time* article, teens said that they get their "full share of [sexual] information from the tube." A 16-year-old girl who claimed to have slept with five boys stated, "You can learn a lot about sex from cable. It's all mad-sex stuff." A 14-year-old boy agreed: "If you watch TV, they've got everything you want to know." New York psychologist and talk radio host Judith Kuriansky added, "Kids are impressionable, and what they do see, they tend to copy."

But we needn't rely solely on the comments of children and critics. Major studies by the Surgeon General's Commission, the National Institute of Mental Health, and the American Psychological Association show a definite link between media violence and real-life aggression. Dr. Lawrence Eron, chairman of the APA's 1992 Commis-

sion on Violence and Youth, declared in 1994, "There is an immediate effect [on children] and there is a long-lasting effect on the formation of their personalities as well." The APA study reported that watching violence desensitizes people to violence and increases their appetite for it, even as it increases their fear of becoming victims themselves.

Parents and television executives alike argue that children know how to separate fantasy from reality. What they fail to take into account is how large a part the media plays in the lives of children, particularly those who feel lonely and isolated. Teenagers watch their favorite shows and movies over and over, buy the related soundtracks and video games, and discuss those favorites and create "fan fiction" about them on the Internet. For many teens, fantasy *is* its own reality, or at least much more appealing than reality. They are sucked into a culture that dictates what's "cool" and drowns out what they hear from parents and teachers, who generally are considered anything but cool.

The entertainment industry's relentless promotion of the generation gap, in fact, is what makes its other antisocial messages so dangerous. Children and teenagers bombarded with the idea that adults are weak and unworthy of respect are accepting it, with the result that the industry's glorification of sex and violence is all the more effective. After all, the only barrier keeping kids from wholeheartedly embracing what they learn from the culture is the values and priorities they learn from parents, teachers, and other adults in their lives (when those adults teach them values and priorities). It is decidedly in Hollywood's interest to undermine that barrier as much as possible, in order to keep ratings high and dollars rolling in. So, in a type of vicious circle, Hollywood encourages kids to take control of their own lives and assert authority over their parents; kids increasingly act on that idea; busy and frazzled parents decide they might as well give in and save their strength for bigger battles; and kids are permitted to consume more harmful media messages.

What's a Parent to Do?

One of the most moving stories from Columbine High School is that of Cassie Bernall, the 17-year-old who, by some accounts, died for her faith. However, had Cassie's parents not intervened at a critical point in her life, she might have been at the other end of the gun. While

in middle school, Cassie started hanging around with a crowd similar to the one Eric Harris and Dylan Klebold were a part of. She experimented with drugs and witchcraft, and even contemplated suicide. Her parents sought the advice of a youth pastor, Dave McPherson, who recommended swift and dramatic action: take Cassie out of school to separate her from her old friends, disconnect her phone, and sequester her in the house. The Bernalls followed McPherson's advice, and later sent their daughter to Christian school and camp. The eventual result was a devout, compassionate girl who loved her family and friends, ministered to drug addicts, and ultimately inspired millions of people.

The Bernalls' experience demonstrates powerfully what happens when parents, not children, take charge. Admittedly, not every troubled child so disciplined will undergo such a transformation. But contrast Cassie's story with that of her killers, who reportedly kept Nazi propaganda in their rooms and smashed glass in one of their garages to make bombs, with their parents apparently taking little or no notice. Or consider the middle-schoolers—including honor students—throughout the Washington, D.C., area whose parents were shocked last year to learn that they were engaging in oral sex with multiple partners. One girl summed up their attitude with the words, "What's the big deal? President Clinton did it."

Then there is the case of Jay Randall of Herndon, Va., who was fatally shot at 16 in an exchange of gunfire with a schoolmate's father after crashing a graduation party with a gun. At a critical point in his life, when he started middle school and was having discipline problems, Jay began idolizing rapper and convicted sex offender Tupac Shakur. According to the *Washington Post*, Randall's father "worried about the profanity and misogyny in rap lyrics but felt he couldn't stop his son from listening to music." Randall's friend Raschad Winston explained, "He wanted to be a thug."

In these and other cases, the voices of negative role models were louder to kids than those of the people who genuinely cared about them but were afraid to interfere with their lives. Our culture bears not all but a large share of the blame for encouraging kids to demand autonomy and parents to abdicate their roles. We have to pressure the makers of that culture to abandon the model they have promoted so recklessly, with such poor results, and to start providing better role

models. Boycotts, protests, letters and, particularly, refusing to watch their products are all effective tools.

Yet real change has to start at home. Parents must stop letting the culture dictate their role and start taking control of their families. At the least, this may involve nothing more than turning off a particular show or song—and possibly stopping some problems before they start. In other cases, it may mean drastic steps, like those Cassie Bernall's parents took. In any event, change will require parents paying attention to their children, recognizing their emotional and spiritual needs, and taking steps to fulfill those needs—whether or not those are the steps the children themselves would have chosen.

Family Values, British Style

"The nuclear family is not the natural way in which humans reproduce society. Nothing is worse than taking a young couple, sticking them alone and isolated . . . right into this emotional hothouse of three or four people in order to become happy—it's a nightmare. You need a bigger unit like the village, 50 or 100 people, so you don't always have to be around when you may not like to."

Ken Livingstone, British MP

"Marriage is an enterprise. You could say it was like a partnership or business. There are so many myths about marriage. One is that marriage is about romantic passion."

Mary MacLeod, chief executive
of the British government's new
National Family and Parenting Institute

Main Street Fights Back

Stacy Mitchell

In 1992, Wal-Mart constructed a 120,000-square-foot store in Warr Acres, a community of about 10,000 located 25 miles from downtown Oklahoma City. Like the thousands of other places Wal-Mart has chosen to locate, Warr Acres soon lost several local businesses, including the community's grocery store. Then, just seven years later, Wal-Mart too decided to close its doors in Warr Acres in favor of opening a 200,000-square-foot supercenter closer to Oklahoma City. Warr Acres stands to lose \$500,000 in taxes annually, nearly eight percent of the town's budget.

The loss of local merchants and growing dependence on absentee-owned corporate retailers is a predicament Warr Acres shares with most of the nation. Large national corporations now dominate much of the retail and service sector, while independent, locally owned businesses are struggling, and often failing, to survive. The level of retail consolidation nationwide is staggering. Wal-Mart alone, with 3,500 outlets and \$138 billion in sales in 1998, now commands six percent of all retail spending. Borders Books and Barnes & Noble are driving out independent booksellers, whose market share has declined from 58 percent in 1972 to just 17 percent today. While many communities have lost their neighborhood hardware stores, the two giants of this business, Home Depot and Lowe's, now account for one-quarter of all hardware sales. And thousands of community pharmacies have closed their doors, while Walgreen, CVS, and Rite Aid have expanded to a combined total of 10,000 stores and \$43 billion in annual revenue.

Proponents of chain store expansion insist that these retailers yield a number of benefits for consumers, including wider selection,

greater convenience, and lower prices. In the long term, however, consumers may find they got less than they bargained for. Chain stores tend to price low when entering a new market. In some cases chains will price entire lines below acquisition costs, as Wal-Mart has done with its pharmacy department, in order to gain market share. Once rivals have been eliminated, prices tend to rise. In Virginia, for instance, researchers found that prices on specific items at several Wal-Mart stores varied by as much as 25 percent depending on the level of local competition.

When one looks at the broader picture, the benefits of chain stores become even more dubious. Retail spending is a relatively fixed pie; gains at one location will be offset by losses at existing businesses. A town of 10,000 might support 50 to 60 small merchants, providing economic diversity and stability. A single large-scale retailer will put most of these local stores out of business. It will also impact main streets in surrounding towns, leaving many of the region's residents with little option but to travel long distances for even the most basic of daily necessities. And as Warr Acres discovered, this dependency on large retailers carries risks. While local merchants will do their best to weather economic hard times, absentee owners are far more mobile and will abandon a community if profit margins do not meet their expectations.

In addition, locally owned businesses provide economic and qualitative benefits to the community rarely matched by corporate retailers. Profits from local enterprises are more likely to circulate within the local economy, and unlike their corporate counterparts, independent retailers generally rely on other local businesses for services such as banking and printing. Local merchants give more to local causes than their big competitors. And while chain stores prefer uniform, single-purpose shopping centers, often on the edge of town, local retailers often form the pillars of neighborhoods and city centers, providing a sense of place and distinct local identity.

Losing community to the designs of corporate retailers is far from an inevitable process. A number of towns have organized against invading retailers, turning once quiet planning board meetings into noisy battlegrounds. But even when communities do put up a fight, they lose these David and Goliath battles as often as they win them.

Rather than reacting to corporate expansion as it comes along, communities can sustain their homegrown retail and service businesses by designing rules that favor the small local retailer. The authority of communities to nurture and defend local businesses is substantial. Courts consistently grant local governments considerable leeway to exercise their authority to preserve the physical and commercial character of the community. Increasing numbers of communities are using this authority to fashion regulations and ordinances that encourage a more rooted economy. These rules generally seek to achieve their goal by following one of five strategies: limiting size, evaluating a proposed business on its broad community impact, favoring local ownership, regulating against “formula” establishments (i.e., chains), and favoring retail that serves primarily the community it is located in.

Limiting Size

Bigness, absentee ownership, and concentration of retail power tend to go hand-in-hand. More than half of all new retail space in the United States in recent years has come in the form of superstores. These massive retail outlets range from 90,000 to 250,000 square feet, two to five times the size of a football field and 20 to 50 times the size of a typical downtown retailer. New stores of this magnitude almost certainly lead to significant sales losses and potential failures at dozens of existing businesses. Moreover, these sprawling, monolithic structures place tremendous burdens on public infrastructure—especially roads—and are at odds with the compact, walkable neighborhoods most people say they prefer.

A number of cities and towns have responded to this problem by capping the size of new retail developments. Skaneateles, New York, for instance, limits retail development to no more than 45,000 square feet and shopping center sites to no more than 15 acres. Westford, Massachusetts, enacted a zoning ordinance banning retail stores larger than 60,000 square feet and requiring a special review and permitting process for stores between 30,000 and 60,000 square feet.

The weakness of municipal zoning restrictions in the age of the automobile is that large-scale retailers denied approval in one place may well find acceptance in an adjacent town. These retailers are large

enough to affect an entire region's economy, and the town that declined the development may find itself not only lacking the tax revenue generated by the new retailer, but with a shrinking local economy as well.

Regional cooperation offers a solution to this problem. A handful of regions have taken this approach, creating joint planning agencies charged with reviewing applications for developments that exceed a certain size. The Cape Cod Commission, established by Cape Cod voters in 1990, has the authority to approve or reject proposals for new construction larger than 10,000 square feet and changes of use for commercial sites that exceed 40,000 square feet.

Assessing Broad Community Impact

The Cape Cod Commission focuses not only on size. Their review process, which includes a public hearing, also considers a project's impact on the environment, traffic, community character, and local economy. Applicants bear the burden of proving that the project's benefits outweigh its detriments.

Cape Cod's regional policy plan, which provides guidelines for reviewing development applications, states that the Commission "should take into account any negative impacts that the project would have on the Cape Cod economy and should encourage businesses that are locally-owned and that employ Cape Cod residents." Armed with strong land use rules, Cape Cod residents have given a number of corporate retailers the cold shoulder, including Wal-Mart and Sam's Club in 1993, Costco in 1994, and Home Depot in 1997.

Vermont pioneered this approach on a statewide level in 1970 with Act 250, which requires developments that will have a regional impact to obtain a land use permit from one of the state's district environmental commissions. (District decisions may be appealed to the state environmental board and ultimately the Vermont Supreme Court.) In most cases, commercial developments require Act 250 review when they encompass 10 or more acres of land. Approval depends on meeting several conditions that focus on the project's environmental and economic impacts. Act 250, for instance, discourages sprawl and scattered growth and specifies that developments must not exhaust a town's ability to accommodate growth or place

unreasonable fiscal burdens on the ability of local governments to provide services.

Act 250 has limited the number of large-scale retailers in Vermont. The state was the last U.S. frontier for Wal-Mart, which opened its first store there in 1995. The state now has four Wal-Marts, but as a result of Act 250 review, three of these stores are about half the size of a typical Wal-Mart and are located in preexisting buildings, one of which is in a downtown.

Favoring Local Ownership

Communities have the authority to impose special taxes on absentee-owned stores. In fact, such taxes were once fairly common. The first wave of U.S. chain store expansion began in the late 1920s. The market share of chain stores shot up from 9 percent of all retail sales in 1926 to more than 25 percent in 1933. This trend met with vigorous opposition. While a narrow focus on efficiency and consumer welfare dominates current debates about corporate retailers, the dialogue in the earlier part of the 20th century included concerns about community. Many were convinced that absentee ownership would drain local economies and undermine democracy by concentrating economic power. More than half the states responded by enacting chain store taxes designed to curb the growth of corporate retailers. Most of these laws were challenged in the courts, but in 22 states they survived.

Chain store taxes usually took the form of a graduated license or occupation tax that increased according to the number of outlets operated by a chain. Some were fairly mild at \$25 to \$30 per store per year. Other states were more aggressive. Texas, for instance, assessed \$750 per store for systems with more than 50 outlets. This was fairly substantial considering that the average annual net profit for grocery stores was \$1,694 in 1929 and \$950 in 1935. Iowa collected both a per-store tax of \$155 for chains with more than 50 units and a gross-receipts tax of 10 percent on income exceeding \$1 million. Most states counted only those outlets within their borders. The exception—Louisiana—based its tax on the number of stores the chain operated nationally.

The anti-chain store movement began to fade by the late 1930s, in large part due to a massive campaign mounted by corporate retailers who argued that the community-building aspects of local retailers were merely secondary functions. Their primary purpose was to benefit consumers through selection and low prices, and here, they argued, the chains were enormously successful. No new chain store taxes were enacted after 1941, and over the years all of the existing state taxes were repealed.

Perhaps the time has come to dust off this old idea and once again favor local over absentee ownership. Cities or states could adopt progressive license fees to do business within their borders. These fees would increase according to the number of stores operated by the company.

Demanding Diversity

Unlike chains, local retail businesses reflect the diversity of local cultures, and thus help enhance people's sense of place and community identity. As these retailers are displaced by national chains, America's towns are becoming marked by a stark uniformity. Thanks to a creative local ordinance, however, this is not the case in Bainbridge Island, Washington. "We struggle with how we can legally keep our island from becoming Anyplace, USA," remarked Mayor Alice Tawresey in 1989, following the town's adoption of a zoning ordinance banning formula restaurants. The law defines a formula restaurant as a food service establishment that is required by contract to have standardized menus, food preparation techniques, and decor, and is virtually identical to restaurants in other locations. In short, the rule prohibits chain restaurants. And Bainbridge Island is not alone in its action. Carmel, California, acting in the mid-1980s, was the first town to adopt a such a ban, and since then several communities have followed Carmel's lead.

Moving beyond restaurants, the town of Calistoga, California, determined that chain stores did not "reflect the unique character of the community." To ensure that "new development is in scale and in harmony with Calistoga," the town, in 1996, enacted an ordinance banning formula restaurants and hotels and requiring all other formula businesses to undergo a review and apply for a special permit.

To gain approval, the business must be consistent with the town's Comprehensive Plan and with the "historic, rural, small town atmosphere of Calistoga."

Favoring Community-Serving Retail

Large-scale retailers draw customers from a wide area. As a result, the host community almost always faces a significant increase in the levels of traffic and pollution, which often diminishes the quality of life and property values of area residents. An invasion of national retailers drawing from a regional market may also drive up commercial rents, making survival difficult for neighborhood-oriented businesses that supply basic daily goods.

Enacting a town-serving zoning ordinance, as Palm Beach, Florida, has done, provides one potential solution to these problems. This island community seeks to limit its main commercial district to businesses that primarily serve those living and working on the island. Because of the nature of small businesses, retail and service businesses smaller than 2,000 square feet are assumed to serve primarily the local community. As for businesses larger than 2,000 square feet, they may apply for a special permit provided that they can satisfy the town council that 50 percent or more of their anticipated customers reside or work in Palm Beach. The ordinance was upheld in a 1991 court case in which the judge determined that the law served legitimate public interests and reflected the community's desire to "limit displacement of businesses serving the Worth Avenue neighborhood by larger, regional establishments."

Resistance Isn't Futile

The decline of independent retailers is by no means inevitable. Indeed, the displacement of these businesses by national chains has been aided in no small way by public policy. Public officials have often courted corporate chains with development incentives that favor national corporations over local merchants. And land use rules have all too often ignored the needs of communities and undermined the stability of existing retail centers.

This is a story that can be reversed. Increasing numbers of local governments are beginning to use policy to nurture rather than harm

homegrown businesses. With rules that give proper weight to the role the retail and service sectors play in building and strengthening community, the goals of resurrecting Main Street and restoring the vitality and stability of local economies can become more than just nostalgic longings.

For examples of laws mentioned in this article, visit www.newrules.org/biz/index.html.

THE COMMUNITY'S PULSE

Left and Right: Similar, but Different

- When asked whether society's top goal should be to promote respect for traditional values or encourage tolerance of differences, 56% of people on the political left chose encouraging tolerance, while 33% voted for traditional values and 11% either said both were important or were not sure. On the political right, 84% selected traditional values, with 11% choosing tolerance and 5% unsure or wanting both.
- Seventy-three percent of people on the left said they would support government funding of religious groups that dealt with poverty, addictions, and domestic violence, while 76% of people in the middle and 77% on the right agreed.
- When asked about allowing religion-based values/morals instruction in public schools, only 35% of people on the left expressed support, in contrast to 70% of the middle and 83% of the right.
- Forty-nine percent on the left said they were in favor of laws regulating sexually explicit content on the Internet, as were 61% of the middle and 68% of the right.
- When asked if they would support a law banning medical research on human cloning, 40% of the left, 47% of the middle, and 55% of the right said yes.
- Laws restricting immigration from Africa, Asia, and Latin America, found support among 34% of those on the left, and 48% of both the middle and the right.

Source: Wall Street Journal, June 24, 1999, p.A15.

THE COMMUNITY BOOKSHELF

A Libertarian-Communitarian Bridge?

David R. Karp

Bruce Benson, *To Serve and Protect: Privatization and Community in Criminal Justice* (New York: New York University Press). 372 pp.

In Garrett Hardin's classic essay, "The Tragedy of the Commons," he argued that individuals in a commons who pursue their own interest without regard to the aggregate outcomes of their decisions will surely and quickly destroy the resource. "Freedom in a commons," he wrote, "brings ruin to all." To resolve this conflict between individual interest and the collective good, he proposed two solutions—one communitarian and one libertarian. The former he characterized as "mutual coercion mutually agreed upon," implying that social regulation is necessary, but can be exercised democratically. Alternatively, he suggested privatization of the commons. Private property owners would better husband their resources than individuals who share a public resource. Both seem reasonable solutions to the social dilemma.

In criminal justice, these alternatives are manifest in two visions of "community justice." Both seek to diminish the role of the state as the sole arbiter of justice and crime control. One vision, however, relies upon the market in lieu of the state, and promotes privatization of justice services. The second relies upon the normative institutions

of a civil society. Bruce Benson's recent book, *To Protect and Serve: Privatization and Community in Criminal Justice*, promotes the market-based vision, but speaks often, though more quietly, to the second vision as well. In this comprehensive and well-documented text, an economist promotes the cause of his discipline, but also expands its boundaries. Where I expected this libertarian approach to state-based criminal justice to consistently conflict with a communitarian alternative, I was surprised by the frequency of my own sympathetic reactions. Perhaps complementarity might supersede conflict in the cause of criminal justice reform.

Benson's book is divided into three parts, sequentially developing a case for privatization of the justice system. In Part I, he examines the various ways in which the criminal justice system has already experimented with privatization—for example, private prisons and private security—and how privatization alters incentives to produce higher quality services more efficiently. In Part II, the conceptualization of privatization is expanded beyond government contracts or corporate investment in private security to include a wide array of “private” activities. This list blurs the line between economic markets and community action to include citizen patrols, gated communities, victim-offender mediation, and other activities that I would characterize as collectivist rather than private. This section also includes a thoughtful examination of the criticisms typically leveled against privatization. Part III examines the history behind state-based justice in order to suggest that criminal law has its roots in civil law, and a return to such roots is the objective of privatization. Benson proposes that this return will redirect attention to crime victims, and that they should occupy much more of our attention than is currently the case.

Pondering my sympathetic reaction to this libertarian examination, I remain uncertain about whether its source is a reconciliation of liberal-communitarian discourse in the text or whether Benson crosses boundaries that a more careful critic would argue are not so easily traversed. To be sure, the language of Benson's reformed criminal justice is the language of economics. Criminal justice is to be concerned with efficiency and product quality, responsive to the profit motive, guided by supply and demand, and made productive through flexibility and economies of scale. This nomenclature is in vivid

contrast to the language of communitarian critics of state-based criminal justice. If I were to content analyze my own writing, for example, Benson's terms would be few and far between. The terms that would appear frequently—citizen participation, moral order, reintegration, social ties, deliberation, shame, norm affirmation, rights, responsibility—are rarely used by Benson.

This discourse divide can be traced to the overarching frameworks that guide the development of each strand of critique and reform. Benson reveals his framework succinctly: "When questions about crime policy are asked, they should be framed more broadly: 'What is the most cost-effective way to reduce crime?'" While this is certainly consistent with an economic perspective, Benson later suggests this narrow characterization is insufficient. In this, he leaves traditional economic/public management territory to explore the moral domain more characteristic of communitarian discourse:

Efficiency need not be the paramount concern in deciding how to produce criminal justice. It is one of several normative criteria that may be relevant. Indeed, a common and perhaps justifiable complaint against economists is that they tend to emphasize efficiency issues to the virtual exclusion of other norms. And in this regard, some of the objections to private involvement in crime control are not economic in nature. . . . A broader range of potential normative objectives is considered here than might be expected from an economist. Efficiency, including efficient gains in crime prevention and in rehabilitating criminals through privatization, is still extensively discussed (I am an economist, after all), but justice for victims of crime is actually the primary normative objective underlying my recommendations.

Thus, Benson moves beyond narrow considerations of efficiency and prioritizes justice for victims. Although this quotation appears early in the text, it turns out not to be a disarming platitude, but indeed guides the development of the privatization argument. For this reason among others, Benson's argument deserves serious attention.

Means as Ends

Underlying Benson's attempt to transcend the liberal-communitarian divide are some difficult questions primarily having to do with the adjudication of means and ends. Economic rationality is almost

exclusively concerned with finding the most efficient means to narrowly defined ends, while communitarian idealists often seek the stars with scant attention to the constraints of astrophysics. Since Benson primarily resides in the home of efficiency, the communitarian skeptic will be troubled at times. For example, Benson is comfortable with a rational choice analysis of gun control. The hypothesis contends that gun control hinders defensive action by potential crime victims, therefore increasing the probability of criminal offending. We have all seen the bumper sticker, “An Armed Society Is a Polite Society.” Some economists argue that states that allow law-abiding citizens to carry concealed weapons will have lower crime rates than those states that regulate gun carrying. From a crime control perspective, the end justifies the means. I would ask, however, if we ought to narrow the determination of ends so definitively. Is a good society an “armed” society? Are there other, more desirable, means to accomplish the same end?

Similarly, Benson is comfortable with “defensible space” strategies that alter the built environment in the service of public order. Of course, we are all comfortable with these strategies to a certain extent. Few protest the imposition and inconvenience of street lights to coordinate traffic flow. Benson discusses the privatization of public spaces to take advantage of the greater commitment private property owners have to the protection of their own spaces than to the protection of public spaces. Again, a near-term public safety end is served by such privatization: gated communities are a good example. But are the demarcation of boundaries, division, and exclusion indicative of a good society? Communitarians worry about the precarious balance between particularism and universalism. In this case, it would seem that economic rationality does not share that concern.

Benson is no stranger to the criticisms of privatization. The fact that he provides an insightful review and response to these criticisms is another strength of the text. Among the criticisms examined in detail are the following: Privatization driven by the profit motive will inevitably lead to cost-cutting and the delivery of poor quality service. We might worry, for example, that a private prison will be understaffed. Privatization will exacerbate social inequalities. For example, only the wealthy can afford to live in gated communities with private

security details. Privatization will undercut constitutional guarantees of due process, either because private citizens will “take the law into their own hands,” or because government oversight of the private sector is inadequate compared with direct government control. From a slightly different angle, Benson also examines the criticism that privatization is unlikely to be successful for the same reason that public criminal justice is unsuccessful—both face Hardin’s commons dilemma. All citizens would like public safety, but each would rather have others supply it (through taxation or privately) and, so, this pursuit of self-interest will prevent the provision of the public good.

While Benson offers insight into these issues of privatization, I will conclude this review by referring again to his economist-transcending goal of providing justice to crime victims. First, he provides a solid critique of the criminal justice system’s effectiveness in this regard. He reminds us, for example, of the circumstances of the famous *Miranda v. Arizona* ruling by the Supreme Court, which established the necessity of reminding suspects of their rights. In this case, Ernesto Miranda was arrested for kidnapping and forcible rape. The victim identified him in a line-up and he provided a detailed oral and written confession. The case was dismissed because he was not advised that he could have a lawyer present during his confession. Rights questions aside, the victim’s need for justice played a small role, if any, in this case. Benson notes that the Warren decision refers to the victim only as “the complaining witness.”

More generally, Benson reviews the victim’s (nonexistent) role in the plea-bargaining process, which accounts for over 90% of criminal proceedings. “The fact is,” Benson writes, “plea bargaining often makes victims feel violated by the system as well as by the criminals because of plea bargained forgiveness of the crimes.”

Benson argues forcefully for returning the crime victim to the center of the justice process, and this is wholly consistent with emerging community justice and restorative justice philosophies. Criminal accountability becomes defined by the responsibility of offenders to make restitution to their victims. (In Benson’s system, of course, this is a monetary obligation.) He makes his case effectively by examining the history of restitution practices, its philosophy in light of other criminal justice objectives such as retribution, and the details of

implementing restitution policies. He also provides a fascinating comparative analysis by examining the role of restitution in Japan's criminal justice system, a discussion that dovetails with communitarian considerations of informal social control and offender reintegration into the fabric of community life.

To Serve and Protect provides a detailed account of privatization in the criminal justice system—what has occurred in the past, what currently exists, and possibilities for the future. It is a substantial and coherent work that provides theory with evidence. This makes it a book that cannot be easily dismissed, even if one is not as inclined as Benson is to trust in the “power” of the free market. The irony for me, and I suspect for communitarians more generally, is that Benson arrives at many seemingly communitarian conclusions, but travels quite a different path to get there. Perhaps moral and economic theories are not mutually exclusive solutions to the commons dilemma.

Especially Noted

Jay Rosen, *What Are Journalists For?* (New Haven: Yale University Press, 1999). 338 pp.

As told by Rosen, on a wall at the National Press Club in Washington, D.C., there is a plaque titled “The Journalist’s Creed.” The creed reads, in part, “I believe that the public journal is a public trust; that all connected with it are, to the full measure of their responsibility, trustees for the public; that acceptance of a lesser service than public service is a betrayal of that trust.” Believing such ideals were being neglected, Rosen and others began the “public journalism” movement. Also called “civic journalism,” proponents argue that journalists should make a deliberate effort to treat their audience as active participants in public affairs, to help communities address their problems, and to facilitate public deliberation. Now, after a few years of implementation, and more

than a few rounds of criticism, Rosen gives us his overview, both responding to critics and speculating on what is ahead.

The Templeton Guide: Colleges that Encourage Character Development (Radnor, Pennsylvania: Templeton Foundation Press, 1999). 408 pp.

In the crowded college guidebook market, this entry attempts to stand out by addressing the character growth that students should expect a university to foster. In each of ten categories—including academic honesty, civic education, student leadership, and volunteering—the top college programs are profiled. Also listed are 50 college and university presidents who have emphasized character development. Finally there is the Templeton Honor Roll: those 100 schools that rated highest overall. For those who want to look beyond SAT averages, this is a good place to start.

Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 1999). 266 pp.

Corruption—a quintessential case of public versus private good—is a problem everywhere. In developing countries, however, it is of particular concern: those nations making the transition from socialism are particularly susceptible to corruption, and high levels of it can hinder the investment that is vital to their economic growth. In order to bring about the desired effects, Rose-Ackerman calls for action by both the international community and domestic leaders. But instead of periodic purges of guilty parties, the goal should be to reduce the opportunities for people to gain from either paying or receiving bribes. As a source of optimism, Rose-Ackerman provides accounts of efforts that were successful in ending or massively reducing various forms of corruption.

THE MORAL DIMENSION OF THE MEDIA

Sex, Sadness, and the City

Wendy Shalit

If you've heard the hype for HBO's hit comedy series *Sex and the City*, you might have assumed that the show celebrates the wonders of sexual liberation for Manhattan single women. Mimi Avins of the *Los Angeles Times* gushes that "the smart women of *Sex and the City* aren't afraid of their femininity or their appetites." *Newsweek* reports that "*Sex and the City* shows us single women who are anything but desperate. . . . As our favorite TV foursome prowls through New York hunting down new men and discarding the old ones like last year's Prada bags, they reinforce this fact: women who make their own money don't have to depend on a man, and they don't have to settle."

Yet despite the hype, *Sex and the City* is not about girls who just want to have fun. While promoters offer the show as one more brave step in the sexual liberation of women, leading to ever greater fulfillment, in fact it is a lament for all the things of inestimable value that the sexual revolution has wrecked. If Candace Bushnell—whose *New York Observer* columns sparked the series—were a practicing Catholic, she couldn't have produced a more effective proselytizing tool for continence and modesty.

The show follows the life of New York sex-columnist Carrie (Sarah Jessica Parker), as she tries to find Mr. Right. Until he shows up, Carrie dates Mr. Big (Chris Noth), a fickle 42-year-old who sleeps with

her regularly but won't let her leave any of her clothes in his apartment. Her single, mid-30s friends are all equally unsuccessful in searching for a lifelong mate.

Typical is this season's opening episode, which finds Carrie dating the newest Yankee ballplayer. She recently broke up with Mr. Big for not being able to "commit" to her, and she is hoping to make him jealous. All she accomplishes, though, is to burst into a flood of tears when the new Yankee tries to kiss her. "I'm sorry; this is really embarrassing," Carrie stammers. "I just cried in your mouth. I'm not ready!" Then she commiserates with her friends: "I saw Big, and I completely fell apart!" Everyone is sympathetic.

When she is among her girlfriends, Carrie sarcastically dismisses the possibility of love ("Yeah, love, whooo!"). But when left alone she broods over her miserable romantic history: "Ten years play in New York, countless dates, five real relationships, one serious, all ending in breakups. If I were a ballplayer, I'd be batting, uh . . . whatever really bad is."

Carrie is the most monogamous of the four women, the other three having for the most part given up on the idea of having one boyfriend. Charlotte (Kristin Davis), an art dealer, sleeps with men she doesn't particularly like, just to get things done around the house. As for the men she does care for, she gives them presents they usually reject: "Whoa, too fast," one exclaims to Charlotte: "Next you move in, and then you hate my music!"

Striving to Be Numb

Sex and the City couldn't be more timely. Susan Faludi, the popular feminist who penned *Backlash* in 1991, has recently released *Stiffed*, a book about the "betrayal of American men." Faludi decries our current mores, which encourage men to "score" with many women instead of providing for one. Our notions of manhood were much healthier, she argues, before World War II. As for why our masculine ideal has changed for the worse, Faludi offers no compelling explanation. The missing piece of her otherwise accurate assessment: in an era of free sexual favors, women no longer demand that men commit to them, and our no-fault-divorce society doesn't back them up when they do.

The result? “If you’re a successful single woman in this city,” Bushnell writes in her original *Sex and the City* column, “you have two choices: You can beat your head against the wall trying to find a relationship, or you can say screw it and just go out and have sex like a man.” Samantha opts to have sex “like a man,” and Bushnell’s other women emulate her. But the results aren’t much better than beating your head against the wall. “I think I’m turning into a man,” says Carrie, describing how, after a recent sexual tryst, she didn’t feel anything.

“Well, why the hell should you feel anything?” someone else asks. “Men don’t. I don’t feel anything after I have sex. Oh sure, I’d like to, but what’s the point?”

“We all sat back smugly, sipping tea, like we were members of some special club,” Bushnell writes of her unfeeling foursome. “We were hard and proud of it, and it hadn’t been easy to get to this point—this place of complete independence where we had the luxury of treating men like sex objects. It had taken hard work, loneliness, and the realization that, since there might never be anyone there for you, you had to take care of yourself.”

Pathologies, Old and New

The publicists and pundits may not get it, but Candace Bushnell and the show’s producer Darren Star understand in their heart of hearts the failure of sexual liberation. That’s why all the story lines keep returning to the unhappiness of the players involved. The characters of *Sex and the City* accurately represent what the sexual revolution expects of women, and what the woman who looks for liberation through the bedroom can expect. The writers know that their four protagonists, for all their cool urbanity, experience feelings of loss and sadness and loneliness that are real and typical for women in the age of liberation.

For every incident in *Sex and the City* that may seem like a caricature, you can find a real-life woman in America with an even more extreme story. Take Grace Quek, flatteringly profiled in *Allure* magazine recently, because she had had sex with 251 men in a single day and had immortalized her feat in an X-rated “documentary,” *World’s Biggest Gang Bang*, shown at the 1999 Sundance Film Festival.

“Actually,” writes *Allure*, Quek’s film “satirizes masculinity while expressing the enormity of her own desire. To challenge our gender assumptions, Quek put her body (and psyche) on the line.”

Allure also reports that Quek had survived a gang rape years before, “which raises a troubling question: Is her adult-film work a way of punishing herself for that victimization, or of reclaiming her body?” Troubling indeed: the behavior of this woman, who takes our culture’s standard of liberated womanhood to such lengths, suggests that what our culture expects of all women—to remain indifferent to what is to them most naturally sacred—is really a pathology.

And what our culture considers a pathology is really quite normal. Writing of *Sex and the City* and *Ally McBeal* in the *New York Times Magazine*, Stacey D’Erasmus wondered: “Why do the sexy, savvy new heroines want nothing so much as rings on their fingers?” Taking for granted that it is weird to want to get married, D’Erasmus answers the question: “The new single-girl pathos seems more like a plea to be unliberated, and fast. These characters really do just want to get married; they just don’t want to look quite so naive about it. . . . The new single girl, tottering on her Manolo Blahniks from misadventure to misadventure, embodies in her very slender form the argument that not only is feminism over. It also failed: look how unhappy the liberated woman is! Men don’t want to marry her!” And why do women continue to pursue this life of “misadventure”? According to D’Erasmus, “Perhaps, it’s because they know . . . that marriage doesn’t solve all your problems. It never did.” Sure, goes this line of reasoning, the new way of doing things is a mess, but the old way didn’t solve all our problems either.

Well, no kidding. But that’s like saying that because aspirin doesn’t always cure a headache, you are better off banging your head against the wall.

In the second episode of *Sex and the City*’s second season, one woman says sweetly, “I’m a single, 38-year-old woman, still hoping to get married. I don’t want to know the truth.” But the next generation, for whom it’s not too late, does—and perhaps that’s why they enjoy watching *Sex and the City*.

LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

From the Libertarian Side

The Right Not to Get Off Your Duff

Frank Meeks is the kind of urban entrepreneur you have to love. For starters, he gave up law school to become a pizza driver. He then made a fortune by opening several Domino's franchises in tough Washington, D.C., neighborhoods when other people were reluctant to do so. Continuing on his good-guy track, he shares profits with store managers—many recruited from the inner city—who now earn \$70,000 a year. Also, according to the Center for Community Interest, Meeks has made a strong commitment to hiring welfare recipients, while challenging other business leaders to follow his example.

Imagine the irony, then, when he was slapped with a multimillion-dollar discrimination suit—charging him with racism because of a rule he had enacted to protect the safety of his workforce (which is largely African-American). In neighborhoods with a high occurrence of violent crimes, Meeks allows his drivers to remain in their cars, rather than deliver to the customer's door, thus making customers come to the car to pick up their pizza.

Some residents feel stigmatized by this policy, claiming that it is offensive to the customers, particularly to middle-class African-American professionals who live on well-kept streets. According to one customer, "Every time they did that to me, they took a little bit of my dignity away." However, as Meeks's lawyer notes, the drivers are black as well and know from their own experience that the surround-

ing neighborhoods are still very dangerous, and “there have been too many pizza delivery people assaulted, robbed, and murdered.” The compromise was to continue delivering to these areas, but ask the customers to assume some of the risk and inconvenience as well.

True, it is unfair for people living in high crime areas to contend with lesser service and it is legitimate for them to feel anger over this situation. But equally legitimate is the fear delivery drivers have for their safety. There needed to be a compromise. Those involved in the suit may disagree, but it would seem that the current solution is a reasonable one.

From the Authoritarian Side?

Sex and Violence: Equal Treatment before the Law?

Congress’s efforts to address the issue of children’s exposure to violence in the media has been halting and meek. In part this can be explained by the cries of “free speech” by media spokespersons, who wave the First Amendment whenever someone begins discussing the regulation of content. Indeed, one high-up threatened the Senate Judiciary Committee: “If you push and shove people, they’re going to shove back. And remember, they have the armor of a thing called the First Amendment.”

With this lack of action on the federal level, several states have passed their own laws seeking to limit minors’ access to media violence. However, citing the First Amendment, the courts have not been friendly to these statutes. But that needn’t be the case, according to Kevin Saunders, a University of Oklahoma law professor. Writing in the *William and Mary Bill of Rights Journal*, Saunders asserts that states’ attempts at restriction should be considered constitutional and that states should “have the authority to ban completely the dissemination of excessively violent material.” He bases this declaration on the following argument: “[I]f sufficiently explicit sexual material is not afforded the protection of the First Amendment, there are equal or better arguments for denying that protection to excessively violent

material.” In other words, certain depictions of violence should be considered obscene and open to regulation simply because of the level of violent content, similar to the way sexual material is regulated. And Saunders is not alone. FCC Commissioner James Quello has suggested that the “FCC’s approach to the broadcast of indecent material be carried over to violent material.”

A case of authoritarian excess, or food for thought? You decide.

From the Community

Ways to Fight Hate (and Really Annoy the Klan)

East Peoria, Illinois, is a town of 24,000 with only a few dozen nonwhite citizens. For years citizens ignored Matthew Hale, a local and loud racist. As the *New York Times* reports, when Hale founded the World Church of the Creator headquarters at his parents’ residence, most thought it stupid but harmless. But their opinions changed when Benjamin Smith, a former World Church member, targeted Jews, African-Americans, and Asian-Americans in a two-state rampage that resulted in two dead and nine wounded.

Responding to the tragedy, City Attorney Dennis Triggs called Morris Dees of the Southern Poverty Law Center, a nonprofit civil rights organization, for advice on how East Peoria could confront racism. Dees sent Triggs and town Mayor Charles Dobbelaire the center’s publication “Ten Ways to Fight Hate.” Dees also told them they had to speak out against Hale and his associates, and should form a broad community coalition on racism. The mayor immediately appointed a Human Relations Commission to “guide us in combating hate and teaching tolerance.” He also led a prayer vigil in front of the Hale home. “We will not surrender the minds of our young to Matt Hale,” said Mayor Dobbelaire, adding that the town is invested in confronting racism “for the long haul.”

In Boyerton, Pennsylvania, an all-white community near Philadelphia, the Ku Klux Klan was making monthly visits to distribute recruitment material. In response, a group of citizens asked people to

pledge a small amount of money—5 to 50 cents—for every minute the Klan spent in Boyerton. The money then went to civil rights groups and helped fund Boyerton's first Martin Luther King Jr. rally. The effort was so successful that it was bringing in over \$1,000 an hour. A complaint by the head of the local Klan that the group was using the Klan's name to make money fell on deaf ears.

The fundraising continued for 13 months, and then the Klan stopped coming. But when a Klan member returned a year later, the group revived their collection efforts. So far they've raised more than \$11,000. The strategy was so successful that it is being added to an updated version of "Ten Ways to Fight Hate."

Japan's Rosa Parks?

Japan prides itself on being a monoethnic nation. As the *New York Times* tells it, the country is "not only proud of it, but fiercely attached to the idea." In one week, the United States naturalizes more foreigners than Japan does in an entire year. And consider the Japanese Constitution. Written largely by the American occupying forces after WWII, the English version states that "all of the people are equal under the law." In Japanese, however, "all of the people" turns into "kokumin," which means "all Japanese people."

This desire to maintain ethnic purity is evident in Japan's public policies. Foreigners are forced to obtain re-entry permits even though they already possess a visa, and they must also be fingerprinted in order to get a temporary resident's card. (This latter policy will change in April 2000.) And some Japanese public places, such as bars and restaurants, have signs in their windows stating "Japanese Only."

It was in this environment that Ana Bortz, a Brazilian reporter, found herself six years ago. She had largely become accustomed to it, until one day when she was escorted out of a jewelry store by the owner. The reason for her forced departure, according to the owner, was their "policy of refusing people of her nationality." Fed up, Bortz took her case to the Japanese courts. And in October 1999, to the surprise of Bortz and many others, a judge found in her favor. In 1996, Japan had signed the Convention on the Elimination of All Forms of Racial Discrimination, 31 years after it had been adopted by the United Nations. (It was the 148th country to sign it.) It was based on

this agreement that Judge Tetsuro So found the store owner's actions to be "an illegal act against an individual." And because the ruling was based on an international agreement it cannot be appealed. Bortz was awarded \$47,000 in damages.

Other foreigners have been encouraged by both Bortz's actions and the court's findings. Although there is little they can do about the Japanese people's standoffishness toward outsiders, they can at least demand equal treatment before the law. They've also found that by working together, foreigners living in Japan can find support and strength—and an occasional win in the courts.

Empathy 101

In five Prince George's County, Maryland, public middle schools, a new class was initiated to teach kids about the realities of being poor, hungry, and dependent on others for assistance. According to the *Washington Post*, the 9-week Hunger 101 course was brought into the schools as part of a required family and consumer science program. In class, students learn about malnutrition, including the implications of being malnourished while trying to work, go to school, etc.

Hunger 101 includes role playing, lectures, writing assignments, and class discussions. Rebecca Churchman teaches the class to seventh- and eighth-graders at the Robert Goddard Middle School. In one exercise, she assigned each student the role of banker, social worker, store owner, or needy person. The "needy people" were then given a budget and a list of monthly expenses. After paying bills, some found themselves with only \$3 left to buy their family's groceries. Those who then decided to apply for a special emergency allocation were greeted with an application written in a foreign language. "What do you mean you can't understand it?" asked Churchman. "Can't you read our language?"

While just educational for some, the course hits close to home for many students. Because their families' incomes fall within federal poverty guidelines, 41 percent of Goddard's students are eligible for free or reduced-priced meals. Countywide, the rate is 39 percent.

Rachel Mears

PARTING THOUGHT

The Virtue of Forgetting

Howell S. Baum

The problem of individuals and communities stuck in the past and unable to plan is not that they do not remember enough, but that they remember too much. They remember certain experiences too vividly and rigidly. They identify so strongly with particular good or bad memories that much of their identity is attached to being part of some time in the past; they cannot imagine themselves otherwise. The remedy is not to remember everything, or even just to remember more. It is to remember differently—and to forget.

The challenge is to get free of these memories by constructing a new narrative about the past where, whatever happened, it is confined to the past. The emotional valence of memories changes as in the idiom that one “forgives but does not forget.” One may remember experiences but forget some meanings in order to remember new details and meanings. Under these conditions, memories of the past continue but no longer arouse anxieties or desires that control present actions. We speak of being “less attached” to certain events or memories. We may continue to recall episodes but, leaving them in the past, consider them less central to our identity and refer less to them in defining our contemporary relationships.

Yet it is not enough just to insist that a group “be realistic,” for there are moments when the past seems real enough to those who

hold fast to it. People will decide to remember things differently for the same reasons they remembered them originally: pragmatically, memories make sense of everyday experiences and actions. Hence, the strongest motive for forgetting certain memories and recollecting others is that the apparent reality described by prevailing memories conflicts with present realities. Change depends on seeing costs in adhering to particular memories.

From the article "Forgetting to Plan," which ran in the Fall 1999 issue (Vol.19, no.1) of the Journal of Planning Education and Research.

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