

THE
RESPONSIVE
COMMUNITY



RIGHTS *and*
RESPONSIBILITIES

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Facing the Realities of Teenage Motherhood

LYNN MARTIN

In recent months increased attention has been focused on the national epidemic of teenage pregnancy. The focus on sex education, condom distribution, and abortion rights, however, neglects one critical point: Government must stop signaling that unwed teen mothers can simultaneously raise their children and seek decent futures for themselves on a few welfare dollars.

It should surprise no one that the number of unmarried women having children has increased. Not long ago, pregnancy outside of marriage was kept hush-hush. But in recent years we have moved it to prime time, and we now celebrate it on the covers of glossy magazines. I hope we're all glad to progress beyond branding children illegitimate or ruining lives through desperate marriages. But it strikes me as equally damaging to ignore the economic and social realities faced today by single teenage mothers and avoid the policy changes needed to discourage unwed pregnancies and help girls with children get their lives in order.

Except in Hollywood and on Wall Street, mature, educated women who actively choose motherhood are still only a small percentage of all single mothers. The boom in single motherhood is occurring among undereducated young women with slight economic opportunity and no support systems for parenting. Murphy Brown aside, most single mothers are woefully unprepared for their task.

We must transcend the old conservative-versus-liberal arguments and discuss how to change a failed system. A 15-year-old girl is not a 21-year-old woman, yet we have a system that treats her as one. When welfare was added to the Social Security Act back in the 1930s, its

purpose was to support families so they could stay together. Orphanages, though common, were viewed as a less-than-ideal solution, for Dickensian images of poor, abused children still resonated in America. The convoluted, complex welfare system we have today started with the best of intentions. And in many cases through the years, this system has worked, just as it works for many families today.

But in dealing with the increasing numbers of mothers under 16, the system has spawned two generations of dependents at once. We've let two absolutist views dominate the moral discussion. "Sex is bad—abstinence is the answer," argues one camp. And it is partly right. The other camp responds that we should not interfere with people's choices, and that our job is to supply these kids with the help they need. And this camp is partly right too.

Missing from both arguments, however, is common sense. Think of your own 15-year-old daughter. If you found out she was pregnant, wouldn't you do more than give her a check at the beginning of every month? Wouldn't you be furious it had happened? Wouldn't you want to know how, when, and who? Wouldn't you want to know how your child and her child were going to survive?

I believe vestiges of racism and sexism confound what ought to be said and done. We would not treat our own daughters the way the welfare system treats teenage mothers. Could it be that because many of America's 15-year-old mothers are children of color and are poor, too many of us believe they are not important?

Our welfare system should separate pregnant girls who are not yet 16 years old. It should remove them from wherever they are staying—with boyfriends, sisters, parents, or in the streets. Our system should have a residential base where these girls can stay, be protected, and grow up. Why not have supervised group housing? Why not provide counselors during the pregnancy and, in those cases where the mother decides to keep the baby, for the first eight months of the infant's life? Why not require school attendance and nightly check-ins? Why not create a haven where a girl can learn about her new responsibility?

Girls in group homes are easier to reach with services and easier to influence than girls living on their own. Only half of teenage mothers begin prenatal care in their first trimester and many continue

using drugs and alcohol during pregnancy. Moreover, repeat pregnancies occur more frequently among teens than among adults, and abusive parenting is much more common. Education and training, adequate and timely health care, and comprehensive and long-term drug and alcohol treatment are far more critical to avoiding welfare dependency than is mere income maintenance. Would group housing foreclose easy access to boyfriends and give greater authority to the state to infringe on the right of young mothers to do anything they wish? You bet. But if we adults wring our hands and do nothing, we are adults in name only.

Raising children is a demanding task under the best of circumstances, but teenagers often don't grasp this reality until after a baby arrives. Why shouldn't our welfare system send the message before teens risk pregnancy that they cannot escape the responsibilities of parenthood?

At the same time, we must be equally focused on teenage boys and their responsibilities as parents. At the very least, we need to ensure that boys do not escape their financial obligations as parents. Like teenage girls who may avoid motherhood when faced with difficult choices, boys may view the loss of income as a good reason to think twice before mindlessly entering fatherhood.

Obviously, this would cost money, but according to the Center for Population Options, Washington already spends \$25 billion a year for families whose first child was born to a teenage mother. In fact, almost 50 percent of all welfare dollars go to women who are (or were originally) teenage mothers. And this doesn't include the long-term costs to society of the premature, low-birth-weight babies that teenage mothers have in disproportionate numbers. We have an enormous economic (not to mention moral) stake in ending the tragedy of childhood motherhood.

A residentially based child assistance program will require fundamental change in our welfare, medical, and legal systems. But why not risk change? All we have now is failure.

The Growing Up of ABA Ethics

AMITAI ETZIONI

Bag the nasty lawyer jokes. The American Bar Association just got religion—kind of. After laborious deliberations, the ABA Committee on Ethics and Professional Responsibility has issued a 16-page ruling laying down the law on how lawyers should not overcharge their clients, bill for recycled research, or impose surcharges for office services. If the committee had had a chance to study the work of moral educator Lawrence Kohlberg, it would have realized that the somewhat stunted ethics of lawyers still have a lot of growing to do.

The report is written as if a significant number of lawyers have failed to progress beyond the ethical state of three-year-olds. Kohlberg points out that young children cannot tell right from wrong and that a three-year-old scolded for lying may not have the foggiest notion why you're distressed. The committee found it necessary to expound these elementary ethical notions. Say a lawyer is being paid by a client for a cross-country flight and she "decides not to watch the movie or read her novel, but to work instead on drafting a motion for another client." The ABA forbids her to charge both for the same hours. And if a law firm pays an economist \$200 per hour for her services as an expert witness, it cannot bill the client \$250 per hour. "A lawyer's stock in trade," the report stresses, "is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services." The document even declares "that a lawyer is never justified in charging a client for hours not actually expended," as if lawyers were fresh out of kindergarten.

If one assumes that lawyers are adults and know damn well what they're doing, the effect of the committee's report will depend on the extent to which its essence will be incorporated into state laws that regulate lawyers and subsequently relied upon by judges.

As children grow older, Kohlberg shows, they first do what is right because it spares them the rod or earns them cookies. They reach the apex of moral development only when they do what is right out of moral conviction, whether it pays or not. The ABA Committee's

report says precious little about why lawyers should refrain from various forbidden practices. There is not a hint of moral awakening, outrage (say, at the fact that lawyers drag out their work to bloat their billing time), or an uplifting appeal for virtuous conduct.

The rationale for ethical behavior given in the report, to the extent that a rationale is provided at all, is that ethics are good for the profession's image and good for business. The document opens with the complaint that "the profession has spent extraordinary resources on teaching and enforcing these ethics rules. Yet ironically, lawyers are not regarded by the public as particularly ethical." The billing practices of some lawyers, the document adds, contribute to "discouraging public opinion of the legal profession." The report further recognizes that clients are at a disadvantage because they know little about the matters at hand and hence must rely on the lawyer—to inform them how much research their case requires, for example. The resulting lack of trust will deter a "layman from utilizing the legal system," the report notes ruefully. Following the suggested rules, the Committee on Ethics stresses, will ameliorate the PR problem and the loss of business.

To be fair, many others, even quite a few ethics professors, adhere to these "utilitarian" or "consequentialist" notions. For instance, their idea of a calculus of harm suggests that you should tell the truth only as long as the benefits of veracity exceed those of dissembling (although you are to take into account that lying diminishes the total stock of trust in the society in which you must live). But such expedient ethics provide convenient rationalizations for those who believe they can get away with double billings and all the other unseemly shenanigans. Ultimately, a civil society requires that most people most of the time will do what is right because they believe it is the only way to behave, even if they have to pay out of pocket. This is, one must hope, what the ABA Ethics Committee was groping for but did not quite find.

FOUNDATIONS FOR DIALOGUE**Democracy and the Politics of Difference**

JEAN BETHKE ELSHTAIN

The American Founders were well aware of the vexations attendant upon the creation of a new political body. As men of the Enlightenment, they rejected the images of the body politic that dominated medieval and early modern political thinking. For Jefferson and Madison, John of Salisbury's twelfth-century visualization of a body politic with a prince as the head and animator of the other members was too literalist, too strongly corporatist, and too specifically Christian to serve the new secular order. But they were nevertheless haunted by Hebrew and Christian metaphors of a covenanted polity: The body is one but has many members. There can be unity with diversity.

Indeed, it is this incorporation, this enfolding of individuals within a single body that makes meaningful diversity possible. As political philosopher Charles Taylor writes, "...my discovering my own identity doesn't mean that I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others....My own identity crucially depends on my dialogical relations with others." We cannot be different all by ourselves. The great challenge was to create a political body that brought people together and created a "we" but still enabled people to separate themselves and recognize and respect one another's individualities. This remains the great challenge for all modern democrats.

Practitioners of a phenomenon I tag the "politics of displacement" try to solve this problem by smashing it to bits. Rather than

negotiating the complexity of public and private identities, they disdain all distinctions between citizenship and any other identity and seek full public recognition, not as a citizen but as a person with a handicap, as having a particular sexual orientation, as a member of ethnic or racial groups, or as a man or woman. When such marks of difference triumph, once they gain public recognition, acceptance, legitimation, and even preferred status and treatment, what we hold in common loses ground. The result is a public world with many “I’s” who form a “we” only with people exactly like themselves.

Persons of democratic disposition are troubled by such developments. The rush for recognition of difference represents a legitimate, modern concern, and some form of equal recognition must form the very lifeblood of a democracy. But what sort of recognition? Claiming, “I am different, you must recognize me and honor my difference” says nothing at all. Should I honor someone or recognize her simply because she is female or proclaims a particular sexual identity? I may disagree profoundly with her about everything I find important—from what American policy ought to be in the Balkans, to how to stem the tide of deterioration of America’s inner cities, to whether violence on television is a serious concern or just an easy target for riled parents. My recognition of her difference—by which I mean my preparedness to engage her as an interlocutor *given* our differences on equality, justice, freedom, fairness, authority, and power—turns on the fact that I share something with her. She, too, is a citizen. We both, I hope, operate from a stance of goodwill and an acceptance of the backdrop of democratic, constitutional guarantees. We both share democratic habits and dispositions, an energetic desire to forge at least provisional agreements on highly controversial issues and, failing that, to remain committed nonetheless to the centrality of dialogue to our shared way of life. If I am her enemy—because I am white, or heterosexual, or a mother, or an academic—her only desire can be to wipe me out. One makes war with enemies; one does democratic politics with opponents.

INTELLECTUAL ABOUT-FACE

Not all that long ago it was the liberal position that emphasizing human differences sanctions inequality. Our sameness alone, argued liberal thinkers, secures an egalitarian, democratic regime. American

society is unique among nations in its strong presumption of equality as one of the touchstones of our national identity: all men are created equal (To be sure, slaves and women were omitted from the original intent of the phrase, but the formulation named the continuing aspiration as well as the imperfect reality). Many conservatives, by contrast, claimed that manifest natural differences between people amount to natural human inequality. Equating equality with sameness and inequality with difference, such thinkers insisted that society must reflect this human inequality and that widespread social inequity is therefore inevitable. Moreover, they argued, attempts to alter institutions to eliminate or reduce inequality are a nasty form of social surgery designed to eliminate human differences themselves. Liberals insisted that such Social Darwinism strained credulity: could all those who were well placed have fully earned it? Could their power and privilege simply have flowed from their being different—unequal—from the rest of us?

Alas, the radical egalitarian response became as tendentious as its ideological opposite. Rather than challenging the view of equality that equated it with sameness, many critics implicitly embraced it, envisioning a fuzzy, utopian world in which people were as indistinguishable from one another as happy peas in an egalitarian pod. Arguments for the continuing need to assess the disparate merits of diverse human capacities, abilities, and achievements melted away. Over the past 30 years, the argument has been vehemently pressed that standards themselves are inherently anti-democratic. A therapeutic mentality, holding that we should all “feel comfortable” and that the faculty of judgement is suspect, has gained credence.

Kurt Vonnegut, in his short story “Harrison Bergeron,” satirizes this ideology of bland equality of sameness, promoted by many calling themselves egalitarians. Vonnegut writes: “The year was 2081 and everybody was finally equal. They weren’t only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else. Nobody was better looking than anybody else. Nobody was stronger or quicker than anybody else. All this equality was due to the 211th, 212th, and 213th Amendments to the Constitution, and to the unceasing vigilance of agents of the United States Handicapper General.” Vonnegut portrays a future society in which all differences, all particular and unique human talents and gifts, have

been counterbalanced in order to achieve the “equal society.” Thus, ballet dancers, naturally gifted and trained to be lithe and limber, must dance with huge weights and irons on their legs. This guarantees that those who haven’t the grace to be ballet dancers won’t have to watch others leap any higher or move any more gracefully than they can.

THE HARM WROUGHT

In the academy, the equation of equality and sameness led to a muddleheaded assault on any notion of distinctiveness or value. Core curricula, for example, were jettisoned on the presumption that a core hampers individual liberty and is suited only for elitists. Some institutions of higher learning gave up grading students altogether. Others moved to a “Pass/Fail” system which amounts to the same thing. Textbook publishers knowingly began to “dumb down” texts in history, science, and literature. In an understandable and justifiable urge to improve the lot of the many, the distinctiveness of the one was forgotten or even disdained.

Writer Richard Rodriguez, in his poignant autobiography about growing up the son of Mexican immigrant parents in California and becoming a “scholarship kid,” writes of the condescending paternalism he encountered at the hands of interventionist egalitarians. Rodriguez’s particular target is affirmative action and his own legal categorization as a “minority” by policymakers allegedly working on his behalf. Rodriguez notices that, although he received an excellent parochial education, he was treated as a victim of cultural deprivation; the working assumption, of course, was that he was both ignorant and incapable of defending himself. He notices that educators make all sorts of “allowances” for poorly educated Mexican-American students and push them through the system ill prepared, assuming that standards of merit and achievement are themselves impositions by an Anglo majority on minorities.

Rodriguez writes: “The conspiracy of kindness became a conspiracy of uncaring. Cruelly, callously, admissions committees agreed to overlook serious academic deficiency. I knew students in college then barely able to read, students unable to grasp the function of a sentence. I knew nonwhite graduate students who were bewildered by the requirement to compose a term paper and who each day

were humiliated when they couldn't compete with other students in seminars....Not surprisingly, among those students with very poor academic preparation, few completed their courses of study. Many dropped out, blaming themselves for their failure. One fall, six nonwhite students I knew suffered severe mental collapse. None of the professors who had welcomed them to graduate school were around when it came time to take them to the infirmary or the airport. And the university officials who so diligently took note of those students in their self-serving totals of entering minority students finally took no note of them when they left."

Unsurprisingly, when Rodriguez published his book, many attempted to discredit him as a spokesman for right-wing reaction; by doing so, they could ignore his arguments. Rodriguez's critics made evident the Left's general inability to tolerate diversity in the ranks of minority groups—presumably they should all think alike and have identical needs that whites can minister to. Ironically, under the rubric of difference, this intolerance has grown more, not less, pronounced in the past decade.

Consider how quickly the rhetoric of difference has supplanted the rhetoric of equality. At a conference on women and feminism in 1989, I was perplexed to hear two and one-half days of assaults on the very idea of equality. Equality meant "the same." It was the mark of masculinism. It was the stigma of heterosexism. It was every nasty thing you could come up with a name for. Even the Nazis became perverse egalitarians in their rush to exterminate the different. Equality, I learned, meant "homologization with the male subject."

The rush to eliminate equality from our political idiom and our political aspiration strikes me as daft, for democracy without equality is an impossible proposition. But at least some of those immersed in what they call the "discourse of difference" are not so keen on constitutional democracy. One participant in the conference was quite candid about this. The task of feminism, she claimed, was celebrating female "will-to-power." She either didn't know or didn't care how disastrously that particular slogan had been deployed in the not-too-distant past.

Repudiating the sameness of equality for its supposed (and supposedly intentional) homogenizing effect, difference ideologues

embrace their own version of sameness—an exclusionist sameness along lines of gender, race, ethnicity, and sexual preference. There is no apparent end to this process, as identities get shaved off into thinner and thinner slivers: lesbian women of color or white heterosexual men who were abused by their fathers. Ironically, writes political theorist Sheldon Wolin, it has traditionally been the “non-democratic rulers, the men who justify their rule by appealing to differences—heredity, divinity, merit, knowledge—who reduce populations to a common condition.” We now impose a common condition on ourselves in the name of diversity.

Political philosopher George Kateb notes: “To want to believe that there is either a fixed majority interest or a homogenous group identity is not compatible with the premises of rights-based individualism.” Although I prefer to speak of democratic “individuality” rather than “individualism,” Kateb’s point is perceptive. To the extent that citizens begin to retribalize into ethnic or other “fixed-identity groups,” democracy falters. Any possibility for human dialogue or democratic commonality vanishes as so much froth on the polluted sea of phony equality, and difference becomes more and more exclusivist. If you are black and I am white, by definition I do not “get it.” There is no way to negotiate the space between our pre-given differences. We’re just stuck with them and mired in the cement of our own identities; we need never deal with one another. One of us will win and one of us will lose, and that’s what it’s all about: nothing but power of the most imposing sort.

If someone has consigned equality to the discursive trash heap and proclaims that she’ll have none of it; if, instead, she insists that politics must consist of my acknowledging and recognizing her differences but, at the same time, I am not allowed to engage her about these differences because we have nothing to say to one another, then I can only respond that she is not thinking and acting like a democratic citizen. She is thinking and acting like a royal pain in the neck, and the sooner I can get her out of sight and mind, the better, not because I am a racist or a sexist or a homophobe or any of the other handy labels we toss around all too easily these days, but because I am weary of being accused of bad faith no matter what I do or say, or refrain from doing or saying.

EDUCATION AND CIVIC SENTIMENT

It was taken for granted from the start of the American democratic experiment that the survival of the republic for any length of time would depend heavily on cultivating civic sentiments among the young. The Founders' optimistic hope was that national character itself could be formed by carefully molding the children of each new generation. The American Founders debated education, rejecting explicitly the classically harsh and martial Spartan example, because it demanded and likely yielded homogeneity and sameness. Their version of difference involved awareness of different opinions: we don't all think alike. The claims to difference were couched in epistemological rather than in ontological terms, in sharp contrast to much contemporary multiculturalism, according to which there is such a thing as "thinking black" or "thinking white" which is innate and inevitable to blacks and whites. To the extent that schools put themselves at the service of this latter version of multiculturalism, they disastrously abandon the turf they were deeded.

Imposed uniformity—whether of sameness or difference—cannot prepare citizens of a democracy to exercise civic and social responsibilities. So-called "multicultural" curricula are designed explicitly to entrench differences. As a form of ideological teaching, multicultural absolutism isolates us in our own skins and equates culture with racial or ethnic identity. "Resegregation," some call it. How long will it take before we move from separate approaches for black children in the name of Afrocentrism, to a quest for entirely separate schools? The glory of American public education has been its mingling of classes, genders, ethnicities, and races.

Richard Rodriguez, in *Days of Obligation*, notes that "American educators have lost the confidence of their public institution.... There are influential educators today, and I have met them, who believe that the purpose of American education is to instill in children a pride in their ancestral pasts. Such a curtailment of education seems to me condescending; seems to me the worst sort of missionary spirit. Did anyone attempt to protect the white middle-class student of yore from the ironies of history? Thomas Jefferson—that great democrat—was also a slaveowner. Need we protect black students from complexity? Thomas Jefferson—that slaveowner—was also a democrat.

American history has become a pageant of exemplary slaves and black educators. Gay studies, women's studies, ethnic studies—the new curriculum ensures that education will be flattering. But I submit that America is not a tale for sentimentalists.”

If we are flattered and cajoled into thinking ours is a tale of victimization and thus one also of purity, we become sentimentalists. As Rodriguez insists, newcomers to this country need to know about seventeenth-century Puritans and, yes, about cowboys and Indians, for these are the building-block dramas of American society. Teaching exotic, mythic, and altogether “foreign” pasts doesn't prepare students for a culture that is both “in common” and forever changing. If we act too quickly on the notion of educational relevance—teaching minority students practical subjects so they can get jobs when they leave school—we stress watery adaptation above authentic excellence. If we concentrate exclusively on the few, assuming the many to be less vital, democratic culture withers on the vine. If we say education must be for the many, yet we have no faith in the many's potential, we abandon excellence for a lowest common denominator and throw out Jefferson's aristocracy of virtue and talent.

POLITICIZATION OF SCHOOLS

A thin line separates an awareness that education is never without political context (and therefore content) from a willingness to politicize education actively. Education is always cast as the means whereby citizens of a society learn to live with one another. It always reflects a society's views of what is excellent, worthy, and necessary. These reflections are continually refracted and reshaped as social definitions and objectives shift as a result of democratic contestation. In this sense, education is necessarily political. But this is different from being directly and blatantly politicized, that is, from serving interests and ends imposed by militant groups committed to true Biblical morality, heightened racial awareness, androgyny, therapeutic self-esteem, or any of the other enthusiasms in which we are currently awash.

Consider the following example: A class takes up the Declaration of Independence and the grand pronouncement that “All men are created equal.” But women (and many men) were disenfranchised. Slaves were not counted as full persons. How could this be? What

meaning of equality did the Founders embrace? Were any of them uneasy about this? How did they square this shared meaning with what we perceive to be manifest inequalities? What political and moral exigencies of that historic moment compelled what sorts of compromises? Might things have gone differently? By raising such questions, teachers and students take part in a reflective and uniquely democratic political education, confronting our perennial dilemma of the one and the many.

But let me offer two other examples, exaggerated in order to mark the differences between these and my first example as clearly as I can. A teacher declares that the Founders were correct in every respect. To be sure, slavery is an unfortunate blemish, but that got corrected. Our purpose as democratic educators at the end of the twentieth century is to reaffirm our devotion to the Founders and their Republic. After all, did they not distill the essence of the wisdom of the ages in their handiwork? Here uncritical adulation triumphs.

The hagiographer's mirror image is offered by the teacher who declares that nothing good ever came from the hand of that abstract, all-purpose villain, the "dead, white, European male." The words and deeds of such men, including the Founders, are nefarious. They were nothing but racists and patriarchalists, blatant oppressors who hid behind fine-sounding words. All they created is tainted and hypocritical. All, presumably, has been exposed. To express a different point of view is to betray one's own venality, false consciousness, or white, patriarchal privilege. Here demonology triumphs.

These latter two examples of teacherly malfeasance I take to be instances of unreflective, dogmatic politicization. Each evades the dilemmas of democratic equality rather than offering us points of critical reflection on those dilemmas. This sort of education fails in its very particular and important task of preparing students for a world of ambiguity and variety. It equips them only for resentment or malicious naïveté. Let me be clear: I am not indicting education, whether public or private, elementary, secondary, or college level, for our growing balkanization. But I am suggesting that the schools, which once took as their mission instilling some measure of commonality across differences, now suffer under the claim that that effort itself was but another name for "normalization" and cultural impe-

rialism. All those dedicated teachers in all those public schools (the vast majority of them women), working long hours for not-very-good pay, are now relegated to the status of agents of domination.

GETTING PERSONAL

I think of my own education, and my democratic dreams, as they were nurtured in the rural Colorado village in which I grew up. The Timnath Public School, District Number 62, incorporated grades 1–12 in a single building; there weren't that many of us. I remember that we memorized the Declaration of Independence and the Gettysburg Address. The Gettysburg Address recitation, when my classmates and I were in the single seventh and eighth grade classroom under the firm if somewhat eccentric tutelage of Miss McCarthy, was always quite an event. We would line up in a single row around the classroom. On Miss McCarthy's signal, we would begin to hum the stirring song of the American Civil War, "The Battle Hymn of the Republic," as Miss McCarthy recited the Gettysburg Address with flourish and fervor. She had a way of trailing off each sentence in a trembly, melodramatic whisper that sometimes left the hummers in stitches. But I never forgot the Gettysburg Address and its promise of democratic equality.

By the time we reached high school in that isolated little place, our text for English class was called *Adventures in Reading*. I still have my copy, having purchased it from the school because I loved so many of the stories and poems it contained. The table of contents was divided into "Good Stories Old and New" with such bracing subsections as "Winning Against the Odds," "Meeting the Unusual," and "Facing Problems." We read "Lyrics from Many Lands" and "American Songs and Sketches." I looked at this text recently as I thought about democracy and education. By no means was this a book dominated by the single point of view of the dread, dead, white, European male. We read Mary O'Hara, Dorothy Canfield, Margaret Weymouth Jackson, Elsie Singmaster, Selma Lagerlöf, Rosemary Vincent Benet, Kathryn Forbes, Sarojini Naidu, Willa Cather, and Emily Dickinson. We read the great abolitionist, Frederick Douglass and the black reformer, Booker T. Washington. We read Leo Tolstoy and Pedro de Alarcón. We read translations of Native American Warrior Songs.

This reading wasn't done under the specific rubric of multiculturalism. But it was undertaken with the assumption that life is diverse and filled with many wonders. Through *Adventures in Reading*, we could make the lives and thoughts of others somehow our own. In my imaginings and yearnings, I didn't feel constrained because some of those I most admired were men. I was taught, "Reading is your passport to adventure in faraway places. In books the world lies before you, its paths radiating from great cities to distant lands, to scenes forever new, forever changing....Reading knows no barrier, neither time nor space nor bounds of prejudice—it admits us all to the community of human experience." Clearly, I was a lucky child, a lucky democratic child, for I learned that, in political philosopher Michael Oakeshott's words, "Learning is not merely acquiring information...nor is it merely 'improving one's mind'; it is learning to recognize some specific invitations to encounter particular adventures in human self-understanding."

This work of human self-understanding can be neither the exclusive purview of the family nor of some overweening state bureaucracy, whether it is pushing homogeneity or multiculturalism. It is primarily a task of civil society, of which schools are a part. Of course, education in a democratic culture is a porous affair, open to the wide world outside the door and beyond the playground, but that does not mean it must become the purveyor of passing enthusiasms, whether political or pedagogical. The danger in continuing down our present path is that our understanding of education itself is increasingly imperiled. We have done too little to protect education from heavy-handed intrusion by those who would have both education and children serve political masters or ideological purposes, whether in the name of change or in defense of some status quo. Thus, we increasingly give over to education all sorts of tasks it is ill equipped to handle. At the same time, we seem intent on stripping it of what it actually ought to be: an invitation to particular "adventures in human self-understanding," in Oakeshott's terms.

CONCLUSION

The danger in any ideological definition of education is that it undermines an essential element of democracy, that of self-limiting

freedom. If democracy is the political form that permits and requires human freedom as responsibility, any definition or system that sanctions evasion of responsibility imperils democracy. Once a world of personal responsibility with its characteristic virtues and marks of decency (honor, friendship, fidelity, fairness) is ruptured or emptied, what rushes in to take its place is politics as a “technology of power,” in Václav Havel’s words. Responsibility, according to Havel, flows from the aims of life “in its essence,” these being plurality and independent self-constitution, as opposed to the conformity, uniformity, and stultifying dogmas of left- and right-wing ideologues, who abandon reality and assault life with their rigid, abstract chimeras. To live “within the truth,” as Havel calls it, is to give voice to a self, and a citizen, that has embraced responsibility for the here and now. As he writes, “That means that responsibility is ours, that we must accept it and grasp it here, now, in this place where the Lord has set us down, and that we cannot lie our way out of it by moving somewhere else, whether it be to an Indian ashram or to a parallel polis.” This is tough stuff. But, then, democracy is for the stout of heart who know there are things worth fighting for in a world of paradox, ambiguity, and irony. This democratic way—moderation with courage, openness to compromise without sacrificing principle—is the rare but now and then attainable fruit of the democratic imagination and the democratic citizen.

Early Communitarians

"Greeks everywhere believed in the cultivation of discretion and self-control as the key to right living; personal freedom was limited by civic responsibility. *Hybris* or pride, considered the most serious of character flaws, revealed itself in rash, unrestrained actions that defied standards of conduct set by the community....Athenian democracy tried to reconcile the individual's private needs with his obligation to serve common interests."

Source: *The Greek Miracle: Classical Sculpture from the Dawn of Democracy*

Drawing by Anderson; © 1993 USA Today

What They Speak at Home

Thirty-one million Americans spoke a language other than English at home in 1990, a 38% increase over 1980. The following are the ten fastest growing languages in America:

Language	Percent growth from 1980
Mon-Khmer	673.3%
French Creole	654.1%
Hindi/Urdu	155.1%
Vietnamese	149.5%
Thai	131.6%
Korean	127.2%
Chinese	97.7%
Taglog	86.6%
Persian	84.7%
Spanish	50.1%

Source: *Census Bureau*

Free Speech and Free Press: A Communitarian Perspective

JEFFREY ABRAMSON AND ELIZABETH BUSSIÈRE

Central to the current debates over free speech and free press in the United States is the question of whether government may intervene in the marketplace of ideas to promote access to views that otherwise might not be heard. This question captures the enduring tension between two competing understandings of the First Amendment.

Libertarians insist that government must keep its hands off both the broadcast media and the publishing industry and leave the market free to determine who speaks and how loudly. Individuals, they argue, have a right to choose for themselves what ideas are worth saying or hearing. Likewise, candidates for public office have the right to buy as much speech as they can afford. The First Amendment further guarantees the press the right to make independent editorial decisions, free from legal requirements about how to report the news.

Communitarians, by contrast, insist that the crucial democratic value is not an unregulated press, but an accessible one. Naturally, the press must be guaranteed independence from government so that it may effectively critique government. But the public interest also requires that crucial channels of mass communications be available to the citizenry at large so that political debate can be open to as wide an array of views and voices as is possible. If it takes legal regulations to achieve wide access, so be it. In an age of such media giants as Time Warner and Capital Cities/ABC, the metaphor of a free market of ideas is no longer as persuasive as it might have been when Justices Holmes and Brandeis set out to protect fringe groups and radical publications from censorship. Given the rise in the media's power,

reaching the First Amendment's goal of a robust public debate may require the government to play an active role in legislating public access or creating alternative public access channels on cable networks.

A SHIFT IN PRECEDENT

Over the past generation the prevailing interpretation of the First Amendment, in the courts and in administrative agencies such as the Federal Communications Commission (FCC), has moved dramatically in the direction of the libertarian school both with regard to speech and the press. Since the early 1960s, the Supreme Court has increasingly insisted that the core purpose of the First Amendment is individual, not social. As Lawrence Tribe writes in *American Constitutional Law*, the prime goal of the First Amendment is to promote "personal growth and self-realization." Remarks constitutional scholar Thomas Emerson, "Assuring self-fulfillment" is a "good in itself," needing no further justification through service to the common good. To protect the individual's right of self-expression, the Supreme Court has fashioned a jurisprudence that strips government of almost all power to judge irresponsible or socially harmful exercises of expression. "Above all else," the Court argued in *Police Department of Chicago v. Mosley*, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Obscenity remains one exception to this ban on government moral judgment; states may still punish *distribution* of hard-core pornography. But since 1969, the Court has granted individuals the right to *possess* pornographic materials in the home, since it stated in *Stanley v. Georgia* that "The constitutional right to receive information and ideas, regardless of their social worth [is] fundamental to our free society."

With regard to free press, the clearest sign of the shift is the release during the 1980s of the broadcast media from their traditional responsibility to act as "public trustees." As far back as the Communications Act of 1934, organizations have been licensed to broadcast over the public airwaves not merely for private gain but also to promote debate and deliberation on vital civic issues. Public trustee status for broadcasters rested on the clear notion that the airwaves

were public property and that those licensed to use the public's property had a responsibility to make radio and television stations accessible to speech by citizens at large. The FCC's 1987 repeal of the Fairness Doctrine, which had required broadcasters to devote airtime to issues of public importance and to cover these issues in a balanced way, exemplifies the growing identification of the First Amendment with deregulation of the media and the panacea of market competition.

These market-oriented, libertarian interpretations of the First Amendment, however familiar today, actually constitute a break with the classical defenses of free speech. Libertarian interpretation focuses on the isolated contribution speech makes to individual development instead of on speech as a crucial means of fostering the social virtues of citizenship and the practices of self-government. "Self-government" defenses harkened back to Madison's admonition that

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.

The self-government rationale for protecting free speech was hardly neutral about the social value of speech. Constitutional scholar Alexander Meiklejohn noted that the democratic justification for protecting free speech grants priority of protection to public debate on issues of civic importance. These discussions must be absolutely protected in a democracy because "The primary purpose of the First Amendment is...that all the citizens shall, so far as possible, understand the issues which bear upon our common life." By contrast, "the private freedom of this or that individual" to express himself or herself on nonpolitical matters was of far less social value.

Of course, this interpretation necessarily leads to controversy over what exactly "public speech" is. Meiklejohn and his successors have had trouble in particular with artistic expression. Should all art be fully protected—art, after all, does enrich (albeit sometimes indirectly) the public's capacity for governance—or may the state regulate works of art ostensibly expressing only the artist's views on nonpolitical matters? The self-government rationale does indeed leave us with difficult line-drawing problems between the political

and nonpolitical. Still, its merit is to peg First Amendment protection to a determination of whether common, rather than purely personal, interests are at stake.

Self-government, not self-expression, remained the key justifier of free speech into the 1960s. In 1966, constitutional scholar Harry Kalven sharply distinguished between the importance of protecting criticism of government versus protecting, say, obscenity. “A society can...either treat obscenity as a crime or not a crime without thereby altering its basic nature as a society,” Kalven wrote. But any society that uses the concept of “seditious libel” to criminalize criticism of government is by definition “not a free society.”

The ascendance of “self-expression” as the prime test for First Amendment protection began in the late 1960s, but the watershed was the 1971 decision striking down a state law that prohibited the use of offensive language in public. In *Cohen v. California* the Court faulted the law for imposing the state’s moral judgment on how individuals choose to express themselves. The Court argued that such legalized moral judgments lack any objective or rational basis: “one man’s vulgarity is another’s lyric.” In the face of this moral relativism, the law cannot dictate how individuals express themselves. The only alternative would be to grant government a “boundless” authority to pick and choose which words were too offensive for civil public discourse. Such moral policing of public discourse does not “comport with the premise of individual dignity and choice upon which our political system rests.”

The importance of granting individuals wide rights to express themselves should be given its due. Compared to the state of free speech from the 1920s through the 1950s, when the Supreme Court upheld laws banning advocacy of socialism and communism, the current principle requiring that government regulations of free speech be “content neutral” is vitally important. Still, in several areas, American law seems to have lost sight of the need to consider the social as well as private purposes of free speech and free press in a democracy. The first of two such areas we will consider is the Court’s persistent hostility to campaign finance reforms designed to lessen the influence of money on elections. The second is the question of guaranteeing some level of public media access. Both areas raise

central questions about whether government may restrict pure individual rights of expression as a means of equalizing speech and of affording as many citizens as possible effective opportunities for speaking.

ACCESS AND ELECTIONS

The Supreme Court noted in *Buckley v. Valeo* in 1976 that “virtually every means of communicating ideas in today’s mass society requires expenditure of money.” But it put this realization to perverse uses. In *Buckley*, the Court considered a series of challenges to the Federal Election Campaign Act of 1971 as amended in 1974. The challenged provisions provided that:

- individual political contributions be limited to \$1,000 to any single candidate per election;
- independent expenditures “relative to a clearly identified candidate” be limited to \$1,000 a year;
- campaign spending by candidates for various federal offices be subject to prescribed limits;
- a system for public funding of presidential campaign activities be established.

The majority of the Court sustained the individual *contribution* limits, as well as the public financing scheme. But the Court declared unconstitutional the act’s various ceilings on *expenditures*. In 1985 the Court used the *Buckley* precedent to strike down a \$1,000 ceiling on expenditures by independent political action committees on behalf of any one candidate.

In *Buckley*, defenders of the campaign expenditure limits argued to the Court that the limits served rather than hindered core First Amendment procedural values. The purpose of the reforms was to enhance the effectiveness of the citizen’s political voice, to minimize money’s amplification of the views of some and diminution of the concerns of others. But the Court rejected the legitimacy of state action to “equalize” speech:

The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.

The reason such an “equality” concept is foreign, the Court went on, is because “the First Amendment was designed to secure the widest possible dissemination of information from diverse and antagonistic sources.”

The Court seems guilty of a non sequitur here. When money determines the effectiveness of speech, there is no reason to presume citizens will debate “information from diverse and antagonistic sources.” Rather, argues constitutional scholar Rogers Smith, “Community deliberation on public issues may be biased, and rational self-governance may therefore be impeded, if certain points of view are made much more prominent than others due to superior economic resources.”

Some scholars defend the *Buckley* decision by pointing out that expenditure limits tend to favor incumbents, who enjoy the advantages of name recognition and free publicity. Other things being equal, challengers depend on spending during the campaign to offset the natural advantages of incumbency. Congressional incumbents were thus acting only out of self-interest when they passed the contribution and expenditure limits at issue in *Buckley*. Smith acknowledges some merit in this view: “Regulations to assure the equal availability of all legitimate viewpoints *are* difficult to construct fairly and they raise the dangers of a chilling effect and partisan abuse.” But, he points out, “in principle, at least, such restrictions could be designed to serve as a type of time, place, and quantity regulation which, like limits on noise levels, would be tailored to achieve on balance the maximum liberty for all.”

Buckley asserts the right of individuals and interest groups to buy as much political speech (and influence) as they can, over the public interest in a fair democratic process—one that grants effective access to all ideas, however much wealth might back them. As political philosopher John Rawls puts it, *Buckley* views democracy as but the “regulated rivalry between economic classes and interest groups in which the outcome should properly depend on the ability and willingness of each to use its financial resources and skills, admittedly very unequal, to make its desires felt.”

A fuller vision of democracy goes beyond this thin sense of a deregulated “marketplace of ideas” properly producing winners and

losers. Ultimately, we aspire to be a democracy that creates genuine self-government by a citizenry feeling moral responsibility to pursue the common good. *Buckley* makes it more difficult to create the participatory conditions necessary for this self-government by placing a constitutional chokehold on legislative reforms aimed at equalizing effective access to and for the public.

LOCHNER REVISITED

As Rawls points out, the Court's mistake on access issues is a repetition of the faulty reasoning that earned the so-called "Lochner" era in American constitutional law its universal, negative reputation. In the 1905 *Lochner v. New York* decision, the Court found in the Fourteenth Amendment due process clause a novel doctrine of individual liberty of contract that prevented the state from passing maximum hours or minimum wage laws. Ultimately, at the crest of the New Deal, the Court abandoned *Lochner* and the consensus ever since has been that the Constitution contains no theory of individual liberty that prohibits the state from regulating contracts in the interest of improving the status of the less well-off.

In *Buckley* and its constitutional progeny, the current Court finds in the First Amendment a novel doctrine of individual liberty that prevents the state from limiting campaign expenditures (by individuals, groups, or candidates) so that those with financial resources do not skew or semi-monopolize the marketplace of ideas. As *Lochner* did to the Fourteenth, this approach stands the First Amendment on its head. If only because of the Court's own philosophy of scrutinizing procedural flaws in democracy, the Court should have given Congress more elbowroom to experiment with ways to close the gap between the speech available to the haves and to the have-nots. But first the Burger Court and then the Rehnquist Court interpreted the First Amendment as ruling out any "egalitarian" attempts to regulate how much speech money can buy in elections. The Court fashioned a false understanding of liberty, in which the individual's interest in expressing his or her views is protected, no matter what the consequences for public debate, fair representation, or genuine opportunity to seek office. Such an interpretation of the First Amendment cannot and should not stand long, since it essentially enshrines the

individual interest in “self-expression” as the highest end of democracy and divorces that end from any need to consider how one person’s exercise of liberty might affect the ability of other persons to exercise equal and like liberties.

ACCESS AND THE PRESS

A generation ago, the Supreme Court commendably noted that freedom of the press is not just the right of individual reporters and editors but the people’s “collective right...to receive suitable access to social, political, aesthetic, moral and other ideas and experiences.” This remark came in a landmark decision upholding an FCC requirement that broadcasters provide reply time to individuals who have been personally attacked on the air or to candidates who have been disfavored by a political editorial. In upholding the FCC’s authority to mandate access to the airwaves in such situations, the Court noted that “it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”

In more recent years, both the courts and the FCC have unfortunately whittled away the public service responsibilities and public access requirements that once came with the right to broadcast over the public airwaves. In 1987, the FCC formally repealed the Fairness Doctrine, following President Reagan’s veto of a Congressional bill that would have expressly enacted the doctrine into law. In justifying the move to deregulate broadcasters, the FCC stated: “What we have come to realize is that the First Amendment was...founded on a belief that ‘fairness’ was far too fragile to be left for a Government bureaucracy to accomplish....If we must choose whether the editorial decisions are to be made in the free judgment of individual broadcasters, or imposed by bureaucratic fiat, the choice must be for freedom.”

The repeal of the Fairness Doctrine harmonized the legal status of the print and broadcast media when it came to access requirements. In 1974, the Supreme Court invalidated a Florida law that would have granted rights of reply to any political candidate or office holder whose character or record was attacked in a newspaper editorial. Such rights of reply might be constitutional in the broadcast world due to scarcity of space on the airwaves, the Court reasoned, but economic concentration in the newspaper industry did not create

similarly compelling conditions of scarcity. Instead, the Court found that right-of-reply laws would likely have a chilling effect on the editorial decision to criticize a candidate in the first place. Insulating the print press from government regulation was deemed the best way to encourage investigation and criticism of government.

Since the repeal of the Fairness Doctrine, battles have raged over how to reconcile the tradition of protecting press autonomy with the tradition of promoting public access to the media. As new media technologies emerge, ranging from cable television to videotex to electronic publishing over computers to satellite video transmission, the debate over regulation of and access to the media moves into new territory. Proponents of continued deregulation argue that technology has ended the scarcity of television frequencies that once justified the government in mandating access to the airwaves. We now live in an age of video abundance and video competition, with cable alone providing hundreds of channels into the home and with new broadband information technologies potentially providing superhighways into the home for voice, data, and video transmission. With the switch from scarcity to plenty, market competition allegedly can now be permitted to do its work, and government should abide universally by the principle of noninterference.

CONGLOMERATION AND MEDIA POWER

The problem with deregulation of the media is that it ignores the phenomenon of media conglomeration that increasingly characterizes ownership of the new and old media alike. The top 10 cable systems, for instance, account for 41 percent of all cable subscribers. Moreover, many of these multisystem cable operators are owned in whole or part by established media giants such as Time Warner, Viacom, or Storer Communications. Capital Cities/ABC and General Electric/NBC are heavily invested in cable as well as in broadcasting. The power of these entrenched media giants implies that leaving the media wholly unregulated by government will actually work against a rich public debate. At one end of the video pipeline, consumers may now be able to flip among a great number of channels or rent from a massive library of videocassettes. But at the other end, a small group of conglomerates still controls the bulk of what programs are pro-

duced, purchased, and distributed. In the face of such concentrated private power, the case for legal regulation and mandated public access requirements remains.

As of this writing, the debate over public access to the media centers on how to define the First Amendment rights of cable system operators. Not surprisingly, industry representatives argue that local governments violate the First Amendment when they require cable operators to set aside a certain number of channels on their system for local community, governmental, or educational access programming. “If a government required a newspaper to publish 10 pages of letters to the editor, you could be sure the publisher would have objections,” a lawyer for the National Cable Television Association quipped. In response, one wonders whether the public’s need for public affairs programming on cable could be served adequately by awarding one company an exclusive franchise to wire a municipality for cable and then full control over the programming content of every channel. Even in market terms, this seems an odd argument, since cable companies enjoy legal monopolies. To accept the cable industry’s free press claims, therefore, is to allow one private entity to control how an entire medium of communication is used in a locale. Not even the strongest free market advocates should endorse such a claim. The public interest is far better served by the current practice requiring cable companies to create public access channels. These channels, unfortunately, are used today only by a few. But at their best, they promise to provide citizens wishing to attend a school board meeting or city council hearing with ways of participating electronically. Technology has advanced to the point at which genuine interactive conversation could flow over public access channels. Use of cable television and other emerging interactive technologies in this way would be a boon to the deliberations that are the hallmark of democracy. Public access television could foster not only a more informed citizenry but also a more engaged and participatory one. No interpretation of the First Amendment should handcuff government from promoting such public access uses of the media—uses that increase opportunities for citizens to engage in the political speech and debates that alone equip us for the responsibilities of self-government.

FREE SPEECH AND COMMUNITY

Let us describe more fully the sharply contrasting political theories underlying the libertarian and communitarian views of the First Amendment. Whereas the libertarian defines liberty as the absence of government restrictions on individual value choices, the communitarian defines it as participation in self-government. While the libertarian endows the individual with rights that trump communal judgments, the communitarian believes, as political theorist Sheldon Wolin writes, that “civic commitments and common action...furnish both content and guidance to the exercise of rights.” Since citizens live within the bounds and responsibilities of a community, they do not have full rein to express themselves without regard to the potentially harmful consequences for others.

Democracy, at its best, engages citizens in a way that enables them to participate in the pursuit of the common good. By contrast, to value democracy only for the opportunities it provides persons to pursue their own interests is to permit public space to be used unabashedly for private ends. As Wolin observes of this rather pale notion of political participation: “Interest politics dissolves the idea of the citizen as one for whom it is natural to join together with other citizens to act for purposes related to a general community and substitutes the idea of individuals who are grouped according to conflicting interests.”

Recent interpretations of the First Amendment elevate the individual’s right to self-expression at the expense of promoting equal and effective citizen participation in debates and deliberations over the common good. A full communitarian interpretation of the First Amendment ultimately must balk at the reigning notion that government is powerless to ensure greater public access to the media and that communities are powerless to make moral judgments about what individuals wish to say. If democracy is not reducible to “self-expression,” then citizens must learn and exhibit certain character traits that dispose them toward a common good. A First Amendment jurisprudence that compels communities to stand by while some of its members suffer degradation through speech strains the loyalties and shared principles that make it possible in the first place for persons to form a community devoted to pursuing the common good.

Rights and Responsibilities Viewed from Afar: The Case of Welfare Rights

MARY ANN GLENDON

In the 1960s and 1970s, when the judicial rights revolution was in full swing, poverty lawyers and allied legal scholars urged the courts to add to the expanding catalog of constitutional rights certain social and economic rights—to housing, education, and a minimum decent subsistence. The advocates of welfare rights were not deterred by the absence of pertinent constitutional language. After all, if the Court could find a right to privacy in the “penumbra” of the Bill of Rights, who knew what else might be discovered there?

The efforts to constitutionalize what were historically matters of legislative discretion had only partial success. The Supreme Court did hold in 1970 that once government grants certain statutory entitlements such as welfare and disability benefits, the recipients have a constitutional right not to be deprived of those benefits without procedural due process. The Court declined, however, to find that the entitlements themselves were constitutionally required.

That result is hardly surprising. The welfare state was not even a twinkle in the eye of the Founders. It is worth speculating, though, about what a contrary holding in the 1960s and 1970s might have portended. Examining the experience of other liberal democracies may illuminate that hypothetical terrain, for most of their constitutions do contain welfare rights or solemn acknowledgments of collective responsibility to provide minimum decent subsistence to needy citizens.

The chief lesson to be learned from examining the way welfare is imagined in foreign legal systems is that, in this area as in so many

others, the United States is in a class by itself. The age of our Constitution is just one of many features that sets the United States apart from other liberal democracies. Our regime of constitutional rights was over a century old when the New Deal transformed the liberal night-watchman state into a liberal regulatory welfare state. In most of the nations with which we ordinarily compare ourselves, the sequence was exactly the reverse. In Canada, France, and Germany, for example, the foundations of the welfare system were in place well before the appearance there of regimes of judicially enforceable constitutional rights. Another element of American distinctiveness is the refusal of American governments to ratify international human rights instruments containing social and economic rights. And finally, there is the unusual structure of our welfare state, which, to a much greater extent than elsewhere, leaves pensions, health, and other benefits to be organized privately, mainly through the workplace, rather than directly through the public sector. A brief elaboration of these points will suffice to show how differently rights and responsibilities are understood in the American and in other North Atlantic contexts.

RIGHTS NOW—WELFARE LATER

Americans are justly proud of the fact that, prior to 1945, we were one of very few countries where constitutional rights were protected by the institution of judicial review. Our courts seldom exercised their power of reviewing governmental action for conformity to constitutional norms, however, until the turn of the century. Then, American judges began energetically striking down factory laws and other early social legislation, while legislatures in the rest of the industrialized world were laying the foundations of their welfare states with statutes broadly similar in spirit to those our courts were nullifying.

It was not until the active period of constitution making that followed World War II that bills of rights and institutional mechanisms to enforce them were widely adopted by other nations. At that time, most liberal democracies did not adopt the American method of judicial review, but opted instead for variants of a system that has come to be known as the “European model” of constitutional control.

The principal feature that distinguishes the European from the American model is that, under the former, constitutional questions must be referred to a special tribunal that deals only or mainly with such matters. In the United States, and in the handful of countries that have imitated our system, ordinary courts have the power to rule on constitutional issues in regular lawsuits. Even among the nations that have adopted a form of the American model—Canada, Japan, and the Republic of Ireland—the United States remains unique. For no other country's courts have exercised their power to declare executive or legislative action unconstitutional with such frequency and boldness as their American counterparts.

YOUR RIGHTS AIN'T LIKE MINE

A renowned European legal historian recently compiled a “basic inventory” of rights that have been accepted by most western countries at the present time. The list included, first and foremost, human dignity, then personal freedom, fair procedures to protect against arbitrary governmental action, active political rights (especially the right to vote), equality before the law, and society's responsibility for the social and economic conditions of its members. It is hard to say what would strike most American readers of this list as more strange—the omission of property, or the inclusion (in a catalog of “rights”) of affirmative welfare obligations. Yet the list is an accurate one. Welfare rights (or responsibilities) have been accorded a place beside traditional political and civil liberties in the national constitutions of most liberal democracies. It is the eighteenth-century American Constitution that, with the passage of time, has become anomalous in this respect.

The fact that welfare rights have been accorded constitutional status in so many countries cannot be attributed exclusively to the relatively recent vintage of their constitutions. To a great extent, it is a legal manifestation of European attitudes toward the state that are traditionally less suspicious than American attitudes. Continental Europeans today, whether of the Right or the Left, are much more likely than Americans to take for granted that governments have affirmative duties to promote actively the well-being of their citizens. The leading European conservative parties espouse openly and in

principle what American conservatives have only accepted grudgingly and *sub silentio*: a mixed economy and a moderately interventionist state. A broad social consensus in Europe supports the subsidization of child-raising families, and accepts the funding of health, employment, and old age insurance at impressive levels. American politicians of both the Right and the Left, by contrast, find it almost obligatory to profess mistrust of government.

THE INTERNATIONAL STANDARD

Article 25 of the United Nations Universal Declaration of Human Rights, adopted by the General Assembly in 1948, provides that “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” To implement that principle, the UN Covenant on Economic, Social, and Cultural Rights was opened for signature in 1966. The Covenant came into force a decade later after being ratified by nearly 90 countries. The United States is the only one of the liberal democracies that has failed to ratify that instrument or its companion, the UN Covenant on Civil and Political Rights.

A large part of the explanation for this reticence, no doubt, resides in our prudent unwillingness to subject ourselves to the jurisdiction of international organizations dominated by critics of the United States. But in some respects, and particularly where economic and social rights are concerned, our reluctance also seems attributable to traditional American ideas about which sorts of needs, goods, interests, or values should be characterized as fundamental rights. Another reason, about which I shall have more to say presently, is probably a concern that the overburdened American civil litigation system is ill equipped to handle the consequences of characterizing a vast new range of interests as fundamental rights.

WELFARE RIGHTS IN PRACTICE

When considering welfare rights in foreign constitutions, Americans may wonder, “How have these rights worked out in practice?”

Does the experience of other nations shed any light on what might have happened here if the Supreme Court had accepted arguments made in the late 1960s and early 1970s that welfare rights could and should be made part of our constitutional regime instead of remaining purely legislative creations?”

In practice, interestingly, the contrast between the United States and countries with constitutional welfare rights is much less sharp than it appears on paper. For no liberal democracy has ever placed social and economic rights on precisely the same legal footing as the familiar civil and political liberties. In some countries, for example, constitutional welfare language is so cryptic as to remain meaningless without extensive legislative specification (the German republic, for example, calls itself a “social” state). More commonly, the various social and economic rights are specifically enumerated, but their special nature is flagged by presenting them as statements of political principles and goals to guide the organs of government as they carry out their respective functions. For example, the Swedish Instrument of Government provides, in a section titled, “The Basic Principles of the Constitution”:

The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent on the community to secure the right to work, to housing and to education and to promote social care and security as well as a favorable living environment.

Continental lawyers call such rights “programmatic” to emphasize that they do not give rise to directly enforceable individual claims, but await implementation through legislative or executive action and budgetary appropriations. Programmatic rights figure prominently in the constitutions of the Scandinavian countries, as well as in the French, Greek, Italian, Japanese, and Spanish constitutions. In all those countries, the welfare state has been constructed by legislation through ordinary political processes—just as it has in the United States.

One cannot conclude, however, that “programmatic” rights and obligations are of no practical significance. One important legal effect is that they endow the statutes enacted to carry out the constitutional “program” with a strong presumption of constitutionality. Nor can

one discount the likelihood that these aspirational statements have a modest influence on public, judicial, and legislative deliberation about rights and welfare, especially in countries where constitutional welfare commitments have issued from, or been grafted onto, a well-established welfare tradition.

On the other hand, at the most practical level, there does not appear to be any strong correlation between the presence of, or the degree of emphasis on, welfare rights in the constitutions of affluent democracies and the generosity of those states as measured by the proportion of national expenditures devoted to health, housing, social security, and social assistance. For example, the United Kingdom, with no constitutional welfare rights (and no single-document constitution), devotes proportionately more of its resources to social expenditures than its richer “neighbor” Denmark, where rights to work, education, and social assistance are constitutionally guaranteed. And social expenditures consume considerably more of the budget of the Federal Republic of Germany, whose constitution merely announces that it is a “social” state, than they do in Sweden or Italy where welfare rights are spelled out in some detail. (It has always been hard to fit the United States into such comparisons because of the peculiar structure of our welfare state. But most analyses give us a relatively poor showing in many respects, especially where assistance to child-raising families is concerned.)

If there *is* a relation between the constitutional status of welfare rights and the type and strength of welfare commitments in a given society, it seems to be but a loose relationship of consanguinity, since both the constitution and the welfare system are influenced by such factors as the homogeneity or diversity of the population, the degree to which mistrust of government has figured in the country’s political history, the vitality of political parties, the health of the legislative process, and the degree of individualism in the culture. This kind of inconclusive speculation seems to lead only to the sort of conclusions that make sociology so unsatisfying to many people. It is difficult to become excited about the idea that a host of mutually conditioning factors, of which the constitutional status of welfare rights may be both cause and consequence, are involved in determining the shape of a given country’s welfare system—its basic commitments, the

priorities among those commitments, the spirit in which it is administered, the degree of support and approval it wins from taxpayers, and the extent to which it disables or empowers those who resort to it.

WHAT IF...

That very inconclusiveness, though, is taken by some rights enthusiasts as a basis for arguing that social and economic rights should be constitutionalized. If the experience of other liberal democracies is any guide, the argument runs, there is unlikely to be any harm in granting constitutional status to such rights, and some beneficial effects might well ensue. Those are risky inferences to draw from cross-national comparisons, though, for reasons that reside, not in the foreign experience, but in our own distinctive American culture of rights. We Americans, for better or worse, take rights very seriously. Not only the term, but the very idea of “programmatic” rights is unfamiliar and uncongenial to us. It is almost inconceivable that constitutional welfare rights, had they appeared in the United States, would have been regarded by the public or treated by the legal community as purely aspirational. Americans are accustomed to the notion that if we have a constitutional right to something, we can go to court to enforce that right, and that, standing behind the court’s order are sheriffs, marshalls, and the National Guard, if necessary.

As soon as we begin to imagine constitutional welfare rights that are other than programmatic guides for legislative action, however, we are headed down a road that no other country, including the socialist states, has traveled. That does not mean that we cannot make an educated guess about the destination of such a trip. The most directly foreseeable consequence of granting constitutional status to social and economic rights in the United States would be a litigation explosion of heroic proportions. Would the benefits of that litigation outweigh the disadvantages? It is sometimes said that such lawsuits will prod government agencies into being more responsive and responsible. But the costs of legal defense (in dollars and morale) plus the occasional high damage award could prod financially strapped local providers in the other direction, toward service cutbacks or eliminating some programs altogether.

THE UTILITY OF CROSS-NATIONAL COMPARISONS

No other country has had any experience which can guide us here. The fact is that we Americans rely to a unique extent on the system of damage awards (both in ordinary personal litigation and constitutional tort litigation) to perform certain social tasks that other advanced industrial nations handle with a more diverse range of techniques including, notably, direct health and safety regulation and more comprehensive systems of social insurance.

Nevertheless, the experiences of other countries may help us to find our own path by heightening our awareness of indigenous resources that we ourselves are inclined to overlook or underrate. In recent years, policymakers in other welfare states have begun to gaze wistfully at the American capacity for cooperation between governmental and nongovernmental organizations in the areas of health, education, and welfare, and at the ability our sort of federalism gives us to innovate and experiment with diverse approaches to stubborn social problems. The United States represents a rare working example, albeit an incomplete and imperfect one, of the principle of “subsidiarity”: the notion that no social task should be allocated to a body larger than the smallest one that can effectively do the job.

The reason these American novelties are now attracting increased interest abroad is that welfare states everywhere are experiencing economic distress. Every country within the democratic world is in its own way grappling with a common set of problems: how to provide humanitarian aid without undermining personal responsibility, how to achieve the optimal mix in a mixed economy, how to preserve a just balance between individual freedom, equality, and social solidarity. The basic problem is nothing less than the great dilemma of how to hold together the two halves of the divided soul of liberalism—our love of individual liberty and our sense of a community for which we accept a common responsibility.

Below the surface of that dilemma lies a long-neglected political problem. It is that neither a strong commitment to individual and minority rights, nor even a modest welfare commitment like the American one can long be sustained without the active support of citizens who are willing to respect the rights of others (not just in the abstract but often at some cost to themselves), who are prepared to

accept some responsibility for the poorest and most vulnerable members of society, and who are prepared to take significant responsibility for themselves and their dependents. Liberal democratic welfare states around the world are now asking men and women to possess and practice certain virtues that, even under the best of conditions, are not easy to acquire—self-restraint, self-reliance, compassion, and respect for the dignity and worth of one’s fellow human beings.

The question that seldom gets asked, however, is this: Where do such qualities come from? Where do people acquire an internalized willingness to view others with genuine regard for their dignity and concern for their well-being, rather than as objects, means, or obstacles? These qualities cannot be generated by governments or instilled by fear and force. The fact is that both our welfare state and our experiment in democratic government rest to a great extent on habits and practices formed within fragile social structures—families, neighborhoods, religious and workplace associations, and other communities of memory and mutual aid—structures that are being asked to bear great weight just at a time when they themselves do not seem to be in peak condition.

The question then becomes: what, if anything, can be done to create and maintain, or at least to avoid undermining, the social conditions that foster our commitments to the rule of law, individual freedom, and a compassionate welfare state? In a large, heterogeneous nation like the United States, the question is particularly urgent. America is especially well endowed with social resources, but we have tended to take that social wealth for granted, consuming our inherited capital at a faster rate than we are replenishing it. Like an athlete who develops the muscles in his upper body but lets his legs grow weak, we have nurtured our strong rights tradition while neglecting the social foundation upon which that tradition rests.

Communitarianism can be understood as democracy’s environmentalist movement, helping to heighten awareness of the political importance and endangered condition of the seedbeds of civic virtue. Toward that end, it will be necessary to take a fresh look at our constitutional framework, and to recall that individual rights are but one set of elements in a larger constitutional structure. As it happens,

those parts of the constitutional design that have been neglected by constitutional lawyers in recent years—federalism, the legislative branch, and the ideal of government by the people—have an important bearing on the maintenance of the social capital upon which all rights ultimately depend.

And so, by a circuitous route, a cross-national approach to rights and the welfare state points back toward the American Constitution and toward what constitutional scholar Akhil Amar called the “Madisonian understanding that individual liberty and strong local institutions need not be at cross-purposes with one another.” If America’s endangered social environments do indeed hold the key to simultaneously maintaining a liberal regime of rights and a compassionate welfare state, then we need to start thinking about the effect of both rights and welfare, as currently conceived, on the settings where we first learn to respect the rights of, and care for the needs of others. Reflection on our own tradition, moreover, should give us pause concerning the disdain for politics that underlies so much current American thinking about legal and social policy. For one of the most important lessons of 1789 is the same one the world learned anew in 1989: that politics is not only a way of advancing self-interest, but of transcending it. That transformative potential of the art through which we order our lives together represents our best hope for living up to our rights ideals and our welfare aspirations in coming years.

Where Journalism Ends and Fiction Begins

STEPHEN HESS

Over the past 18 months NBC settled out of court with General Motors over the network's faking of two GM truck crashes, and psychoanalyst Jeffrey Masson won a libel suit against freelance writer Janet Malcolm for her *New Yorker* story profiling him. These two events have focused public attention on where journalism ends and fiction begins.

DATELINE DISHONESTY

On 17 November 1992 *Dateline NBC* aired a 15-minute segment about the safety of GM pickup trucks manufactured between 1973 and 1987 with the gasoline tanks mounted outside the trucks' underframe. Critics contend that this model explodes in side-impact accidents. The NBC program staged two crashes, which culminated in a 56-second scene, a driver's view of the last moments before impact, and a fire that an on-camera safety consultant described as a "holocaust." The segment's reporter said that the crash had punctured a hole in the gas tank.

A subsequent investigation by GM proved that the story was fraudulent on five counts. First, NBC had attached remote-controlled model rocket igniters to the trucks. Second, while one truck failed to catch fire, the fire on the other truck lasted for only 15 seconds, and the filming of the fire had been enhanced by multiple camera angles. Third, there was no puncture in the gas tank. Fourth, a previous owner of the truck had lost the gas cap and the gas leakage resulted from an ill-fitting replacement. Fifth, the truck was being driven at faster speeds than were reported on the program.

In an on-air apology on 9 February 1993, Jane Pauley told viewers that the incendiary devices were "a bad idea from start to finish." And

co-host Stone Phillips added, "We have also concluded that unscientific demonstrations should have no place in hard news stories at NBC." GM then dropped its lawsuit and NBC agreed to pay the expenses of GM's investigation, estimated at \$2 million. Media reporter Howard Kurtz called it "one of the most embarrassing episodes in modern television history."

NBC later hired outside lawyers to conduct an investigation of what had gone wrong. The report concluded, "Taping a crash fire was at least as important a goal as proving that the GM trucks were defective." The president of NBC, Robert C. Wright, issued his statement: "These journalistic and administrative failures are indefensible."

NEW YORK, NEW YORK

A more complicated but equally embarrassing incident was the conclusion of a lawsuit by Jeffrey Masson against Janet Malcolm. Malcolm's two-part profile of Masson in the *New Yorker* had appeared in 1983 after Masson had been dismissed from his curatorial position at the Freud Archives in London. Masson contended that five quotations had been fabricated. In the profile, for instance, he was supposed to have said that he would have turned the Freud Archives into "a place of sex, women, fun."

After a monthlong trial (May–June 1993), a San Francisco jury found that all the quotations were fabrications and that two of them (including "sex, women, fun") met the three criteria for libel as defined by the Supreme Court: that the quotations were made up or substantially altered, that the plaintiff suffered damages, and that the writer acted deliberately and with "reckless disregard." The jury could not agree on a monetary award.

The trial also delved into Malcolm's writing techniques, notably what she called "compression," or combining quotations from conversations held at different times. A 1986 deposition from William Shawn, then the editor of the *New Yorker*, said, "This is done frequently for literary reasons. It must never be done to distort anything or deceive anybody or done to the disadvantage of anybody." But more journalists would agree with *New York Times* columnist Anna

Quindlen: “Grinding up a number of encounters and molding them into one entity, a kind of journalistic paté, is beyond the pale.”

Much of the contested material in the Masson profile appeared in a very long monologue placed at the restaurant Chez Pannise in Berkeley. Malcolm testified that many of these words had been spoken over the telephone or in her New York kitchen. In her first draft the scene of the monologue was the Berkeley Pier and it was shifted indoors by her editor (and husband), Gardner Botsford, to simplify the story’s narrative.

Malcolm’s work is part of a continuum of controversial compositions that goes back to the publication in the *New Yorker* of Truman Capote’s “In Cold Blood.” That mid-1960s real-life story of the murder of a Kansas family employed all the techniques of fiction while claiming to be “immaculately factual.” But how factual can quotations be when the reporter did not hear them? The same question was raised about *The Final Days*, a 1976 book about President Nixon by Bob Woodward and Carl Bernstein, and in 1984, *New Yorker* writer Alastair Reid, obviating such a question, admitted that his reporting was a distilled melange of things he had seen and heard in different places. Reid, and perhaps the others, were imposing their wills on events and other people’s words in order “to make [in Reid’s judgment] the larger truth.”

FACTS KNEADED AND ROLLED

Which brings us back to NBC’s setting fire to a GM truck. Is this incident merely an aberration, a dishonest moment on a news medium that otherwise conforms to the standards of mainstream print journalism? Is it proof that TV news is intellectually dishonest, a massing of sound bites and pictures in support of predetermined conclusions? Is it proof that the image-based journalism of television is in the process of creating a different standard of truth? It is all three.

The TV newsmagazine format is now so popular and so profitable that it is even beginning to dominate prime-time programming. At the same time, the newsmags have become the motor force of the networks’ news divisions, affecting personnel and resources decisions. Their influence on dinnertime news programs—still watched

nightly by 30 million people in the U.S.—is also evident from the increased use of features with names like *American Agenda* and *Eye on America*, which borrow newsmag techniques.

The TV newsmag was born on 24 September 1968 when the news division of CBS first aired a topical prime-time variety show called *60 Minutes*. By 1979 *60 Minutes* was the most widely viewed program in the nation. According to its executive producer, Don Hewitt, it is “the biggest moneymaker in the history of broadcasting,” having earned \$1 billion for CBS—clearly worth imitating. In 1993 the networks (ABC, CBS, NBC) were producing seven newsmags and had at least three more in the pipeline. In 1987 Rupert Murdoch’s Fox stations introduced *A Current Affair*, a highly sensationalist newsmag that was also imitated by other syndicated programs.

The mid-1980s was a period of flux in the television industry. Murdoch was laying plans to create a fourth network, and the three major networks were changing hands: ABC was acquired by Capitol Cities; Loews bought 25 percent of CBS and made investor Lawrence Tisch its president; General Electric replaced RCA as the parent company of NBC. The networks had always viewed their news operations as loss leaders, good public relations for a government-regulated industry. But times were tough in the news business, and the new corporate owners were offended by waste and redundancy. Soon, Dan Rather was publicly scolding his new bosses on the op-ed page of the *New York Times*: “Do the owners and officers of the new CBS see news as a trust...or only as a business venture?” As anchor, however, he was only entitled to the next-to-last word. The new owners wanted—and got—scaled-down news operations, and they substituted newsmags, which were cheap and network owned, for dramas and sitcoms, which were expensive and owned by others.

Don Hewitt’s newsmag formulation moved the journalist to stage center, transforming the reporter from an objective observer into a Dick Tracy-like protagonist. Reporter-detective outlines the case, searches for clues, stalks the transgressor (often a corporation or a government agency), and, if possible, brings the perpetrator to justice. Reporter-detective, especially if played by Mike Wallace, even wears a trench coat, and, according to media scholar Richard Campbell, “may appear in as many as 40 or 50 shots in a 120-shot, 14-minute segment.”

Just as Capote drew on the conventions of fiction in his “nonfiction novel,” Hewitt and his disciples adopted the techniques of Hollywood screen imaging. Villains are always shown in extreme close-up (Extreme villains, such as the Shah of Iran, have both forehead and chin cut from the frame, while middling villains usually just lose the tops of their heads). The reporter-detective, on the other hand, is seen from a distance.

Hidden camera investigations, often with reporters operating in disguise, have become another staple, especially on ABC’s *PrimeTime Live*, whose executive producer has said he would like to do a hidden-camera story every week. “Journalistic practices that would get you fired from the *Chicago Tribune* or the *New York Times*—surreptitious eavesdropping or assuming a false identity—are standard techniques on the CBS program *60 Minutes* and similar shows,” lamented Richard Harwood, a former ombudsman of the *Washington Post*.

Other techniques that are used at various times, in hard news shows as well as newsmags, include simulation of events by actors, music to heighten mood, changes in sequencing, fast-cutting that reduces sound bites to a sentence, “generic images” for illustrative purposes, weighted expert opinions, and ambush interviews. There are countless examples:

- ABC’s *World News Tonight* used an employee to play an American diplomat handing a briefcase to a Soviet agent.
- *The CBS Evening News* used a rap-music video of President Bush repeating “read my lips” to synthesizer accompaniment.
- Ted Koppel’s *Nightline*, during an interview with a Rodney King trial juror, used music that TV critic John Carmody described as an “almost ominous chord—faintly reminiscent of the note sounded when Rick sees Ilsa for the first time since Paris.”
- *The NBC Nightly News* used images of dead fish to illustrate a 1993 story about alleged overcutting in Idaho’s Clearwater National Forest. The fish turned out to be neither dead nor from Clearwater, and Tom Brokaw apologized on a later broadcast.
- An animal rights segment on *60 Minutes* had a 5:1 ratio of expert opinion in favor of one side, according to the count of one media critic.

Balance is clearly not the objective. The producer of CNN's *Network Earth* series said, "Indeed, [balance] can be debilitating. Can we really afford to wait for our audiences to come to its [*sic*] own conclusions? I think not." The objective is usually sting—which is why ambush interviews are so effective for newsmags. Interviews in which a trapped suspect refuses to answer the reporter-detective's questions serve simultaneously to underline the target's guilt (Why else wouldn't he talk?) and create an illusion of fairness and balance (He was given the chance, after all).

TELEVISION IS DIFFERENT

Is the fire on *Dateline NBC* an indicator of dishonesty in TV news? Clearly, when that program's producers arranged to insure that a GM truck would explode, they violated the network's written policy: "If it isn't happening, you cannot make it happen. Make no effort to change or dramatize what is happening." Still, when the *New York Times*, *New York Daily News*, *Washington Post*, *USA Today*, and *New Yorker* had similar problems with fabrications, the journalism community regarded them as having harbored a sloppy editor or a bent reporter, not of being innately dishonest. The NBC incident, at one level, should be viewed as a similar aberration.

On another level the breach of standards at NBC is more than a blip on journalism's ethical echocardiogram. Increasing institutional pressures in the news business—particularly in television—to cut ethical corners make hoaxes like NBC's much more likely. TV pictures are increasingly coming from freelancers, syndicates, amateurs who happen upon a scene, and groups trying to interest TV programs in their points of view—in short, from people whose credibility and news judgments are questionable. In 1986 ABC's *World News Tonight* purchased and aired a videotape that purported to show the nuclear meltdown at Chernobyl but turned out to be of a cement factory in Trieste, Italy.

Even if NBC's GM truck segment was an aberration, it still illustrates that TV news is intellectually dishonest. The newsmag report was designed to *show* that the trucks were defective, not to *test* whether the trucks were defective. All journalists start with a hunch. The purpose of reporting should be to test these hunches. When

reporters simply marshal facts, quotations, or pictures to support their hypotheses, they sell out their mission.

As the TV news industry has trimmed operations, smaller staffs increasingly need each assigned story to be usable. Moreover, fewer interviews and less time per story both limit the testing of a hypothesis. Redundancy is now viewed as a problem rather than as rigor; reporters seek to gather no more information than a story can use. TV news now has no interest in the complexities of a story if it doesn't mesh with the producers' preconceived notion of what that story will be. Inevitably then, the story's hypotheses are self-fulfilling.

TV news began as an illustration of events, not unlike a courtroom sketch. The fictions of presentation were modest—such as the reverse-question technique, where interview questions and answers are filmed separately. TV journalists generally stuck to the standards of print reporting.

Times have changed. Indeed, as the newsmags increasingly place journalists in prime time, their success will be measured by showbiz standards. An irate professor at the Columbia School of Journalism wrote in the *Wall Street Journal* after the NBC-GM controversy that “TV ‘news’ is today increasingly peopled with ‘journalists’ who are often little more than actors playing the role of journalist.” While the comment slights some very competent people, it is likely that their most valuable on-camera skills have nothing to do with news gathering. As Everette Dennis points out, poll data show that “many respondents could not tell the difference between serious evening news programs, talk shows, and programs that use a news format but which are designed to titillate and entertain.”

TV's image-based journalism is a conveyor of information through moving pictures, and as such, its truth must be filmed. That is why it was so important to the *Dateline NBC* producers to set the truck on fire. This different standard will become more pronounced as the older generation of TV journalists (who learned their craft on newspapers or wire services) leave the scene. TV's “New News,” as it is already called by advocates, suggests a brave new future for the world of television reporting. Stretched by the potential of filmmaking, it seeks to adjust truth to incorporate and accept changing frame space, rearranging sequences, fast-cutting, adding music, even reen-

acting events: the larger truth, it will be claimed, truth in spirit if not in detail. And perhaps then, as Richard Reeves writes, "Situations such as the pickup truck scandal are going to happen again and again, and each time it will seem less important, as fact and filmmaking merge into a new, nonlinear information form." Is it too late to relearn a lesson from novelist and journalist John Hersey? In the autumn of 1980 he bluntly stated the case: "The writer of fiction must invent. The journalist must not invent."

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Banking for the Community

GUY GUGLIOTTA

On an opaque winter's day, the buildings along Seventy-first Street in South Shore are bleak memorials to happier times long past. Peeling paint, boarded windows, and graffiti evidence grimly the demise of one of Chicago's fanciest shopping areas. Idlers lounge in front of the remaining businesses: liquor stores, bars and garish groceries with barred windows, flickering neon, and high prices.

In 1960 South Shore was a predominantly white, middle-class, vibrant residential neighborhood known for good shopping, good rail transportation to and from downtown Chicago, and comfortable, sturdy, low-rise brick- and stone-front apartment buildings.

Within 10 years this white community had disappeared. First, a few upwardly mobile African-American families moved to South Shore to take advantage of its amenities. A few white families moved out, and real estate values dipped. Soon whites were leaving in droves, fleeing to the suburbs as poorer blacks flooded into South Shore to fill the vacuum. By 1970 the old South Shore was a memory, and the new South Shore—predominantly black, working class, and poor—was reality. Services deteriorated, shops closed down and moved to the suburbs, credit slowed to a trickle, then all but disappeared. South Shore, like numerous other urban communities all over America, had become a casualty of segregation and fear.

In 1973 four young bankers—two white, two African-American—bought the South Shore National Bank, at the corner of South Jeffery Boulevard and Seventy-first Street, for \$3.2 million. It was the community's last financial institution. The previous owners had failed in an earlier bid to sell out to a group who wanted to move the

bank downtown. The owners wanted out because South Shore was redlined—no bank wanted to lend there. In its last year, South Shore National Bank had made only two home mortgage loans—and no commercial loans—in the neighborhood it was supposed to serve.

The new owners, all of whom had experience lending to minorities, acquired the bank with the express idea of converting it into a community development organism: using credit and investment to arrest South Shore's decay and to fuel an engine of recovery and rehabilitation, restoring the neighborhood's businesses and commercial and residential properties in order to revitalize the community for the people who lived there.

IMPROVIZATIONAL BANKING

When they first bought South Shore Bank, chairman Ron Grzywinski and his three cofounders expected to call on the experience of others, to "find a development bank and imitate it." But there were none to copy, so "we invented it as we went along."

The founders were all about 30 years old, 1960s idealists seasoned with several years of practical experience in the marketplace. Having bought the bank, they spent their early years writing conventional home mortgages and making commercial and business loans in an effort to retain and eventually stimulate the community's dwindling economy. They spent their evenings and weekends meeting with "any group of people who would have us," Grzywinski said. They visited churches, schools and apartment buildings, listening to complaints and gathering ideas.

From this experience, Shorebank developed its basic philosophy: "Other banks ask 'what's good for my portfolio?'" Grzywinski said. "What we say is 'what does the neighborhood need?'" Even in 1993 Grzywinski spoke very seldom of "loans," and never of "investments"; Shorebank's business, he says, is "development outputs."

Just as Shorebank's lending operation looks only something like a bank, its fund-raising operation looks only somewhat corporate. The owners sought what they came to call "patient investors," shareholders willing to earn less money in order to make a socially responsible investment. Still, the bank turned a profit in 1975 and has

been profitable every year since, though often only marginally. It was not until the mid-1980s that profits for the first time reached levels comparable to peer banks. South Shore has been genuinely competitive for most of the past decade.

Today Shorebank Corporation, the bank's holding company, has four neighborhood subsidiaries, including the original South Shore Bank. At the end of 1992, the bank showed record assets of \$230 million and record net earnings of \$2 million—about average for a bank its size. Shorebank's rate of charge-offs of loans outstanding has averaged 0.5 percent over the last five years, better than its peers. It has about 40 shareholders, a combination of charitable foundations, religious organizations, major corporations, and a handful of private individuals.

And with certain caveats, Shorebank has done its shareholders proud. Using residential housing renovation as the basic tool, it has nurtured a corps of neighborhood entrepreneur landlords that by the end of 1991 had rehabilitated 7,716 apartment units in South Shore—about 30 percent of the total. The community has stabilized and improved, and neighborhood residents live more comfortably and more safely than they did 20 years ago.

But Shorebank's story is not simple, and its founders are candid about its failures. Despite successes in residential rehab, Grzywinski noted, the bank has not yet found the trigger for revitalizing South Shore business and commerce. Seventy-first street is almost as seedy as it was 20 years ago. "Business lending is incredibly more complex," Grzywinski said. "The days when people walk into the stores on Seventy-first Street are gone. Today people go to malls—retail strips generally are not competitive."

Shorebank is also struggling with a new set of imperatives, second stage consequences of their early success: "Abandonment (of buildings), disinvestment and tax delinquency used to be the big issues," said Dorris J. Pickens, president of The Neighborhood Institute, Shorebank's nonprofit community development subsidiary. "Now it's different. People are worried about jobs, training, skill levels and poor education. Now that we have a lot of buildings rehabbed, people want to feel good about themselves."

THE SHOREBANK MODEL

At the beginning, Shorebank had a goal but no plan. The “patient investors” kept the faith as the bank staggered through the 1970s, recording tiny profits and trying to nurture a growth rate that Grzywinski acknowledged “started very slowly” and “took years to develop.” The bank was having trouble connecting with the neighborhood as a community bank. Depositors, the owners found, wanted to keep their money in big, downtown banks and were not interested in local checking accounts. Shorebank reduced the balance requirements down to one dollar in an effort to lure depositors, but the system became prohibitively expensive to run. Local residents used their savings accounts “like a jam jar,” Grzywinski said, depositing and withdrawing tiny amounts of money each week at an enormous per-transaction cost to the bank. The owners reluctantly came to the conclusion that South Shore’s people wouldn’t bank in the neighborhood.

Their solution was “Development Deposits,” another Shorebank innovation. Since the bank couldn’t find deposits in the community, it decided to go elsewhere, soliciting deposits from people across the nation who shared Shorebank’s goals and who knew their money would be used in development financing in a disadvantaged urban area. The bank accepts Development Deposits at competitive interest rates, but some depositors agree to accept below-market rates or even no interest at all. Today the bank receives Development Deposits from all over the country, constituting 52 percent of the bank’s \$187.6 million in total deposits at the end of 1991.

Shorebank’s neighborhood breakthrough came in the mid-1970s, when the bank lured a consortium of savings and loan associations into rehabilitating a 24-block section of South Shore apartment buildings. As the work progressed, the bank began to notice heightened interest among local people who wanted to buy and rehab buildings next to the savings and loan project. Shorebank made loans to the rehabbers, many of them longtime janitors and handymen who had saved money for years in hopes of one day buying a building. When the work was done, all the buildings—including those of the rehabbers—were filled instantly with eager tenants.

What had occurred, Shorebank realized, was the reverse of urban blight. The savings and loan project had established an island of rehabbed apartments amid the general squalor. Locals with limited resources would never risk buying a single building surrounded by slums, but they saw a halo effect from the ongoing project, and sought to buy buildings close by. The island of improved housing grew larger.

In 1978 Shorebank formed its for-profit development subsidiary, City Lands Corporation, in part to take advantage of this phenomenon. City Lands' tactic, still in use today, was to buy and rehab the corner buildings in a target area, then let the local "mom-and-pop" rehabbers buy up and renovate the rest of the units, filling in the blanks.

But there was more to development banking than simply picking neighborhoods and letting market forces work. What made Shorebank successful both as a profit maker and as a community social service institution was its willingness to take pains to get to know the community. It had made exhaustive studies of its clientele and its community, and understood that in a neighborhood of 61,500 mostly working people, 97 per cent of them black, the demand for good, moderately priced rental housing was almost insatiable.

And unlike most commercial banks, Shorebank was willing to work for less. Most bankers can make money from residential loans, but many shy away from smaller notes because they require the same paperwork as a large transaction and provide considerably less return. Shorebank does a volume business, spends the time with individual investors and does not avoid small loans. These are conscious policies that a traditional commercial bank, one interested in portfolio rather than community needs, would not adopt.

The bank has always been willing to take a chance on low-asset local borrowers whom they judged could produce the comfortable, affordable housing the community needed. Len Hoyles, now 45, was working for a medical equipment company in 1986 when he decided he wanted to become a landlord. He used his life savings to buy a South Shore building, but needed \$43,000 to renovate it and couldn't get a loan from any ordinary commercial bank. Hoyles had no assets, no experience as a landlord, and almost no track record as an

entrepreneur of any kind. He got the money from South Shore, largely because the bank's vice president for real estate and installment lending met him, liked him and trusted him.

Hoyles today owns six buildings and is making payments on \$1.4 million in notes held by South Shore Bank. The same vice president has steered other buildings his way, at one point almost goading Hoyles into buying a 31-unit, \$325,000 apartment building. Shorebank starts its rehabbers off slowly, and often suggests a more modest investment for a would-be borrower who is reaching too high. But once the rehabber has established himself, Shorebank's enthusiasm increases exponentially. And they never stop paying attention. Hoyles says bank officials are visiting him all the time, looking at his improvements and talking with him about what he should do next: "I'm close to the limit of how much they can lend to one person, but they want me to buy more buildings," Hoyles said. "They're always after me to refinance some of their notes somewhere else so we can do more business." Grzywinski readily acknowledges that the bank consciously uses the marketplace as a way to keep the development process honest. Both the bank and its borrowers understand profit, greed, and risk.

A MODEL FOR INNER-CITY DEVELOPMENT?

Shorebank's demonstrated ability to make "community development" banking economically profitable has brought the bank fame nationwide, and caught the attention of the Clinton Administration, which has made it the role model for what could turn out to be a network of federally assisted development financial institutions. But while the founders are proud of their performance, they are cautious about the chances of repeating their experience elsewhere. Development banking works best, Grzywinski said, "when everybody has something to lose." For this reason he is wary of any government program to replicate Shorebank elsewhere in the country. Government might help capitalize a development bank, but development works best when private individuals run it and the marketplace acts as umpire.

Accordingly, Grzywinski and other Shorebank leaders have said that the federal government shouldn't run a development bank, let

alone be the bank. Instead, the government must be that “patient investor” and benefactor for existing organizations that have proven themselves as development institutions and are ready to undertake more sophisticated activities and subject themselves to banking regulations. The federal government would provide capital and screen prospective applicants, making sure they are closely connected to and knowledgeable about the communities they are designed to serve, and are ready to run their own independent operations with sophistication and professional expertise. Local knowledge and experience are the key requirements, Grzywinski said. Development banks must be built to survive in the real world. Grzywinski said he doubted there were more than two dozen banks or community development organizations in the country ready to open operations today as full-fledged development banks.

STRENGTHS AND WEAKNESSES

Shorebank’s success dramatizes both the strengths and shortcomings of a community development strategy based primarily on the renovation and rehabilitation of residential housing. Grzywinski takes care to point out the special initial advantage of South Shore—that in 1970 the neighborhood still had housing stock that had not deteriorated beyond redemption. “For this kind of thing to work, you have to have structures that are standing,” Grzywinski said. “You can’t rebuild from scratch unless you have deep subsidies.”

The neighborhood also benefited from having readily available rail service that connected it directly to downtown Chicago. In essence South Shore by 1970 had evolved from a self-contained, white, middle-class neighborhood—almost a city unto itself—into what was essentially an African-American bedroom community supplying blue-collar labor to downtown businesses. Because the neighborhood had easy access to its jobs, it could endure the decline and fall of Seventy-first Street. The bank’s mistake in the early days was in failing to realize that restoration of the neighborhood’s commercial viability was not essential to the neighborhood’s survival.

It took the better part of the 1970s for the bank to figure this out. In meetings with local neighborhood groups and families, the officers had heard repeatedly about the decrepit condition of both the com-

mercial and residential areas, but in focusing in the early years on commercial lending, often with disastrous results, the bank was treating the wrong symptom. A healthy residential neighborhood could hold the shops or bring them back, but investing in stores was a lost cause in a deteriorating residential neighborhood. Who would shop in South Shore if no one lived there? Rehab was the natural strategy.

If the good news is that the neighborhood has stabilized, the bad news is that the attack on the commercial blight has not yet acquired momentum. The dreariness along South Shore's main thoroughfares persists, and Grzywinski is looking for the same halo effect for commercial properties that the savings and loan project gave to the residential rehabbers. "The commercial frontage is always the last to come back," said The Neighborhood Institute's Pickens. "We have lovely apartments a block off Seventy-first Street, but the strip is still a mess."

The greatest shortcoming of the Shorebank development model is that it simply does not address substantial aspects of the urban experience. Housing rehabilitation does not bring better shopping, better medical care, better police protection or better schools, which is probably why after 20 years South Shore still has the same mix of inhabitants it had in 1970: on one side, working-class people with 18 percent living below the poverty line, and on the other, a smattering of glitterati. Jesse Jackson and jazz pianist Ramsey Lewis have homes in South Shore, and Senator Carol Mosely Braun (D-IL) once owned an apartment in the neighborhood.

"Chicago is such a segregated city that there's probably nothing that would cause white people to move back to South Shore," said Richard Taub, a social science professor at the University of Chicago and a keen Shorebank watcher. "And to gentrify the neighborhood you'd need ethnic restaurants, boutiques, nightclubs, that kind of thing. South Shore doesn't have it." Moreover, Taub and others noted, South Shore remains a part of the Chicago public school system, and no middle-class family wants to put its children there if it has an alternative.

Shorebank is trying to address issues broader than housing, using The Neighborhood Institute as its principal conduit. The Institute has

helped organize a citizens' crime watch, summertime activities for children, and workshops and seminars for literacy, job training, and business expertise. It's also setting up a youth activities center on Seventy-first Street, a few blocks from Jeffery Plaza. Across the street is a microenterprise "incubator" for small businesses.

"What we are doing is moving through the community, trying to find out what are the bonds that hold us together," Pickens said. "Now that people have good housing, they have a stake in the community. People are looking for jobs; people need to improve their skills. Our schools are producing illiterate people—these kinds of things affect all of us." The Institute has enrolled and trained 2,700 people in basic education, clerical skills, word processing and carpentry. It has found jobs for over 3,300 people, and helped organize and start up more than 150 small businesses. It has held workshops, seminars and training sessions for 10,000 local apartment residents to promote neighborhood unity and revitalization.

Shorebank has not yet found the answer to South Shore's business problems, but the failure is not for lack of tenacity. The bank's founders thought it would be both interesting and useful to run a development bank in a deteriorating inner-city neighborhood. Two decades later, the same four people remain along with a good many others who have been around for years. Although most are not of the neighborhood, they are all experts in it, so highly valued that Shorebank in its 1991 financial statement attributed its relatively weak performance in part to "moving a senior officer to an expansion site" and not "quickly replacing the talent." In the community development business, the importance of continuity is immense: "We've probably done better because we do banking the old-fashioned way—we know the neighborhood, and it's the same people," Grzywinski said. "We don't have turnover."

Toward an Ethics of Social Systems

Jane Jacobs: *Systems of Survival: A Dialogue on the Moral Foundations of Commerce and Politics*

New York: Random House, 1992, 236 pp.

(also available in paperback)

Reviewed by Eric W. Orts

Judging from the title of her bestselling book, one might suspect Jane Jacobs is one of Isaiah Berlin's hedgehogs, a systems-thinker who knows one big thing and tries to shrink the complexity of the world to fit the unity of a theory. Like Berlin's characterization of Tolstoy in *The Hedgehog and the Fox*, however, Jacobs believes herself a hedgehog but shows herself to be a fox. She is a thinker who knows many things that are irreducible to an all-encompassing theory.

Following a method of Platonic dialogue among characters who meet for intellectual dinner parties, Jacobs constructs a social theory embracing two great "moral syndromes." A "commercial moral syndrome" underpins economic activities of trading, industry, and commerce. It includes settling disputes without resort to force, honoring contracts, following honest business practices, and valuing economic efficiency. A "guardian moral syndrome" consists of quite different principles of political and military organization. Guardian principles include loyalty, exclusivity, respect for power and hierarchy, and adherence to tradition.

The two moral syndromes correspond to two forms of social organization, namely, the system of the economy and the system of politics, of which the respective historical apexes are modern markets and nation-states. Jacobs claims the basic moral principles underlying the economic and political systems do not fit easily together. And not only don't they fit, they often conflict.

Jacobs argues analytically for sharply distinguishing the two moral syndromes, and she argues prescriptively that each syndrome should operate only in the sphere of human activity meant for it. When a syndrome extends outside its scope, “monstrous hybrids” result. For example, organized crime and government-run business impose the guardian logic of power on economic life, which should be left instead to commercial norms. Conversely, when business interests “capture” political decision making, such as through bribery or kickbacks, the commercial syndrome intrudes into the rightful realm of guardianship.

One can poke holes in the arguments of *Systems of Survival*, and others have done so. Pursuing only this sort of criticism, however, slights some important larger points that Jacobs succeeds in making. Human behavior in modern societies cannot realistically be reduced to a single system of morality or ethics. The complexity of contemporary life demands a corresponding complexity in moral theory. A modern theory must allow not only for different morals to apply to different activities, but also for moral principles governing some types of activities to conflict with those governing others. Rules for bureaucrats, for example, differ from rules for business.

Yet having made this important insight, Jacobs falls into a trap that can ensnare overzealous and unwary foxes, as well as hedgehogs. She tries too hard to classify activities as properly governed by *either* commercial *or* guardian morality, rather than allowing for combinations of both. Her treatment, for example, of the modern business corporation suffers from this kind of oversimplification. Jacobs rightly claims that business life depends essentially on underlying commercial norms such as honesty, industriousness, and efficiency. (Anyone doubting this proposition should go to present-day Russia and observe how difficult it is to do business without a strong presence of what may loosely be called “business ethics.”) Specifically with respect to the business corporation, however, Jacobs errs in assuming that *only* norms of commercial morality should apply. This cannot be right.

Take, for example, Jacobs’s cursory treatment of the history of corporate takeovers. She derides takeovers for being motivated by the “territorial” objectives of the guardian syndrome. In other words,

takeovers are for Jacobs a monstrous hybrid, one of many social Frankensteins she imagines to be roaming the modern landscape. Her insistence on a strict separation of commercial and guardian syndromes in this context proves misguided under close analysis. Businesses must plan strategically and even geographically. An example is the emergence of strategic alliances of corporate partners designed to expand market share or develop new technologies. Territorial thinking of this variety is an inevitable part of the competitive economic game that corporations play. Takeovers are just one aspect of this larger game. Jacobs's claim that mergers and acquisitions are motivated invariably by "sheer aggrandizement" overlooks a more salient issue in each particular case: aggrandizement of whom? If a specific takeover works to the advantage of a corporation's constituents (shareholders, creditors, employees, and others), most observers would agree the transaction is "good" according to the very criteria Jacobs recognizes as legitimate under the commercial moral syndrome. Important issues remain concerning exactly who benefits and who loses from any specific merger or acquisition. The larger point, however, is that the history of the modern world economy, which over the past several centuries has supported an unprecedented boom in human productivity and population, cannot be told simply in terms of the gradual growth of small businesses that practice the virtues of Jacobs's commercial syndrome. Large-scale business planning requires precisely the kind of territorial thinking that Jacobs condemns. One would therefore think that business corporations should answer, in Jacobs's terms, to the guardian moral syndrome, as well as the commercial one.

In fact, the conclusion that a synthesis of guardian and commercial syndromes should govern corporations is reflected in corporate law. The law directs that ultimate authority for management of corporations lies in boards of directors, and board members must comply with important legal fiduciary duties. In the United States, directors owe duties of "care" and "loyalty" to their corporation and its shareholders. To say directors must perform with care and loyalty employs the language of guardianship. It is no accident, moreover, that directors' duties become most pronounced when issues of corporate control are at stake. There is a big difference between takeovers designed primarily to promote the wealth and power of

corporate managers (and perhaps their investment bankers or lawyers) and takeovers designed for sound business reasons of strategic vision and competitiveness. Corporate law has traditionally distinguished the two general types by exhorting (if not always successfully compelling) directors to “take care” to assure that major structural changes in corporate organization are undertaken only for good reasons.

Clarification of how Jacobs’s guardian and commercial moral syndromes apply in corporate law leads to a broader criticism of her theory. Even if one accepts the systems-theory premise of a world divided by the fundamental processes of economy and politics, how are the commercial and guardian syndromes themselves to be separated and promoted? Are people simply expected to adopt and follow the correct moral syndrome in the appropriate context once they have read and been persuaded by Jacobs’s book? Or must society somehow construct and support the two syndromes and, when necessary, restrict them to their proper scope? And how can society achieve the separation of syndromes Jacobs prescribes without relying, in a circular fashion, on guardians? A partial answer to these questions lies in examining the role of law in the structure of society. In other words, law provides one way to regulate the relationship between commercial and guardian syndromes.

Law establishes and structures social boundaries in a way that Jacobs does not fully appreciate. Although Jacobs is impressed by certain aspects of law, such as the importance of the institution of the law merchant in the historical development of the commercial syndrome, she describes law in general as a troublesome “anomaly” fitting neither the commercial nor the guardian model. The very ambiguity of law, however, points toward its significant role in maintaining boundaries between commerce and politics. Law accomplishes a kind of modern “separation of powers.” It functions, in this respect, as a tool for detailing accepted precepts for various social activities. At the same time, it flexibly combines elements of the ideal types of Jacobs’s two moral syndromes—as is needed, for example, in corporate law. As that systems-thinking hedgehog, Jürgen Habermas, observes, law operates both as an “institution” capable of structuring economic and political relations and as a “steering me-

dium” that can determine what kinds of systems, and associated rules and principles, should apply in various areas of social life.

More systematic thinking than Jacobs provides is needed to supply mortar for her impressionistic bricks. Nevertheless, *Systems of Survival* is a provocative book about a central problem of our time. As the communitarian impulse demonstrates and helps to address, people find it increasingly difficult to maintain moral orientations to a social world that is becoming continually more fragmented and complex. Jacobs raises more questions than she answers, but they are the right questions. With the sharp eyes of the fox, she perceives some broad and important problems in contemporary moral theory. It is left to others, hedgehogs as well as foxes, to build a more detailed ethics of social systems and to determine how best to integrate the moralities of commerce and politics in the future.

Drawing by Luckovich; © 1993 Creators Syndicate

Pluralism ad Absurdum

Os Guinness: *The American Hour: A Time of Reckoning and the Once and Future Role of Faith.*

New York: Free Press, 1993, 458 pp.

Reviewed by: Kenneth L. Grasso

The central thesis of *The American Hour* is simple and straightforward. Beneath the surface of the various malaises afflicting the American body politic today, Os Guinness contends, lies “a crisis of cultural authority,” in which “the beliefs, ideals, and traditions that have been central to Americans and to American democracy—whether religious, such as Jewish and Christian beliefs, or civic, such as Americanism—are losing their compelling power.”

The origin of this crisis is found in the impact of modernity, which has so broadened American pluralism as to fundamentally alter its character. Roughly speaking, our pluralism began as “largely a Protestant family affair,” and later expanded to a broader but still limited pluralism existing within the context of an overarching adherence to the Judeo-Christian tradition. Recently, however, the scope of our pluralism has expanded drastically, thus producing a “radical diversity that makes nonsense of any hope of a religious common denominator.” Today, “entire meaning systems...confront other entire meaning systems—Jewish-Christian versus secular humanist, Western versus Eastern, and so on.”

This new pluralism has drained our traditional faiths of “their inner compelling character,” and has fostered “a new American nihilism, for which relativism is often a current synonym, [and] lifestyle, a current euphemism.” The consequences of this “cheerful nihilism,” however, have been anything but cheerful. On the one hand, it has produced a wholesale crisis of national character which manifests in a pervasive sense of hollowness, rootlessness, herolessness, and an unraveling of our social fabric. Simultaneously, our new pluralism has given rise to a crisis of public philosophy. Our inability to formulate a substantive public philosophy in the face of our “exploding diversity” is evidenced by today’s bitter and seemingly interminable cultural wars, in which nothing less is at issue than

the ethos that will inform our public life. Nor, Guinness believes, should we minimize the depth of the crisis we confront. By making “why not” a “publicly unanswerable question,” our cheerful nihilism threatens to make our democratic institutions “incomprehensible and unworkable.”

Americans, Guinness contends (drawing here on the work of Catholic theologian John Courtney Murray), can respond to this situation in one of three ways. Confronted with our exploding religious, ethnic, and racial diversity, we could respond as “tribespeople,” retreating into “a form of tribal solidarity,” and becoming “intolerant of everything alien to [our]selves.” Such a return to tribalism could take the form either of the fragmentation of the body politic into a plethora of hostile and mutually inscrutable groups; or of an attempt to deny our pluralism and impose a fictitious unity, perhaps through the imposition of a civil religion—a religion of Americanism or democracy—of the type that played a prominent role in earlier periods of our history.

Alternatively, we could respond as “idiots,” in the classical Greek sense of the private person who does not participate in the public life or thought of the city. Americans, in other words, could seek to implement the approach to politics championed by influential liberal theorists today (Rawls, Dworkin, Tribe, etc.) by relegating to the private sphere all questions about the human good, and by establishing a public order designed to function simply as a “neutral” framework within which individuals can pursue their private goals.

To succumb to either of these temptations, Guinness insists, will merely exacerbate our problems. To revitalize our democratic experiment, Americans must instead respond as “citizens”; that is, while recognizing “their own interests,” Americans must “also recognize their membership in a commonwealth” and display “the knowledge and skills that underlie the public life of a civilized community.” Guinness means that although we recognize that “a religious consensus is now impossible,” we must understand that this “does not mean that [a] moral consensus...is either unimportant or unattainable.” Given today’s pluralism, however, such a consensus “must be viewed as a goal, not a given.” Despite our differences, we must strive through “persuasion and ongoing conversation” conducted in a

“publicly comprehensible language” to forge a new public philosophy, grounded not in an agreement on ultimates but in “an overlapping consensus,” an overlapping body of what the late philosopher Jacques Maritain termed “practical beliefs.”

Though not written for the professional scholar, this volume is, beyond question, a significant and thought-provoking exercise in what is sometimes called public philosophy. Its importance stems less from the originality of the individual theses it defends—the idea that America is experiencing a crisis of national character, for example, is hardly a novel one—than from Guinness’s ability to bring together aspects of our national malaise usually treated separately, and to explore them from several disciplinary perspectives. By casting important light on the relationship between the various aspects of the cultural crisis engulfing our body politic, Guinness brings each of them into sharper focus.

Like any far-ranging work, this volume is open to the criticism that it gives short shrift to some aspects of the subjects he addresses. Despite his emphasis on the pluralism of the contemporary American religious scene, for example, America’s Catholic and Jewish communities figure only peripherally in Guinness’s analysis.

Probably the aspect of Guinness’s argument most open to criticism is his effort to formulate a solution to the crisis he so ably diagnoses. To his credit, Guinness recognizes that the public philosophy championed by contemporary liberal theory—a flimsy proceduralism precariously suspended over a moral abyss—could not provide us with the solution we seek. The alternative Guinness proposes to the procedural republic of contemporary liberal theory, however, is neither entirely clear nor entirely persuasive. Despite his strictures against liberalism, he exhibits a profound suspicion of the entire communitarian project. The new public philosophy he briefly sketches, moreover, appears itself to be largely procedural in character. Indeed, it seems to consist of little more than an agreement to disagree in a civil manner, while searching for a new moral consensus to replace the one we have lost.

Nor does it appear realistic for Guinness, given his persuasive account of the fundamental character of contemporary pluralism, to

expect this search to result in the type of substantive, practical consensus he believes we need. Has not our historical ability to secure, despite our religious differences, what Guinness calls “a common vision for the common good” been a function of the limited religious pluralism that traditionally prevailed in America? Can a people which disagrees as fundamentally as ours now does about the nature and destiny of man, what is categorically good and bad for human beings, and what structure of social relations should inform human life, reach agreement about the good of man at the level of practice? Indeed, given our many idioms, how are we even to arrive at the type of publicly comprehensible and mutually acceptable language Guinness seeks—language that will enable us to intelligibly state and intelligently argue our differences? It is hard to avoid the conclusion that Guinness’s solution falls into the very trap he accuses the proponents of both tribalism and idiocy of falling into: failing to take the fact of our pluralism seriously enough.

Yet whatever its limitations, communitarians would be well advised to read and reflect upon this thoughtful and far-ranging work. The task communitarianism has set for itself is nothing less than the forging of a new substantive public philosophy capable of reinvigorating our democratic experiment. By clarifying the difficulties inherent in this task—difficulties arising from our ever-expanding pluralism and the need to steer a middle course between the Scylla of idiocy and the Charybdis of tribalism—this book helps lay the foundation for the work that lies ahead.

The Right to Strip

A Dallas appellate court has decided to allow Ann Marie Lindsay's age-discrimination suit against the Cabaret Royale to move forward. The 40-year-old Lindsay filed the suit, because the club's management refused to promote her from waitress to topless dancer.

Source: *Reason*

ESPECIALLY NOTED

Betty Friedan, *The Fountain of Age* (New York: Simon and Schuster, 1993). 671 pp.

Betty Friedan punctures the contemporary myths associated with old age by offering a bracing account of the vitality and wisdom many older men and women possess. In her view, the elderly have been mistakenly viewed as a needy class that needs to be pampered and tolerated. She calls for a new gerontological ethic whereby older Americans are offered opportunities to maintain their independence in age-integrated communities that appreciate the wisdom they bring to bear on life.

Elizabeth Mensch and Alan Freeman, *The Politics of Virtue: Is Abortion Debatable?* (Durham: Duke University Press, 1993). 268 pp.

Mensch and Freeman, who are married, approach the abortion controversy from the left and end up with a refreshingly unorthodox challenge to those who consider themselves pro- and anti-abortion rights. They do this by exploring the moral universes of the opposing camps with an eye for the subtleties and incongruities influencing both sides—from the secularization of contemporary Protestant ethics to the ways in which the pro-life stance effects the moral status of animals. Mensch and Freeman manage to show that abortion is indeed debatable and how.

John Tomasi, “Individual Rights and Community Virtues,” *Ethics*, April 1991.

In this provocative defense of individual rights from a communal perspective, Tomasi cogently argues that rights have a place even in the intimate associations of our social life, where, he claims, they can mark our debts to one another. He contends that when individuals voluntarily give up their rights claims in forgiveness, fraternity, or generosity, they affirm their commitment to the community in ways that involuntary acts do not.

Susan Swartzlander, Diana Pace, and Virginia Lee Stamler, "The Ethics of Requiring Students to Write About Their Personal Lives," *The Chronicle of Higher Education*, 17 February 1993.

College composition courses err when they require students to reveal aspects of their personal lives in writing assignments, the authors argue in this article. They note that the emotional character of such assignments is painful for some students and unfair to those who do not feel comfortable revealing difficult experiences to teachers or peers. They conclude by offering some ethical and practical suggestions regarding composition so that teachers can practice their craft while respecting the privacy and emotional well-being of their students.

George W. Liebmann, "Devolution of Power to Community and Block Associations," *The Urban Lawyer: The National Quarterly on Local Government Law*, Spring 1993.

By taking on local problems and engaging in common projects, Liebman believes that community and block associations can generate the kind of community that suburbia is accused of lacking. He offers specific suggestions for these associations so that they can be for their participants the engaged communities the Founders envisioned.

Jon Elster, *Local Justice: How Institutions Allocate Scarce Goods and Necessary Burdens* (Cambridge: Cambridge University Press, 1992).

This is a preliminary stab at a tough question: How should institutions allocate scarce goods and burdens in ways that are sensitive to local concerns? Elster does not offer any clear answers but he does provide an incisive account of the principles and practices of local justice in communities throughout the United States.

The Trivialization of the *New Republic*

JANET WEST

“Faced with this strong, charismatic figure as his wife,” wrote Julie Burchill, “the Prince of Wales...acted like a true wimp....There was...something Not Quite Our Type about him and his behavior, a horrible hybrid of American psychobabbling self-pity, German pomposity and Scandinavian introspection. Knowing full well that he is not possessed of anything like a first-class mind, he settled into a sort of permanent whining restlessness that dumb people consider makes them seem ‘deep.’” Burchill wrote these choice lines, not in *People Magazine*, *Reader’s Digest*, or even in *Vanity Fair*. She wrote them in a magazine that’s widely regarded as Washington’s premier intellectual weekly: the *New Republic*.

It was not an aberration. With a book review section in the back that remains sophisticated and intelligent, and a front and middle section that each week resemble a gossip sheet more and more, the *New Republic* has become a highly schizophrenic magazine. And the gossip isn’t just the latest dirt from within the White House as reported regularly by on-staff gossip columnist Fred Barnes. It’s pervasive throughout. “In person,” writes Jacob Weisberg in a typical article, “[Texas Senator Kay Bailey] Hutchison seems almost an automaton, releasing a trained, expressionless smile, but concealing any spark of human warmth. Columnist Molly Ivins calls her ‘The Breck Girl.’ Her perfect dyed-blond hair, perfect makeup, perfect suits and perfect stockings give her an anchorwoman’s sheen; think of Connie Chung crossed with Georgette Mosbacher, but icier.”

Muckraking has a long and proud history in Washington, but the attacks the *New Republic* has run over the past year have been highly

personal. In January, the editors teased a story on language experts with the following mock definition of columnist William Safire: “Safire *n...*alleged interpreter of language; someone who aspires to be a greater expert on what people mean than the people themselves...[see pompous know-all; bore; pedant].” The table of contents admits that the story “single[s] someone out almost unfairly.” I tend to agree.

One particularly troubling aspect of the new *New Republic* is its contempt for strongly-held convictions of any kind. Whenever a public figure states an opinion with any vigor, the *New Republic* is right there to belittle not merely the opinion but also the person. Case in point: When Hillary Rodham Clinton met with *Tikkun* editor Michael Lerner in May, a “Washington Diarist” column noted that “Back in 1988 Clinton wrote to Lerner praising an article of Lerner’s in the Los Angeles Times called ‘The Crisis in the Meaning of Life.’ I know this because Clinton’s letter forms the core of *Tikkun*’s current direct mail solicitation.” Lerner’s use of Clinton’s letter may not have been in the best of taste. Still, given world hunger, earthquakes, and AIDS, it takes a certain amount of gall to waste reader space in “a journal of politics and culture,” as the *New Republic* describes itself, criticizing another journal’s direct mail.

The tabloidization of the Washington press is part of a larger vulgarization of American political discourse. The society whose politicians once wrote the Gettysburg Address and the Declaration of Independence now must suffer watching its vice president debate a Texas rabble-rouser over NAFTA—arguing over who interrupts whom more often. Given this fact, it’s perhaps unsurprising that our print media should suffer similar degradation, but intellectual publications should aspire to more.

“This week is a double issue and the *New Republic* will not be appearing next week,” wrote the editors in their final issue of 1993 (dated January 10 & 17 in accordance with the *New Republic*’s peculiar press schedule). “The editors will spend their week off avoiding vulgar tabloid fare.” Would that it were so.

Voluntary Health Risks: Who Should Pay?

CLARE ANDRÉ, MANUEL VELASQUEZ,
AND TIM MAZUR

Alcohol abuse milked the U.S. health care system for \$85.8 billion in 1988. Cigarette smoking drains over \$65 billion annually. Obesity now swallows more than \$27 billion per year. According to the American Medical Association, at least 25 cents out of every health care dollar is spent treating diseases caused by potentially changeable behaviors: smoking, alcohol abuse, poor diet, lack of exercise, non-use of seatbelts, overexposure to the sun, and so forth. Preventable health care costs have become a focal point for many U.S. health care critics.

Overwhelming evidence suggests that individuals with unhealthy habits pay only a fraction of the costs associated with their behaviors, the rest being borne by the public through higher insurance premiums, government health spending, and disability benefits. To address this imbalance, lawmakers, insurers, and employers are pressing for policies that would shift the financial burden of voluntary health risks to those who choose to take such risks. Proposals under discussion range from charging “health offenders” higher insurance premiums to the quadrupling of the 24-cent-per-pack “sin tax” on cigarettes in President Clinton’s Health Security Act of 1993.

But penalizing individuals for unhealthy behaviors isn’t everyone’s idea of justice. Some argue it would result in great social harm. While 18 percent of U.S. citizens with incomes above the

The Responsive Community publishes case studies as material for dialogue. Cases illuminate both sides of an issue without taking a position.

poverty line smoke, for example, 33 percent of those with incomes below the poverty line smoke. A one-dollar cigarette tax would hit low-income people with undue harshness. Considering the power of tobacco addiction, a cigarette tax might not reduce smoking or lower health care costs, but might divert dollars from nutritional food and other essentials—conceivably leading to more illness and higher health care costs.

During this period of health care reform, citizens, politicians, and ethicists seek to answer the question: Should persons who engage in unhealthful behaviors bear the burden of the resulting costs? The following is an examination of both sides of the argument.

MAKE 'EM PAY!

Those supporting policies to redistribute the costs of voluntary health risks base their arguments on the notion that all people should be held responsible for the foreseeable consequences of their voluntary actions. People who voluntarily engage in risky behaviors should thus be held responsible for the resulting health care costs.

It is well-documented that certain behaviors and lifestyles are hazardous to personal health. Smoking, consuming foods high in LDL cholesterol, being overweight, and not exercising are the key modifiable behaviors contributing to coronary heart disease, the leading cause of death in the United States. Cigarette smoking is responsible for 87 percent of all lung cancer cases and 82 percent of all deaths from chronic obstructive pulmonary disease. Cirrhosis of the liver, principally caused by alcohol abuse, was the ninth leading cause of death in the United States in 1990.

Disease and disability resulting from unhealthful habits like these impose enormous costs on society. Coronary heart disease, for example, costs the nation approximately \$43 billion per year. According to Louis Sullivan, former secretary of health and human services, every person in the United States pays \$221 annually for the health expenses of smokers alone. "Cigarette smoking has an adverse impact on every American, whether or not he or she smokes. That \$221 cost comes out of the pockets of smokers and nonsmokers alike, largely in the form of increased health care and insurance costs."

Some redistribution proponents stress that individuals who choose to pose risks to themselves ought to be held responsible for the consequences of those choices, including the costs of the resulting health care required. It is unjust to burden individuals who have kept themselves healthy with the extra health care costs of those who have not.

Others stress that society ought to adopt those policies that bring about the greatest overall social benefits and the least social harm. Four hundred nineteen thousand persons die each year of smoking-related illnesses. Penalizing people for risky behaviors would benefit society by discouraging such behaviors, significantly decreasing health care costs, and also saving lives. According to a 1990 Congressional Budget Office report, increasing the price of alcoholic beverages by 18 percent would lead to a 10 percent drop in demand and a corresponding decrease in alcohol-related health care costs. In Canada, cigarette use decreased 61 percent among teens and 38 percent overall when the price of a pack reached U.S. \$4.45. When benefits such as reduced costs and saved lives are measured against the relatively minor harms of excise taxes and higher insurance premiums, society has a moral obligation to charge persons for their unhealthful behaviors.

RISK TAKERS SHOULDN'T PAY

Many of those who oppose policies that would penalize people for unhealthful behaviors invoke principles of retributive justice to support their position. Retributive justice asserts that an individual should be held responsible for the foreseeable consequences of his or her actions except when the person is uninformed or the action is involuntary. These two exceptions exclude the case of so-called voluntary health risks.

Numerous studies have shown, for example, that genetics plays an important role in determining whether a person will abuse alcohol. Compulsive overeating is sometimes the direct result of psychological factors. Manipulative advertising and peer pressure often lead adolescents to begin smoking; once addicted, their capacity to choose to stop is further diminished by addiction. Recent research showing a higher incidence of risky behaviors among low-income groups

suggests that socioeconomic factors, such as inadequate income or lack of education, influence lifestyle behavior. Given the powerful influence of such factors, penalizing individuals who engage in high-risk actions “blames the victims” for the true cause of their behavior.

It is similarly unjust to call on people to pay the costs of diseases or disabilities they could not have prevented. It is impossible to predict accurately the role a person’s behavior will play in his or her health problems. Most evidence linking lifestyle and disease is based on aggregate statistical methods, and establishes only correlation, not cause. Most smokers do not develop lung cancer, nor do all persons who develop lung cancer smoke. Lung cancer can result from a variety of factors, including heredity and exposure to hazardous substances. Imposing penalties on persons who engage in unhealthy behaviors is unjust when the links between behavior and disease are unclear.

Others who oppose penalizing risk takers cite the principle of distributive justice, according to which the benefits and burdens in a society should be allocated fairly among its members. Policies penalizing risky behaviors impose greater economic burdens on the poor than on the rest of society. A 1990 Congressional Budget Office report shows that increasing cigarette taxes would hit low-income families more than twelve times harder than it would high-income families. The poor, after all, pay a disproportionate percentage of their income in excise taxes.

Finally, utilitarians argue that the overall harm of policies penalizing people who engage in hazardous behaviors would exceed the overall benefit. For example, reformers want to raise excise taxes because they believe higher cigarette and alcohol prices will reduce consumption and thereby decrease risky behavior. Utilitarians, however, note that while U.S. cigarette prices rose 40 percent between 1981 and 1988, demand stayed level—proving that higher prices don’t necessarily change behavior. Higher taxes on alcohol might induce the weekend drinker to reduce his or her intake but are unlikely to affect the behavior of the alcoholic or the adolescent drinker.

Even if penalties successfully discouraged unhealthy behaviors, they wouldn’t save much money. A person who dies from a heart

attack at age 60 because of obesity is less costly than one who lives into old age and receives more expensive treatment. Smokers who stop smoking and heavy drinkers who stop drinking may live longer as a result and incur additional medical expenses. Moreover, since low-income smokers would likely forgo food and basic health care to meet the costs of higher cigarette taxes and so compromise their health, reallocating health care expenses would probably increase, not decrease, overall costs.

CONCLUSION

As medical costs soar and alternative means of funding health care in the United States are considered, the question of whether society should subsidize health care associated with unhealthful behaviors is critical. In answering the question, we need to assess carefully the different appeals to justice, the benefits and harms of penalties, and the extent to which we are justified in holding people responsible for the consequences of their behaviors.

ABOUT COMMUNITARIANS

From the Podium

THE PRESIDENT

President Bill Clinton, who according to *Time* and *U.S. News and World Report* has been reading Amitai Etzioni's latest book, *The Spirit of Community*, extolled communitarian values during his State of the Union address on 25 January 1994:



In our toughest neighborhoods, on our meanest streets, in our poorest rural areas, we have seen a stunning and simultaneous breakdown of community, family and work—the heart and soul of civilized society...

Our problems go way beyond the reach of government. They're rooted in the loss of values and the disappearance of work and the breakdown of our families and our communities....The American people have got to want to change from within if we're going to bring back work and family and community....

Let us, by our example, teach [our children] to obey the law, respect our neighbors, and cherish our values. Let us weave these sturdy threads into a new American community that once more stands strong against the forces of despair and evil because everybody has a chance to walk into a better tomorrow....

THE GOVERNOR

On 10 January 1994, Governor Mario Cuomo shared these thoughts at the Communitarian Network's panel discussion on the Moral State of the Union:

If we want to be fair and [move] forward toward the light as a society, I think we need one thing more than any other. We need a new, renewed sense of national community....

We need to persuade the people that community is much more than a pretty idea, to be tricked up and prodded around the ring once or twice every election year....

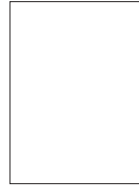
Without a restoration of the idea of community, without a willingness to share, without this eagerness even to participate, you cannot hope to conquer the huge and sobering problems that confront us as a nation....

In this complicated, uneven, and totally interconnected democracy, we will each find our individual good in the good of the whole community.... If we fail to reach this understanding again, this understanding of the essential idea of community, and reach it soon, I am afraid that America may start, in fear and exasperation, to make some regrettable choices....

In the Press

CHICAGO TRIBUNE

Three major reasons for the decline in social well-being—that child abuse reached its worst recorded level, the rate of children in poverty reached the worst level since 1983 and average weekly earnings have declined every year since 1984—show that if we are to reweave our tattered social fabric we must concentrate on children and families. Nothing is more important. That's where we come in....



The United States urgently needs a communitarian approach to families—one that is not afraid to speak with a moral voice and to strive for a healthy balance of government, business, volunteer and parental responsibilities....

Communitarians do not have all the answers, nor do we all agree with each other on all the issues. But we do create opportunities for joining the national conversation: for talking about how to balance rights and responsibilities; and for building a new consensus for the benefit of our children and families. Pessimism need not overwhelm us. Working together, we can make a better future for our children.

Enola G. Aird

Member of the Communitarian Network and former Chairwoman
of the Connecticut Commission on Children
5 December 1993

DETROIT NEWS

There are important parallels between the kinds of principles the president advocates and the sorts of principles Communitarianism has developed," said William Galston, a former co-editor...of *The Responsive Community*, a Communitarian journal, who is deputy assistant to the president for domestic policy. "The president has talked for a long time about the need to accept our responsibilities at the same time we are claiming our rights...."

Tarek Hamada
28 January 1994

NEW YORK TIMES

Last spring in Texas Hillary Rodham Clinton gave a courageous speech about America's greatest crisis.

We suffer "from a sleeping sickness of the soul," she told her audience, the feeling "that we lack at some core level meaning in our individual lives, and meaning collectively, that sense that our lives are part of some greater effort, that we are connected to one another...."

There is a yawning hole in the psyche of America and Americans where our sense of common purpose, of community and connection, of hope and a spiritual satisfaction should be....

[As Amitai Etzioni says], that we have done away with old forms, connections, rules, traditions, but have put nothing much in their place—cannot be denied. He writes: "Moral transitions often work this way: destruction comes quickly. A vacuum prevails. Reconstruction is slow. This is where we are now: it is time to reconstruct...."

Mrs. Clinton made a good beginning in April. And the discussion must continue, of what morality and community mean, of what we will build to replace the old outmoded forms, of how we will fill the vacuum. How uncomfortable it will make some of us to talk about such things. And how impossible it has become to avoid doing so.

Anna Quindlen
17 October 1993

Recently, a group of social scientists, including the poll-takers Daniel Yankelovich and Everett C. Ladd, the political scientist Norman Ornstein and the sociologist Seymour Martin Lipset, answered a call to assess “The Moral State of the Union.”

The invitation came from *The Responsive Community*, the quarterly journal of communitarianism. That is the movement, mainly of maverick liberals, that tries to marry typically liberal concerns for civil rights and economic welfare with traditionally conservative concerns about the ability of families, neighborhoods and schools to build character and foster personal responsibility....

Peter Steinfels
22 January 1994

NEW YORK NEWSDAY

Teen pregnancy is the gateway to long-term welfare dependency,” [William Galston] said. “That means you have to talk much more aggressively about preventing teen pregnancy... if we can’t solve that problem, we can’t reform welfare or solve the other problems.”

Government alone will not achieve much, Galston admitted. “We don’t have enough carrots and sticks as incentives. If people don’t do right because they believe that it’s right, we cannot solve any of our problems....”

Lars-Erik Nelson
Reporting on the Communitarian Network’s
Capitol Hill Teach-In on the Family
4 November 1993

Benjamin Wittes

From the Libertarian Side:

OBESITY RIGHTS?

The Equal Employment Opportunity Commission (EEOC) has done an about-face since Clarence Thomas left. Breaking with its previously minimalist self-image, the organization is now seeking to expand protections under the 1973 Rehabilitation Act and the Americans with Disabilities Act (ADA) to obese people. In an essay ridiculing the decision, Margaret Carlson writes, “Doesn’t anyone stop to think what the creation of another aggrieved group will mean to the already bursting-at-the-seams body politic? Or did anyone fast-forward to the prospect of adjudicating whether a person is fat enough to park in a handicapped space at the shopping mall or should continue to get preferential seating on airplanes?”

Those pushing for fairness for the obese argue that the human dignity of obese people is frequently violated and that they are thus entitled to air their grievances and to ask for statutory protection under relevant laws. Firing an overweight employee is simple discrimination—assuming his or her weight does not interfere with job performance—and it should be treated as such.

But, the counterargument goes, statutory protections aren’t rights. Framing this debate in the language of rights equates the protection from weight discrimination with the protection from censorship, unreasonable search and seizure, and cruel and unusual punishment. Carlson rejects the extension of statutory protections to the obese, but even if the government should protect Americans from the indignities they suffer because of their bodies, the equation of this protection with basic rights cheapens those rights the Constitution actually affords.

Confusing rights with policy decisions is hardly an error unique to the champions of the obese. *Reason* editor Virginia Postrel, in an essay railing against border controls, argues that “the first, most natural right is freedom of movement” and, quoting Frederick Douglass, that the passport system is “‘a bold and infamous violation of the *natural* and *sacred* right of locomotion.’” Two questions: First, where is this sacred right of locomotion in the Constitution that guarantees foreigners unregulated immigration? Second, will the EEOC’s new interpretation of the ADA properly ensure that the right of locomotion be extended to the obese?

Time, 6 December 1993
Reason, October 1993

WHEN I DID IT, IT WAS DIFFERENT—REALLY

As film and television studios have come under increasing criticism for excessive violence, directors have begun trying to justify the violence in their films:

- Richard Donner, director of such masterpieces as *Lethal Weapon*, *The Omen*, and *The Goonies*:

If people see gratuitous violence in any of the *Lethal Weapon* movies, I wonder if they’ve seen the same movie. It’s entertainment. That’s my obligation. I brought social issues into the *Lethal Weapon* movies, like when Danny Glover’s family comes down on him for eating tuna, or the “Stamp out the NRA” sign up in the LA police station. In the last one the daughter wears a pro-choice T-shirt.

- Callie Khouri, author of *Thelma and Louise*:

I was extremely frustrated with the literal interpretation of *Thelma and Louise*. Doesn’t anyone read anymore or understand metaphor? The film was supposed to be complex, without easy answers, and with flawed characters. I thought when Louise shot that guy that there’d be dead silence in the theater. That scene was written carefully: it was an attempted rape, and I wanted to make what she did wrong. And yet people cheered. I was stunned.

Mother Jones, July/August 1993

CATO CREDO

The following are excerpts from a speech given by humorist and Cato Institute fellow P.J. O'Rourke at the avowedly libertarian institute's dinner in honor of the opening of its new Washington headquarters:

The Cato Institute has an unusual political cause—which is no political cause whatsoever. We are here tonight to dedicate ourselves to that cause, to dedicate ourselves, in other words, to...nothing.

We have no ideology, no agenda, no catechism, no dialectic, no plan for humanity....All we have is the belief that people should do what people want to do, unless it causes harm to other people. And that had better be clear and provable harm. No nonsense about secondhand smoke or hurtful, insensitive language please.

I don't know what's good for you. You don't know what's good for me. We don't know what's good for mankind. And it sometimes seems as though we're the only people who don't. It may well be that, gathered right here in this room tonight, are all the people in the world who don't want to tell all the people in the world what to do....

So we are here tonight in a kind of antimatter protest—an unpolitical undemonstration by deeply uncommitted inactivists. We are part of a huge invisible picket line that circles the White House 24 hours a day. We are participants in an enormous non-march on Washington—millions and millions of Americans *not* descending upon the nation's capital in order to demand *nothing* from the United States government. To demand nothing, that is, except the one thing which no government in history has been able to do—leave us alone.

There are just two rules of governance in a free society:

- Mind your own business.
- Keep your hands to yourself....

You know, if government were a product, selling it would be illegal.

Government is a health hazard. Governments have killed many more people than cigarettes or unbuckled seat belts ever have.

Government contains impure ingredients—as anybody who’s looked at Congress can tell you....

And the merest glance at the federal budget is enough to convict the government of perjury, extortion, and fraud.

There, ladies and gentlemen, you have the Cato Institute’s program in a nutshell: government should be against the law.

Term limits aren’t enough. We need jail.

American Spectator, *July 1993*

From the Authoritarian Side

BANNED AND GAGGED IN CANADA

The Canadian Supreme Court’s 1993 decision to broaden the existing definition of obscenity has emboldened customs officials to seize great works of contemporary literature. Last fall, Canadian officials at the U.S. border nabbed 30 copies of Marguerite Duras’ novella *The Man Sitting in the Corridor* while the books were in transit to the University of Trent. The customs officials shipped them back to Manhattan because of the sexually violent nature of the story.

Canadian customs officials have long had the right to seize obscene books, but the Supreme Court’s decision last year widened the scope of obscenity to include depictions of sex that degrade women. They are now permitted to seize books with rape scenes, bestiality, necrophilia, pedophilia, sodomy, or incest. In addition, they can seize material deemed to be seditious or “hate propaganda.”

The New York Times, *13 December 1993*

LOVE’S LABORS LOST

British headmistress Jane Brown apparently regards *any* story of heterosexual love as taboo these days. Refusing to accept cut-rate tickets to a ballet of *Romeo and Juliet* for her school’s elementary classes, she argued that Shakespeare’s play is an overdose of heterosexual romance in a society that doesn’t recognize all forms of love in the arts. Ms. Brown apologized after outraged parents complained.

Brown's colleagues were more sympathetic to her stand. One teacher commented bizarrely: "All she was trying to do was to prevent the children being fed a constant diet of gang fights and killing." Wait till she gets her hands on Macbeth!

Reuters, 21 January 1994

CHARACTER REFERENCE

The following is an excerpt from Thomas Flemming's essay "Jesting With Pilate":

The most basic lie of all is that ours is a free country, a representative democracy established by the Constitution of 1787. Even the ghost of that system was dissipated by our President-for-Life, Franklin Roosevelt, in whose four terms many of the worst official lies sent their spores into every nook and cranny of our national institutions.

FDR was the master of lies, from the doctored photo-record that made him appear a robust physical specimen, when in fact he was physically, not just morally, a cripple, to his manufactured reputation for brilliance and erudition. "He never told the truth when a lie would serve," was Douglas MacArthur's judgment, and that verdict could fit virtually every occupant of the White House since FDR's timely demise.

Chronicles, September 1993

THE LONG REACH OF THE STATE

The German government regulates not only how shoppers can handle tomatoes at the local grocery store, when all shops must close, and what citizens may watch on television. Believe it or not, it has a say in what parents name their children.

Olaf and Silke Witte of Bremerhaven actually had to go to court to force the government to allow them to name their son Sascha. German officials had demanded that Sascha be given a middle name so that his name would be obviously masculine. For the thirteen months it took Olaf Witte to fight for Sascha's identity, the blank in the baby's passport designated for his first name had been just that—a blank.

Officials can also veto names; in recent years, such names as Hollas and Whoopy (after Whoopie Goldberg) have been rejected flat out, as have names like *Gott* (God), *Zufall* (coincidence), and *Bierstuebel* (little beer ball). Adolf, however, is apparently permitted, because as name-nixer Guenther Bahrtd puts it, "Otherwise, we'd have to forbid names like Khomeini and those of other bad statesmen. That couldn't be." At least you can still name your child Ayatollah in Germany.

Wall Street Journal, 15 July 1993

HOME ON DERANGED

The following is an excerpt from the infamous speech by Khalid Abdul Mohammad, National Spokesman of the Nation of Islam, at Kean College on 29 November 1993:

We don't owe the white man nothin' in South Africa....If we want to be merciful at all, when we gain enough power from God Almighty to take our freedom and independence from him, we give him 24 hours to get out of town by sundown. That's all. If he won't get out of town by sundown, we kill everything white that ain't right (inaudible) in South Africa. We kill the women. We kill the children. We kill the babies. We kill the blind. We kill the crippled (inaudible). We kill 'em all. We kill the faggot. We kill the lesbian. We kill them all. You say why kill the babies in South Africa? Because they gonna grow up one day to oppress our babies. So we kill the babies. Why kill the women?...They are the military of the army's manufacturing center. They lay on their back [*sic*] and reinforcements roll out from between their legs. So we kill the women too. You'll kill the elders too? Kill the old ones too.... How the hell you think they got old. They got old oppressing black people. I said kill the blind. Kill the crippled. Kill the crazy. Goddamit, and when you get through killing 'em all, go to the goddam graveyard and dig up the grave and kill 'em, goddam, again. 'Cause they didn't die hard enough.... And if you've killed 'em all and you don't have the strength to dig 'em up, then take your gun and shoot in the goddam grave....

From the Community at Large:

FAMILY VALUES AND THE SUPREME COURT

The following is an excerpt from an interview with Ruth Bader Ginsburg:

Q. An unprecedented step you've taken is agreed to a flexible schedule for one of your law clerks. What made you decide to do that?

A. You have in mind David Post. David clerked for me in the D.C. Circuit....When I received his application for a clerkship several years ago, he explained he was attending Georgetown at night rather than in the day because his wife, an economist, had a demanding job, so he attended to the children in the morning and early afternoon.

I thought, "This is my dream of the way the world should be." When fathers take equal responsibility for the care of their children, that's when women will truly be liberated. I was so pleased to see that there are indeed men who are doing a parent's work, men who do not regard that as strange. People like David, I hope, will be role models for other men who may be fearful they won't succeed in their profession if they spend time caring for their children, or are concerned they will be thought of as less than a man if family is of prime importance.

More than anything else, I believe, the responsibility by men will make things genuinely equal for women. Women will have truly equal opportunity when men accept responsibility for raising children to the same extent that women do. Is that an impossible dream? I don't think so. The fact that there are people like David Post in the world encourages me.

New York Times, 7 January 1994

BACKS TO THE WAL

The town of Greenfield, Massachusetts, by a nine-vote margin, dealt Wal-Mart its third defeat of 1993 when it rejected a ballot initiative that would have allowed the retail giant to build a superstore in town. Turning down \$100,000 per year in taxes and road improvements, the 18,000-member community voted not to allow the plot of land Wal-Mart had sited for its store to be redistricted for commercial use. Westford, Massachusetts and North Olmstead, Ohio have also rejected Wal-Mart outlets.

Westford's and North Olmstead's actions and Greenfield's "We're Against the Wal" committee are just the latest examples of a growing trend of communities fighting plans by corporate retailers to enter towns and undersell local stores. Home Depot, Payless Drug Stores, K Mart, and Price Club have been the targets of similar mobilizations. Residents who oppose the superstores cite pollution, traffic, and the decimation of downtown shopping districts as reasons for their opposition.

And it's not just residents anymore. Small businesses with ties to the communities they serve are fighting back as well. The impact of superstores has been particularly devastating to independent book dealers, who now find themselves up against national chains such as Waldenbooks, B. Dalton, and Crown. At the American Booksellers' Association (ABA) conference in Miami Beach last June, ABA members actually approved two motions to counter what the independent booksellers regard as unfair, even predatory, trading on the part of the chains. One ordered an ABA board to investigate and document unfair trading practices. The second called on the ABA to launch a national media campaign stressing the importance of independent and specialty booksellers to the First Amendment.

Publishers Weekly, 7 June 1993

Time, 1 November 1993

A STUDY IN CONTRAST

In the face of the soaring popularity of gangsta rap, radio and television stations are starting to demonstrate restraint. Washington's most popular radio station refused to play Onyx's hit song "Throw Ya Guns in the Air" and other tunes that advocate violence. Many other stations all over the country are doing likewise and giving airtime to explicitly antiviolent songs like J.G.'s "Put Down the Guns." Black Entertainment Television has gone "gun-free," and MTV now refuses to broadcast "gratuitous violence" or any video that might stimulate viewers to violence or present violence as "an acceptable solution to human problems."

Radio stations have not shown the same restraint in dealing with Howard Stern, whose 15 million listeners apparently provide an audience large enough to override the broadcasters' newfound con-

cern for society's well-being. Far from refusing to air Stern's show, radio stations are going gaga, and 16 cities around the country are daily subjected to his racist, homophobic, misogynistic rantings (which are certainly no less antisocial than gangsta rap). Stern has become, in his own words, a "First Amendment poster boy." He has also become very rich. His income last year probably exceeded \$12 million.

Washington Post, 28 October 1993, 14 November 1993

Drawing by Toles; © 1993 New Republic.

THE COMMUNITY'S PULSE

AN RC DOCUMENT

The New Citizenship White Paper was prepared by Harry Boyte, Benjamin Barber, Dorothy Cotton, Suzanne Morse, and Harold Saunders in February of 1993. The document led to a historic meeting in January in the Roosevelt Room of the White House hosted by the Domestic Policy Council between members of The New Citizenship and members of the Clinton Administration. Participants developed a six-month planning process to strengthen citizen-government partnership. Following are excerpts from that document:

The New Citizenship White Paper

The Clinton Administration comes into office after a remarkable political year in which millions of Americans became seriously engaged in the nation's public life. Last July, Bill Clinton spoke to this engagement in an eloquent speech to the National Bar Association: "America needs to restore the old spirit of partnership, of optimism, of renewed dedication to common efforts. We need an array of devoted, visionary, healing leaders throughout this nation, willing to work in their communities to end the long years of denial and neglect and divisiveness and blame, to give the American people their country back."

Clinton's vision of partnership can advance the nation. Yet the 1992 election generated two powerful currents, which, if they clash, will undermine this possibility. First, the campaign promised an administration dedicated to decisive government action. Second, Bill Clinton called for people to take back government.

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The second theme, proposing that all Americans participate in self-government, promises to energize the vast creativity that lies buried in our country and to address our nation's problems from the bottom up. Instead of looking to Washington for answers—with an accompanying rush for jobs and insider connections—it suggests a vigorous partnership. It points towards an alliance between an activist administration of the people and citizens joined in reinvigorated civil institutions. It is in support of this prospect that we have authored this white paper; we address ourselves to citizens and to the new administration.

America needs its people engaged in solving our nation's social and economic problems. We must pool private effort into public force so that the thousand points of light are concentrated in a great beacon to light our nation's future. Citizen efforts need to be framed in terms larger than individual volunteering.

This means a partnership between citizens and government. Such a partnership is based on the concept of active citizenship as the foundation of politics, itself broadly conceived as public problem-solving. We call this partnership The New Citizenship. The New Citizenship will enhance citizen responsibility and political skill, and can help us in working through the divisions that stymie efforts at productive common work in America today. It involves stronger commitment to civic education from our voluntary and educational organizations and a reassertion of their mission as public problem-solvers. It requires a renewal of popular government led by public servants who see themselves as citizens first: representative agents of the people, rather than the purveyors of goods to a population of clients.

The New Citizenship also means an enlarged citizen perspective in which the individual's sphere of concern becomes transnational, even global. As citizens topple dictatorial systems from Russia to South Africa, they also seek to build democratic civic institutions, responsive governments, and market economies. We, as a nation, will not provide the leadership of which we are capable unless we conceive a foreign policy that constructively relates to the challenges of governance, civil society, and deep-rooted ethnic and cultural conflicts which others face. In this foreign policy task, too, we the people must work with the administration in fresh partnership.

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The politics of serious democracy is *public* work, the give and take, messy, everyday activity in which diverse groups of citizens set about dealing with the problems of our common existence. Public work is a crucial way in which we *become* citizens: public-spirited, effective contributors to the country. Yet today, most people put themselves outside of politics. They have relegated politics, the public work of problem-solving, to professional politicians. Thus, The New Citizenship reclaims "politics" (from the Greek, *politikos*, meaning "of the citizen") as the public work of citizens.

Throughout American history, the work of public problem-solving occurred in a variety of institutions that extended from the local community to large-scale civic organizations; it has been the way that millions of citizens developed a sense of their stake in the nation and their capacity to act as citizens. Similarly, during the civil rights

movement in the late 1950s and 1960s, Citizenship Schools and Freedom Schools were the way that southern African-Americans excluded from public life developed public capacities and voices.

These mediating institutions persist. But they have frequently been recast in a professional-client pattern that separates Americans and our political agents into an “us” and “them” and treats the relationship as simply adversarial and crudely manipulative. “We” relate to “them” by “sending them a message” or “throwing the rascals out.” Politics today allows us to be heard and to receive things from our government, but we, as citizens, rarely imagine ourselves as producers of politics.

Yet redefined, politics becomes something that we as citizens do to address our problems. And though this process will not be easy or simple, we can revitalize the public dimensions of the organizations in which we are involved, from our religious congregations, neighborhood groups, union locals, the full range of civic and service organizations, schools and colleges, business and professional associations to political parties. We can make government an instrument to which we delegate responsibilities and which we hold accountable for the directions we have set, once we as citizens have discussed and debated how problems are defined and how they might be addressed.

Through active citizenship, we can address our nation’s divisions of race, culture, and gender. Racial conflicts, patterns of discrimination, and controversies over women’s public roles and the definition of our families are often dismissed as irksome diversions, on the one hand, or used to divide and fragment us into different camps, on the other. Appeals for goodwill and even the most eloquent political leadership are insufficient. In contrast, reinvigorated public institutions can serve as meeting grounds for citizens to work together in practical fashion on common issues, from crime, to housing, to improved education.

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The New Citizenship calls for a revitalized government that is open, accountable, responsive, and led by public servants who see themselves as part of the citizenry, not outside or distant from us. Government spokespeople at every level, from the President to county clerks, need to acknowledge candidly the need for Clinton’s “spirit of partnership,” both within our communities and also in our infrastructure of civic organizations that are state-wide, national, and international in scope.

Government can build bridges, tame interest rates, issue environmental and health and safety regulations, dispense justice, and

provide a social safety net. But political leaders need to acknowledge that government cannot resolve most of our complex problems by itself. Overpromising only leads to cynicism.

Issues such as school reform, community and economic development, racial conflict, public health, crime, homelessness, and protection of the environment all require that citizens act as deliberators and problem-solvers. Schools and businesses, as well as individual citizens, make recycling work. School reform requires that schools reconnect with the life of communities and forge relationships with other institutions and that parents become powerful stakeholders, acting with imagination on the entire range of school issues, not simply their individual interests. Only strong neighborhoods and renewed community institutions like small businesses can reduce crime, through partnership with police departments. Creating a healthy nation is the work of providers and advocacy organizations that open themselves up as public institutions, welcoming public deliberation on how health problems are best defined and how to decide difficult trade-off issues such as treatment priorities, technology purchases, care before death, and prolongation of life.

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