

THE
RESPONSIVE
COMMUNITY



RIGHTS *and*
RESPONSIBILITIES

Volume 5, Issue 4, Fall 1995

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On Making Lawyers a Bit More Socially Responsible

A lawyer recently confided that if someone were to sue his client, he would imply that the accuser was a child abuser. “Even without any foundation?” a communitarian wondered. The lawyer chuckled: “Many people drop their suits right then and there. Go prove that you have *not* abused children!” He added that the media would carry the implied accusation, but because the smeared party would not be on trial, he could not obtain a verdict of innocence, and thus clear his name.

To the lay person the possibility of being subject to such abuse seems just short of unbelievable. Checking with a law professor, a caller was informed that while such tactics “may not be proper, it can and is done.” For instance, in a cross-examination a lawyer may raise questions about child abuse, attempting to reflect on the witness’s credibility. True, the press may not pick up the story, but if the stakes are high enough a public relations firm could see that the word gets out. In any event the party at issue will need to take his chances if he chooses to proceed.

In this context, it is also noteworthy that many people believe that O.J. Simpson will walk, whether or not he is guilty, because his lawyers concocted a conspiracy theory that the Los Angeles Police Department is framing him because it is racially prejudiced.

Floyd Abrams, an eminent lawyer, wrote in the *New York Times* that in our current climate we should not be surprised when lawyers state things that “have nothing to do with the truth” because we should know that they will say anything that might help their client. It’s like sitting down to play poker—one should expect the other side to bluff.

But courts are not a game. Lives, liberty, and fortunes are at stake. Justice is not served by both sides playing the court for all they can. Can we find ways to maintain our adversarial system, but also expect lawyers to truly live up to their responsibilities as officers of the court?

In the quest to make lawyers a bit more communitarian—to enhance somewhat their responsibility to the community—I posed a hypothetical case (based on an actual one) to several legal authorities: Eight women charge that a physician sexually molested them while he had them connected to a wire that he claimed would endanger them if they moved. The defense argues that the women fabricated the whole thing, conspiring to extort money from the physician. No evidence of any kind is presented to support this claim. Assume, I suggested, that the lawyer made up the whole defense; should this be allowed?

All those approached responded that lawyers' only obligations are to their clients. George E. Bushnell, Jr., former president of the American Bar Association, put it starkly:

While your report of the sexual molestation defense on its face is irresponsible, I cannot agree that the rights of the defendant should in any way be changed or modified. Rather it is my judgment—and conviction—that *only* through full protection of defendants' rights is the total community best served. For it is only by emphasizing the rights of the least of us that the rights of all of us—the rights of the total community—are preserved.

Alan M. Dershowitz, in his recent novel, *The Advocate's Devil*, put the following line into the mouth of his legal maven: "In this game, there's only one bottom line—winning—whether the client is black or white, innocent or guilty."

The rush to not reform is astonishing both because justice is too often denied in the existing system, and because as it is there are already several rules on the books—in the law itself, and in the ethics of the profession—that curb lawyers in the community's interest. For example, if a lawyer knows that her client is about to commit perjury, the lawyer is supposed to stop the client or alert the court. (Many lawyers circumvent this rule by warning their client not to tell them more than they need to know.)

Similarly, the Supreme Court ruled that lawyers may not elicit what they know to be a false answer from their clients. True, lawyers regained much of their wiggling room by narrowing what is considered “eliciting.” But still, there is some limit on what lawyers can do when it comes to bearing false witness.

Also, lawyers may not pay the secretaries of their opposition to slip them copies of what is on file. We have added, over recent years, some limitations on what aspects of the sexual history of a rape victim the defense may bring up. Why not consider strengthening these rules a bit in the interest of justice and the community?

For instance, how about prohibiting lawyers from pleading a client not guilty when they know he is guilty; and similarly prohibiting lawyers from challenging the other side’s veracity when they know it is telling the truth? Abrams believes we should ask lawyers to show less willingness to make certain arguments (for example, those that *could not* be true) and greater willingness to “view themselves as part of a system of law” rather than as alter egos of their clients. This is surely a sentiment that we should encourage, even as one recognizes that it needs additional specification before one can use it to hold people accountable.

Finally, judges may need to become a bit more active. During my recent service as a juror, the defense was in the hands of a legal aid attorney who must have been on her first case. (I would not be surprised if she had barely scraped by on the bar exam.) The prosecutor, on the other hand, was quite accomplished. The judge was in obvious pain, trying to find leeway for the defense, but was boxed in by the rules. Allowing judges to ask questions would move us forward.

The details need to be worked out, but first the public dismay—heightened by the way the O.J. Simpson case and several other highly publicized cases were handled—needs to be galvanized. The point that needs to be emphasized is that, given that there are already some very loose limits on what lawyers may do, proposals such as the ones mentioned above are not a violation of our legal or ethical traditions. It is time to move the marker over some more, in a socially responsible, communitarian direction.

Nobody questions the need to protect the rights of the defendant, but these rights do not include allowing those who are guilty to walk because they have as lawyers the best fiction writers money can buy. True, public interest in justice should not take precedence over the defendant's rights—but it should not be wantonly ignored, either.

Amitai Etzioni

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Entertainment Violence: Rights, Regulation, and the Radical Right

The traditional sociological analysis of how children develop their values, attitudes, and behavior focuses on family, school, religious institutions, and peer groups. The technological advances of the last 50-odd years require that we now add to this list the entertainment industry. Most children today spend more time being entertained by TV, films, videos, videogames, discs, and tapes than they spend in school or with their family. Should an industry whose major goal is profit maximization be allowed to play such a significant and unregulated role in the socialization of our children?

The media's influence is documented by a large body of research on the effects of TV and film violence. Every major metastudy evaluating this research—the most recent one carried out by the American Psychological Association in 1992—has arrived at the same conclusion: Viewing antisocial, violent behavior on screen puts the viewer at higher risk of behaving in an antisocial, violent way.

The most common responses to the problem have been the assertions that parents should exert more control over their children's entertainment and that media education should be introduced in the schools. Both recommendations are inadequate. Those parents who are at home with their very young children can control entertainment, but millions of toddlers are being raised by child-care workers. Once the children, especially boys, are in nursery school, even highly educated parents determined to protect their children from antisocial, violent entertainment are often overwhelmed by the peer pressure to which their children are subjected. Boys who do not have the right violent toys or videos, or are not allowed to watch violent TV shows, are often ostracized. And as children get older and more independent, it becomes virtually impossible to control their entertainment.

As for media education, it is naive to think that teachers explaining to children that media violence is unrealistic, and that it is not good to behave like the violent characters on the screen, will undo the lessons learned from 28 hours per week of TV plus additional hours

of films, videogames, and so on. Besides being inadequate, these approaches are also unfair to parents and teachers who, instead of being helped by society at large in the all important task of socializing young children, are constantly hindered. (It is worth noting that interviews with teachers reveal that boys' mimicking of Ninja Turtles, Mighty Morphin Power Rangers, and other violent media role models represents a major classroom problem.)

LAISSEZ-FAIRE DOES NOT WORK WITH CHILDREN

If we are to have a viable society, we cannot continue to allow the entertainment industry to encourage our children's basest, most violent tendencies, and then ask teachers and parents to undo the harm. We must begin to treat American children as a precious national resource rather than as a commercial market to be exploited for profit.

To begin with, we need a major educational campaign, akin to the anti-smoking campaign of the seventies, to educate parents about the effects of violent entertainment on their children. In the course of viewing slasher and adventure films at movie theaters (while researching a book), I found children as young as three years old brought by their parents to see films in which people are dismembered, chopped up, and burned alive in graphic detail. Taking their children to such movies should eventually become as unthinkable for parents as taking children to pornographic movies is today.

With regard to TV, all sets should be equipped with a parental control device permitting parents to block channels and programs they deem inappropriate for their children. Although a bill requiring such a device, as well as a "V-chip" (which permits parents to eliminate programs rated violent), has been passed by the Senate, the House of Representatives has only passed the V-chip provision. Hopefully parental control device legislation will pass the House as well.

A parental control device should be accompanied by the creation of two public television channels dedicated to top quality programming—one for children aged roughly two to nine, another for preadolescents aged ten to thirteen. The combination would create a separate TV universe for children. For the last 25 years, Sesame Street has

been extremely popular with young children of all social classes. There is no reason why we cannot create entertainment of at least equal quality for older children. Reed E. Hundt, chairman of the Federal Communications Commission, recently suggested that commercial stations might fulfill their obligation to serve the public interest by paying for PBS to carry programs such as Sesame Street. Perhaps this concept could be extended, requiring commercial stations to make a major financial contribution to a Children's Public Broadcasting System.

What, then, can we do about films, videos, videogames, and music lyrics that promote violence? We have a long judiciary tradition of laws for the protection of children, including labor, liquor, and pornography laws. Some state laws prohibit the sale of sexually explicit magazines to children under 17. Our double standard with respect to sex and violence has led to a dearth of precedents for protecting children from violent entertainment. But while there is disagreement on details, First Amendment law experts acknowledge that laws designed for that purpose would most likely be upheld by the Supreme Court as long as they did not interfere with the rights of adults. This view is supported by a June 18, 1987 report for Congress prepared by the Congressional Research Service, entitled "Regulating Record Lyrics: A Constitutional Analysis." Its conclusion is that "it would be constitutionally permissible for Congress to restrict access by children to certain records..." The report explains that "in addition to sexually oriented material, concern has also been expressed over lyrics which arguably encourage illegal drug use or other types of illegal activity. It appears that such records could also be regulated..."

Thus, from a constitutional perspective, it seems likely that we could have regulations of the kind that exist with respect to film in Canada and many European countries. In these countries, movie theater owners are fined if they allow underage children to see films that are rated unsuitable for them. In the United States we have the Motion Picture Association of America ratings, which are developed by the film industry. But these ratings are not accompanied by any penalties. As a result, many movie theater owners ignore them. In fact, a prime target audience for violent "R" rated adventure and

slasher films is young teenage boys, who in theory are excluded from seeing them unless accompanied by an adult.

THE PRICE OF STAYING WITH THE STATUS QUO

Despite all of the evidence, some will no doubt remain repelled by any proposals requiring governmental regulation. I recommend that these people consider the alternatives.

We can retain the status quo, which permits the entertainment industry to play a significant role as a *de facto* regulator of our children's entertainment. The burden of raising decent, nonviolent children can continue to be placed in the hands of parents and teachers, while the entertainment industry remains free to create a culture of violence that works against their efforts. We can continue to plead with and attempt to pressure the industry to clean up its act, occasionally boycotting a program or a sponsor. (To judge the effectiveness of this approach, one need only ask how effective it would be if we had to plead continually with the tobacco industry to restrain itself in terms of advertisement and sales, without subjecting it to any governmental regulation.) Certainly intense public pressure and the threat of serious regulation might lead to some concessions. But these concessions would in all likelihood be discarded when the pressure is off.

Accepting the status quo also means that we can look forward to further escalation of entertainment violence. Soon virtual reality video games will enable children to have the tactile experience of shooting, stabbing, or strangling an Arnold Schwarzenegger or Sharon Stone, or perhaps a world leader such as President Clinton or Boris Yeltsin. In brief, if we do nothing more than apply band-aid solutions, American children will continue to be raised in a culture of violence that encourages their basest, most antisocial violent tendencies.

If those of us who seek to protect the First Amendment rights of adults do nothing to develop a rational plan for protecting children, we may well be playing into the hands of the extreme right. For while some Americans consider violent, gory entertainment suitable for their children, a significant percentage of Americans feel deeply frustrated in their attempts to raise decent children in a society that

seems to do everything possible to thwart them. If we do nothing to help, the messages of the extremists and bigots—the folks who want to remove *Catcher in the Rye* from high school libraries—are likely to become increasingly attractive to large segments of our population.

Myriam Miedzian

Not Too Calvinist

Calvin Klein has been at it again, this time with a series of bus and magazine ads showing young teens posed in what look like opening scenes from a porn movie. In one photo, a girl is shown lying down with her skirt hiked up, exposing her panties. In another tacky crotch shot, a curly-haired boy gazes out at us, as if scanning desperately for any nearby member of the North American Man/Boy Love Association.

These are creepy pictures, and like Calvin Klein models going back 10 years, nobody here looks capable of ever having an actual relationship. Sex is rather blankly offered here as a commodity by and for the bombed-out and the hopelessly numb. Some of the teens look coaxed into posing. Others seem like they are wearily going through the motions for a customer. It is not just in our face and totally inappropriate on buses. It is decadent.

This is about what we have come to expect from Klein, our most relentlessly tasteless taste maker. Why does he bother with this tawdriness? Don Nathan, a spokesman for Calvin Klein, told *The Washington Post*: The target audience is made up of a generation that's independent and media-savvy. They are "people who do only what they want to do." The *Post* reporter, Robin Givhan, summed up his analysis: "Hence the rule-breaking attitude of the ads."

It is interesting to focus on rule breaking, rather than the more obvious themes of sex, numbness, and the sensibility of cheap porno film shot quickly in a motel or basement rec room. But in fact the rule-

breaking theme is nearly always more potent in ads today than the sexual themes that draw far more attention. It works like this: Advertisers are focusing more and more on the emerging market of “people who do only what they want to do,” that is, people who yearn to be completely free of all restraint, expectations, and responsibilities. This is a familiar sixties attitude now tinged with nineties pessimism. So a socially subversive, pro-impulse, anti-rules, and anti-restraint message is casually being built into more and more campaigns, often with the help of hired psychologists and focus groups.

The modern classics in this effort are Nike’s “Just Do It!” (act on impulse, don’t analyze or inhibit yourself) and Burger King’s “Sometimes, you gotta break the rules.” These were very successful campaigns and their power can be measured by the number of imitators. A jeweler, Best, picked up the break-the-rules theme and so did Don Q rum: “When you have a passion for living, nothing is merely accepted. Nothing is taboo....Break all the rules.” Another rum, Bacardi Black (“The taste of the night”) promises to take the drinker to a boozy evening universe where it seems that anything goes: “Some people embrace the night because rules of the day do not apply.”

A Neiman Marcus ad says, “Relax. No rules here.” Even a shoe ad can promise a world without norms or rules. Our shoe “conforms to your foot so you don’t have to conform to anything,” heralds Easy Spirit shoes. A batch of ads concentrates on changing the rules or the glamor of crossing lines (for example, Isuzu’s campaign making fun of the imperious and bald teacher who tells children, “Stay within the lines. The lines are our friends.”) Others strum the theme that the only real rule is self-preoccupation. These are so common that they regularly go by without raising eyebrows: “Peel off inhibitions. Find your own road”—Saab; “Your own rhythm”—Drum tobacco products; “We are all hedonists and we want what feels good. That’s what makes us human”—Nike.

Another group focuses on getting rid of boundaries (“Living without boundaries”—Ralph Lauren’s Safari; “Your world should know no boundaries”—Merrill Lynch; “It’s not trespassing when you cross your own boundaries”—Johnny Walker scotch). While there is an obvious healthy side to the no-boundary theme—the computer

world, for instance, has no real boundaries—the idea plays to the classic infantile wish for an infinite self, free of all restraint. At its worst, the no-boundaries theme shows up in narcissistic personality disorders as the inability to know where the self ends and others begin. “I don’t know where I end and you begin,” say ads for Calvin Klein’s perfume Eternity.

The point here is that while everyone is aghast over blatant sex, violent movies, and gangsta rap, the ordinary commercial messages of corporate America are probably playing a more subversive role. The drumbeat of rule-breaking slogans has a devastating effect. Our commercial culture and the advertising industry are not just at war with traditional values. They are at war, too, with the possibility that new common values will emerge from the current social chaos. By pushing self-obsession, narcissism, and contempt for all rules, they strike at the sense of connectedness that any society needs to cohere and to care about its common problems and least fortunate members. It is time to call the corporations and ad agencies on this. They are busy financing our social meltdown.

John Leo

COMMUNITARIAN BALANCE

**Crime and Punishment:
Where Does Repentance Fit?**

JEFFRIE G. MURPHY

As the millennium (in at least one sense of that word) approaches, the newspapers are filled with talk of repentance. Pope John Paul II has suggested that the Catholic Church repent for some of the injustices against non-Catholics to which it has been party during its history. The American Southern Baptist Convention has publicly repented its role in American slavery and racism. French President Jacques Chirac has attempted to express, for France, repentance for its cooperative role in the Nazi extermination of French Jews. The government of Japan has struggled with developing a public response to its World War II atrocities against other Asian nations—some officials advocating full repentance and others more cautious expressions of sorrow or regret. And the government of Argentina is still struggling with the nature and degree of its public response to the atrocities committed against its own citizens in the “dirty war” during the regime of the Generals.

In sharp contrast to this talk about what might be called collective or group repentance (and all the logical and moral problems in which such talk is immersed), we rarely hear much talk these days about individual repentance. These two facts may, of course, be related, since a stress on collective responsibility could well have a tendency to weaken feelings of individual responsibility. Living (at least in the United States) in what some have called a “culture of victims,” we have seen in recent years the development of various strategies to allow wrongdoers to avoid responsibility for their wrongdoing by

claiming victim status for themselves; and a world without responsibility is a world in which repentance lacks logical space.

Gone, it seems, are the days in which we could comfortably refer to prisons as penitentiaries—as places to which we would send responsible wrongdoers in order to encourage their repentance: their remorseful acceptance of responsibility for their wrongful actions, their repudiation of the aspects of character that generated those actions, their resolve to extirpate those aspects of character, and their resolve to atone or make amends for what they had done. We simply do not value this rich notion of individual repentance the way we once did; and the world has suffered a loss thereby. Perhaps we see repentance as some vestigial relic of a religious worldview to which most people now, at most, pay only lip service. Or perhaps, even if we accept the value of repentance in certain contexts, we do not see an important place for the concept in a system of criminal law and punishment organized around secular values and focused on deterrence, incapacitation, and retribution. It is even possible—given the realities of crime and punishment in the United States—that we cannot in honesty see our prisons as anything more than fortresses in which we warehouse an alienated underclass that is perceived, often quite accurately, as highly dangerous to the stability of ordinary life.

A RETURN TO PLATO

It was not always this way, of course. Although Plato made some place for deterrence and incapacitation in his account of punishment in his great dialogue *Laws*, he rejected retribution (which he could not distinguish from vengeance) as utterly barbaric. He offered instead, as the dominant value that should govern criminal punishment, the value of moral improvement—punishment as a means of transforming the character of the criminal from a state of vice to a state of virtue. The goal of punishment is future-oriented, but not mainly as a device for securing future compliance to law. For Plato, compliance is not the primary aim of punishment but will rather be secured as a by-product of the value that is the primary aim: instilling in the criminal not just a fear based in self-interest, but rather a true sense of justice—a desire to do the right thing for the right reason. The goal is to confer upon the criminal a good (the greatest good: a good character). For this

reason the theory is sometimes referred to as a “paternalistic” theory of punishment.

This Platonic theory, traditionally rejected by legal philosophers as implausible, has recently been resurrected by a number of scholars, including R. A. Duff, Herbert Morris, Jean Hampton, and David Moore. And since repentance plays a central role in such an approach to punishment, it merits our serious consideration.

First of all, however, it is worth considering why the theory that punishment may function to generate repentance has long been rejected as implausible. There are several reasons. The most obvious is that our primary methods of punishment are so brutal as to make repentance either impossible or unlikely. (In spite of Dr. Johnson’s quip that the prospect of being hanged tends to focus the mind, the death penalty and incarceration in the pest-hole of the modern prison seem primarily to brutalize all those who come in contact with the system.) Also, contemporary criminal law, at least in the United States, tends toward radical overcriminalization—punishing many offenses with absurd excess and regarding some actions as crimes that, since their moral wrongness is doubtful, are also doubtful objects of repentance. The Georgia penal code, for example, provides that consensual homosexual sodomy may be punished by up to 20 years in prison, but it is by no means obvious that the homosexual has done evil of a kind for which repentance may legitimately be demanded by a *secular* community.

Thus while Plato’s approach may seem implausible to those steeped in the realities of modern criminal systems, the theory is best understood as an ideal—not a description of the world in which we live but rather the portrait of a world to which we should aspire. A state or community properly using the criminal law to provoke repentance would have only just laws (laws organized around a respect for fundamental human rights) and would use only methods of punishment that would assist genuine moral rebirth and not simply reflex conformity or terrified submission. Thus the fact that most of our present penal practices are not of this nature will be seen—by someone committed to the paternalistic theory—as a condemnation of those practices and not as a refutation of the paternalistic theory itself. The Chinese demand for criminal repentance under

the regime of Mao was morally disgusting not because it sought repentance, but because the system of values upon which the demand for repentance was based contained much evil and the means used to secure repentance were degrading.

Even as an ideal theory, however, the paternalistic theory is open to serious challenge. Punishments that are not brutal and inhumane must still, if they are truly to be called punishments, inflict some serious deprivation, some hard treatment, on offenders. (Otherwise how would punishment be distinguished from reward or from psychiatric therapy as a means of reform?) But when people hurt us we tend to get angry and resentful, not repentant, and this fact generates a very puzzling question: How is the hard treatment that is necessarily a part of punishment to be justified as a step toward repentance and reform?

There is, of course, an obvious connection between repentance and suffering. Repentant people feel guilty, and a part of feeling guilty is a sense that one ought to suffer punishment. Thus guilty and repentant people may well seek out, or at least accept willingly, the punishment that is appropriate for their wrongdoing.

This connection by itself, however, will not yield the paternalistic theory. For the connection thus far establishes only that repentance will naturally lead to an accepting of punishment (or other penance). The paternalistic theory, however, requires that the connection go in the other direction—that punishment itself will lead to repentance. How could this be so?

EVOKING REPENTANCE

There is a traditional answer here, but it is not one that is likely to appeal to the contemporary mind. A certain kind of Platonist, committed to soul/body dualism, might argue that tendencies to wrongdoing arise from the desires of the body when those desires are not under the proper control of the rational soul. St. Paul was no doubt under the influence of this kind of Platonism when, in Romans 8:23, he described his own moral failings by saying, “I see another law in my members, warring against the law of my mind, and bringing me into captivity to the law of sin which is in my members.” If one accepts

this kind of dualism, of course, it is not difficult to imagine that the infliction of suffering that mortifies the body might well cause one to grow to hate the body and focus more upon the soul and the life of virtue that the soul makes possible—a thought that permeates the Christian ascetic tradition and is expressed by such figures as Pascal.

Such an account is, however, highly problematic. It is hard for the contemporary mind to embrace a sharp soul/body dualism and even harder to accept the claim that wrongdoing typically arises from desires of the body. Some vice is highly intellectual in nature and results far more from a corrupt mind or will than from slavery to the body. Thus, if one wants a theory that follows in Plato's spirit without embracing the metaphysics of his letter, one might see the infliction of punishment as reforming—not merely by subjecting the body to pain, but by curtailing the power of whatever aspect of the personality is responsible for the vice. As the philosopher Herbert Fingarette has argued, the wrongdoer has assumed a power greater than is his right to assume, and thus it is important that he have his will humbled. Punishment makes him suffer (in the sense of "endure"), and such suffering gives him not only what he deserves but also provides him with an important lesson in the legitimate scope of his power.

But how does punishment itself make the lesson take? Unless we can imagine a plausible mechanism to explain how the infliction of suffering itself generates repentance and reform, it looks as though we will at most be able to claim that punishment provides us with an opportunity to do something *else* to a person (provide therapy, education, religious instruction, etc.) that might be reformative. But then we would be justifying punishment not in terms of its own reformative potential, but simply in terms of the opportunities that it provides—hardly the challenging promise originally held out by the paternalistic theory.

R. A. Duff is sensitive to this problem and makes a very promising start toward salvaging the paternalistic theory from the many objections that have been raised against it. He makes no pretense that punishment can guarantee repentance and reform. (Neither, of course, can other interventions that aim at reform, such as psychotherapy.) In this sense, Duff would agree that punishment can do no more than offer criminals an opportunity for moral rebirth. In his view, how-

ever, the opportunity is presented by the punishment itself and not by some other devices that might be employed while punishment is being endured.

How could this be? It is, claims Duff, because punishment must be understood in communitarian terms—as an *act of communication between the community and a person who has flouted one of that community's shared norms*. The suffering endured is the pain of separation—separation from a community that the criminal values (perhaps without realizing it until he experiences its loss) and to which he would like to return. The punishment communicates to the wrongdoer the judgment that his actions have made him, at least temporarily, unworthy of full participation in the life of the community. It requires that the criminal experience the pain of separation so that he can come to see, in his heart, the appropriateness of that separation and thus seek, with the appropriate humility, reconciliation with the community that he has wronged. In other words, the hope is that a kind of compulsory penance will be replaced by a voluntary penance. Voluntary penance is a sincere act of reattachment or allegiance to the values of a community—an act that will allow the wrongdoer to be welcomed again and reintegrated into community life.

And what makes this paternalistic? Simply this: Punishment on such terms will benefit the wrongdoer because severance from a community—if it is a *just* and *decent* community—is a genuine harm to the individual who is isolated, and reintegration is a genuine good for him. The right sort of prison may help to achieve this good because, as Duff says, it “removes the criminal from his corrupting peers, and provides the opportunity for and the stimulus to a reflective self-examination which will [ideally] induce repentance and self-reform.” (Also worth considering, as a means of provoking “reflective self-examination,” are such alternatives to prison as community service and restitution.)

Duff's theory is rich and in many ways compelling. It cannot be the whole story on the justification of punishment, but it is an important and largely neglected part of the picture. It may, of course, be highly unrealistic to attempt an application of the theory to the crime problem in a society such as that found in the contemporary United States. It is not at all clear to what degree there is a genuine

community of values in our society. And even where there may be a community of values, it is sometimes the case that those who flout those values feel so alienated (perhaps because of poverty, racial injustice, or cultural exclusion) that they could not reasonably see reintegration into the community as a good because they never felt truly integrated into the community in the first place.

However, if the paternalistic theory really is compelling, then even a serious gap between theory and practice will not be a legitimate ground for rejecting the theory. Rather it will be an occasion for mourning the community that we have lost and for seeking to regain it—or for seeking to create it if we have never had it. Those committed to the paternalistic view will argue that we should work to create a community of mutual concern and respect wherein punishment, when needed, could be defended—without self-deception or hypocrisy—on paternalistic grounds.

FROM THE IDEAL TO THE REAL

But suppose that we are sufficiently charmed by the paternalistic theory that we want to get started now and not wait for the ideal world. How might we proceed? Perhaps the best arena in which to attempt to apply the theory is to be found not in adult criminal law, but in the law dealing with juvenile offenders. Juvenile offenders are probably more open to radical character transformations than are adults. Juveniles are more likely to be pained by being separated from the community (and from their families) since they are less likely to be as alienated as some adults. Also, as David Moore has suggested, the more informal and discretionary proceedings of the juvenile courts might allow—in encounters between offender (and family) and victim (and family)—the use of empathy to build a sense of community, or to discover a latent sense of community that more abstract and formal proceedings might mask.

It is also possible that one might be able to draw on subcommunities in ways that would ultimately benefit the larger community by developing in juvenile offenders a sense of self-worth through “belonging.” Ideally, of course, one would want all citizens to feel a sense of belonging in the larger national community. One has to start somewhere, however, and since self-esteem cannot grow in an asocial

vacuum, why not—before gangs come in and assume the role—take advantage of the opportunities offered by particular cultural sub-groups? Such efforts are surely worth a try.

For the most part, however, we will no doubt continue to employ a system of criminal punishment that is driven by a variety of different values. Even if we seek to introduce paternalistic concerns as one of our justifications, the concerns of deterrence and incapacitation will also loom large. So too will concerns with retribution. A demand for retribution can be based on either a belief that people deserve to suffer for the badness of their characters (character retributivism) or a belief that victims and the community, having been wronged by the criminal, are owed a debt that can be paid only when the criminal suffers appropriate punishment (grievance retributivism). Both versions of retributivism have played a role in the justification for punishment in our society, and they—along with a deep concern with crime control—will no doubt retain an important role for the foreseeable future.

To the degree that the system is driven by these important but generally nonpaternalistic values, even full repentance on the part of the criminal will frequently not be sufficient to remove the need for punishment. Punishing even the fully repentant, though having no special deterrence value, might well serve general deterrence values; and punishment will sometimes be demanded by crime victims who believe, on grievance retributive grounds, that the injuries that they have suffered require a response that is proportional to the wrongs that have produced those injuries.

If, then, repentance is to play any role at all in our present system of criminal punishment, it will probably be as one reason bearing on whatever discretion officials are allowed within a punitive range that satisfies the legitimate demands of crime control and grievance retribution. If, for example, we have grounds for believing that society's legitimate general deterrence and retributive objectives with respect to a specific offense could be satisfied by any punishment within a particular range (e.g., three to eight years), then sincere repentance could provide an authority with discretion (normally a sentencing judge or an executive with the power of pardon) with a

good reason for choosing a punishment at the lower rather than the higher end of the range.

It is, of course, important that any system that rewards repentance (and thus, like our present system of plea bargaining, gives defendants strong incentives to fake it) develop safeguards against counterfeit repentance. As Montaigne observed, “These men make us believe that they feel great regret and remorse within, but of amendment and correction or interruption they show us no sign....I know of no quality so easy to counterfeit as piety.”

Legitimate caution here, however, should not lead one to adopt the radical skeptic or cynical view that we can never have reasonable grounds for thinking that repentance is genuine. It is indeed hard to know another’s mental states or states of character; but, as our reasonably comfortable use of *mens rea* (i.e., a requirement of intention) in the criminal law illustrates, we do not generally regard knowledge of mental states as impossible.

A truly repentant wrongdoer is recommitted to community values, requires no additional special deterrence, and—on a theory of retribution that bases criminal desert on character rather than victim grievance—even deserves less punishment than a wrongdoer who is unrepentant. When one could promote the goods represented by these considerations without compromising the legitimate goals of crime control and grievance retribution, it would seem irrational—even cruel—not to do so.

A FINAL THOUGHT: REPENTANCE BY THE COMMUNITY

When one thinks of repentance in connection with criminal punishment, one tends to think that all demands for repentance must be addressed to the criminal. But surely the community—through its patterns of abuse, neglect, and discrimination—sometimes creates a social environment that undermines the development of virtuous character and makes the temptations to crime very great—greater than many of us might have been able to resist if similarly situated. The idea here is not that criminals, if they are from social groups that are poor or despised or abused or discriminated against, are not to any degree responsible for their criminality. They are. As a part of

their dignity as human beings, they must be seen as responsible agents and not merely as helpless victims.

But their responsibility is sometimes shared with those of us in the larger community. In these cases, we too may be legitimately called upon for repentance and atonement—attitudes of mind that should prevent us from thinking of criminals as totally other and should thus moderate our tendencies to respond to them with smug and self-righteous viciousness. The wise and forgiving view that Felicia (in William Trevor's novel *Felicia's Journey*) came to adopt toward the man who tried to murder her surely admits of a wider application: "Lost within a man who murdered, there was a soul like any other soul, purity itself it surely once had been."

Residential Community Associations: Community or Disunity?

DANIEL A. BELL

Champions of civil society from Alexis de Tocqueville to Robert Putnam contend that intermediary associations between the family and the state generally have favorable effects on the polity at large. Associations such as churches, community centers, labor unions, and PTAs are said to break down social isolation and allow people to cooperate and to discover common interests that may otherwise have gone unnoticed. They are, in Tocqueville's words, "large free schools" where citizens "take a look at something other than themselves." In them, political interests are stimulated and organizational skills enhanced, thus countering the disposition to give precedence to personal ends over the public interest and leading to a broader notion of public-spiritedness.

Of course not all intermediary associations are said to produce desirable consequences of this sort. Tocqueville himself made a distinction between "American" associations that allow for and encourage independent behavior and "French" associations that are tyrannical within themselves, thus producing passive and servile behavior instead of training members in the use of their energies for the sake of common enterprises. Along these lines many civil society theorists argue that in an overall authoritarian context, associations will reproduce hierarchical relationships within themselves and reinforce political apathy, whereas in a democracy, citizens tend to freely and equally associate within groups, developing participants' taste for collective benefits, and eventually forging a sense of common purpose in the wider political community.

Senator Bill Bradley expresses a similar viewpoint in the Spring 1995 issue of *The Responsive Community*: "Civil society...is the sphere of our most basic humanity—the personal, everyday realm that is

governed by values such as responsibility, trust, fraternity, solidarity, and love. In a *democratic* civil society such as ours we also put a special premium on social equality—the conviction that men and women should be measured by the quality of their character and not the color of their skin, the shape of their eyes, the size of their bank account, the religion of their family, or the happenstance of their gender.”

The problem with this view is that a *liberal* democratic society also gives people a right to freely associate in communities not governed by such virtues as fraternity and social equality. If people want to form hierarchical and exclusivist communities such as, for example, the Mormon church, they have a right to do so. And even if certain civic associations do allow members to freely and equally participate in the internal life of the community, there is no reason to expect that outsiders will be the beneficiaries of what can be termed “internal democracy.” As Yael Tamir puts it, “the reality is that one necessary feature of group life is drawing a distinction between insiders and outsiders, and development of loyalty to the former at the expense of the latter....Associations may foster among their members feelings of respect and reciprocity but they often promote self-interested behavior towards outsiders.” Such is the price of living in a liberal society—only a tyrannical regime would try to force people to join communities governed by a particular set of virtues meant to forge an attachment to the overall political community.

But what if associations in civil society begin to seriously undermine attachment to the polity at large, maybe even to erode the bare minimum of social cohesion and trust needed to promote social justice and sustain the democratic process? Unfortunately, this is more than a theoretical possibility in view of the worrisome social and political implications arising from a relatively new type of civic organization known as “Residential Community Associations” (RCAs). Almost unnoticed by academics and government officials, more than 32 million Americans—one in eight—live in homes and condominiums as members of over 150,000 RCAs, a number that may exceed 50 million by the year 2000. This essay will look at the political implications of these private communities.

WHAT ARE RESIDENTIAL COMMUNITY ASSOCIATIONS?

A residential community association is a form of communal home ownership that developers adopted in the early 1960s as land suitable for traditional suburban homes became more expensive. Instead of building single-family homes surrounded by large private yards, developers turned to a more economical way of building a new kind of suburban home at prices most middle class families could afford. The concept was first pioneered in such planned communities as Radburn, New Jersey. Smaller individual lots were built and supplemented by common areas for recreation and other activities, areas owned and managed by the residents themselves. New housing in all regions is increasingly RCA housing, but they are most common in the suburban areas of California, Florida, New York, Texas, and Washington, D.C. As of 1990, 61 percent were classified as condominium associations (typically located in multi-family, multi-story buildings) and 35 percent as homeowner associations (detached single-family homes or townhouses with common areas).

RCA developments have three distinct legal characteristics: common ownership of facilities used by all residents (e.g., swimming pools, parking lots, parks) who are assessed fees to pay for these facilities and for private services such as police protection, snow removal, and garbage collection; mandatory membership in a non-profit homeowner association; and the requirement of living under a set of private laws drawn up by the developer (known as “covenants, conditions, and restrictions,” or CC&Rs) and enforced by fellow residents elected to a board of directors. It is the latter characteristic that has drawn the most controversy thus far.

PROTECTION OR PATERNALISM

CC&Rs are put into place on the assumption that most homeowners prefer to forsake some private property rights to the group in exchange for protection against unwelcome change, such as a depreciation of property values or a deterioration in the neighborhood’s aesthetic appearance. But some CC&Rs are also said to impinge upon quite intimate areas of the residents’ private lives. The CC&Rs can empower the association’s board of directors to decide what color homeowners can paint their house or condo-

minium, how many people can spend the night in a home, how often homeowners must mow their lawn, and whether to allow household pets, day-care centers, satellite dishes, commercial vehicles, or basketball hoops. Some community associations have even banned political signs, prohibited the distribution of newspapers, and forbidden political gatherings in the common areas. Evan McKenzie, author of *Privatopia: Homeowner Associations and the Rise of Residential Private Government*, reports some particularly egregious cases:

- In Ashland, Massachusetts, a Vietnam War veteran was told that he could not fly the American flag on Flag Day. The board backed down only after the resident called the press and the story appeared on the front page of a local newspaper.
- In Monroe, New Jersey, a homeowner association took a married couple to court because the wife, at age 45, was three years younger than the association's age minimum for residency. The association won in court, and the judge ordered the 60-year-old husband to sell, rent the unit, or live without his wife.
- In Santa Ana, California, a 51-year-old grandmother received a citation from her condominium association for violating an association rule against "kissing and doing bad things" while parked one night in the circular driveway. She acknowledged kissing a friend good night, but retained an attorney and threatened legal action. A press report quoted her as saying, "Somebody, or a group, has decided to invade my privacy. And it just doesn't feel right to say, 'Let them get away with it.'"

Such rigid enforcement of rules against people's use of their own homes has led an increasing number of residents to file lawsuits against association board members. Critics also advance the charge that CC&Rs are often of questionable legitimacy because residents can be tricked into buying a home unaware of the accompanying restrictions on personal freedom. In addition, the whole process is denounced by some for having a number of antidemocratic features: CC&Rs initially put into place by developers can sometimes only be changed with great difficulty (e.g., by a unanimous consent rule); association board members entrusted with enforcing CC&Rs are not elected according to a one person one vote principle (most significant, renters living in residential community associations are disenfran-

chised, since voting within RCAs is based on ownership, not residence); and few eligible voters even bother to participate in association elections.

The fact remains, however, that RCA residents generally seem happy with their lot, and the lack of interest and participation in the internal workings of homeowner associations can plausibly be interpreted as an indication that the system works to the satisfaction of most people. If the concern is to protect the interests of *residents*, many of the problems are potentially corrigible. Robert Jay Dilger, author of *Neighborhood Politics: Residential Community Associations in American Governance*, notes that laws can be passed to ensure that potential buyers are given the opportunity to fully understand CC&Rs and other RCA-related documents and to make it easier for RCA members to terminate or modify CC&Rs (e.g., by a majority vote or a two-thirds vote). In California a new law was passed that requires two parties involved in a legal dispute in a homeowners association to try to resolve the conflict through nonbinding mediation or arbitration before they file a lawsuit. Relatively noninterventionist regulations of this sort can minimize the number of lawsuits and the harassment of residents by RCA board members.

RELINQUISHING YOUR RIGHTS—CAN YOU DO THAT?

But there still remains the legal question of whether some association covenants violate constitutional rights. In the case of *City of Ladue v. Gilleo* in June 1994, the U.S. Supreme Court unanimously declared as unconstitutional a Ladue, Missouri city ordinance that banned all residential signs. The court ruled that the ordinance violated a property owner's right to freedom of speech. If *Ladue* is used to challenge the constitutionality of an RCA's restrictive covenant that bans residential signs, this case may also apply to community associations. The court may find that RCAs operate as *de facto* local governments rather than as private associations—recall that the actions of an individual or an entity can violate constitutional rights only if those actions constitute “state action”—and RCA advocates worry that many other CC&Rs could thus conceivably be struck down as unconstitutional. CC&Rs that allow associations to enter an owner's unit for the purpose of inspection or maintenance may be

found to violate the right to privacy. A guideline regulating holiday lights may violate an owner's freedom of religion. Restrictions on the colors of paint permissible may be said to violate an owner's freedom of expression. And so on.

But even if the Supreme Court holds RCAs to the same standards as local governments, the whole restrictive covenant regime need not be called into question in view of the fact that local governments themselves are permitted regulations that, for example, restrict the exterior color and architectural style of homes and businesses in the interests of aesthetics and community stability. Nonetheless, some RCA groups and state governments are already taking precautionary measures against the possibility of an unfavorable judgment. Some CC&Rs are being modified to allow for temporary political signs and, at the government level, the state of California has passed several laws to control the content of the original governing documents and thus protect homeowners from abuses.

Whatever the outcome on the legal front, one suspects that many social critics will still find it hard to believe that millions of Americans actually prefer to live in an environment tightly regulated by CC&Rs. Evan McKenzie, for example, notes disapprovingly that RCA boards "exercise power over members...in vital areas of concern, in that their decisions govern what individuals do in the privacy of their own home and what they do with the physical structure of the house and its surroundings. Their actions touch on what is perhaps the most basic human drive: the desire to exercise control over our immediate environment."

But is it really the case that the most basic human drive is "the desire to exercise control over our immediate environment?" If many Americans genuinely prefer to accept restrictions on individual freedom for the sake of owning a home in the context of a stable and prosperous neighborhood, should the state "force them to be free?" As University of Virginia School of Law Professor Clayton Gillette puts it, "There seems something anomalous about arguing for protection of groups such as orthodox Jews or the Amish when their cultures conflict with majoritarian norms while opposing similar license for those who seek residence in artificially pastoral settings free from technologies that they deem unsightly or who live in such

fear of crime that they literally wall themselves off from the outside world.” If the only concern, in short, is to protect the interests of RCA *members*, extensive governmental (or judicial) regulation of the internal workings of RCAs does not seem justified. There is little evidence that most members value individual autonomy—defined as a desire to maintain the maximum feasible amount of *ongoing* control of one’s immediate environment—as an essential human interest. Thus it would be difficult to assert that RCA members view CC&Rs as a serious threat to their “desire to exercise control.”

Unlike the Amish and orthodox Jewish communities, however, RCAs are large in number and have the potential to significantly affect the lives of *nonmembers*. And once we take into account the impact of RCAs on nonmembers and the attendant implications for political life in America, a more worrisome story emerges.

COMMUNITIES OR PRIVATISTIC ENCLAVES?

RCAs seem to exemplify many of the characteristics of civic associations celebrated by Tocqueville and his intellectual heirs. They are generally small in size (the average association has approximately 150 units), well-organized, and provide most members with the opportunity for participation in local public affairs. One might thus be led to expect that RCAs foster norms of generalized reciprocity and social trust that contribute to the benefits of associational life, such as those described by Robert Putnam in his now famous article “Bowling Alone”: “better schools, lower crime, faster economic development, longer lives, and more effective government.”

Not surprisingly, RCAs are in fact promoted on the grounds that they provide all the benefits of village democracy. As the Urban Land Institute put it in one of their studies, “The home association is an ideal tool for building better communities...The explosive growth of our cities, their trend to giantism, and the high mobility of their residents are rapidly destroying a sense of community among individuals in America...The best possible way to bring about—or to revive—a grassroots sense of community is for homeowners to control nearby facilities of importance to them and through this to participate actively in the life of their neighborhoods.” On this view, participation in RCA governance encourages people to become more

knowledgeable about local political affairs, to view the world from the perspective of the neighborhood as a whole, thus broadening the participants' sense of self and developing habits of public-spiritedness that spill over into the larger political world.

The reality, however, is almost the inverse of the myth. As both Dilger and McKenzie document, instead of functioning as facilitators of civic virtue, RCAs allow and encourage "citizens" to act as privatized individuals who participate in public affairs only for the most narrow of self-interested reasons, with profoundly detrimental consequences for the public at large.

Some of the consequences are indirect, not necessarily the effects of conscious political decision making. RCAs give middle and upper income city residents the opportunity to leave the urban setting, either literally as in a move to a new suburban community or in the functional sense of moving to a fortified condominium in a gentrified downtown neighborhood. This amounts to, McKenzie argues, a gradual secession of the well-off that would leave the city stripped of much of its population and resources, exacerbating the social and economic problems of the city and the cleavage between rich and poor. As a warning on the likely effects of RCA housing, McKenzie invokes the voice of Charles Murray: "I am trying to envision what happens when 10 or 20 percent of the population has enough income to bypass the social institutions it doesn't like in ways that only the top fraction of 1 percent used to be able to do....The Left has been complaining for years that the rich have too much power. They ain't seen nothing yet." Murray predicts that cities will come to be viewed in much the same way mainstream America views Indian reservations today, as places of squalor for which the successful would acknowledge no responsibility.

Perhaps this grim diagnosis of the future could be avoided if RCAs served as forums for lively political exchanges and debates, with members learning to think about common purposes and eventually entering the political realm with a certain amount of civic virtue and concern for the less well-off. As mentioned previously, however, few members actually participate in RCA meetings (though, as Dilger notes, RCA member turnout at general membership meetings is higher than the turnout rate for all adults at local government

elections). According to a California survey most RCA members collectively participate in their association's business only when they feel threatened by its decisions or the actions of outsiders. More worrisome, political activity seems to take the phenomenon of NIMBY (Not In My Back Yard) to new heights. Consider the following examples:

- RCA members in California mobilized with the aim of opposing a proposal to build a second high school for the city of Redlands near their homes. Dilger notes that 29 out of 30 speakers at a local government public hearing identified themselves as members of RCAs, and they were unanimous in their view that building the high school at the proposed site would increase traffic, litter, criminality, loitering, drug use, and noise in and around their neighborhoods, thus adversely affecting their property values and their neighborhood's aesthetic appearance. The local school board was apparently impressed by these arguments and subsequently announced that the new high school would be built in a location where there were few RCAs to contend with.
- RCA members in Indiana sought to prevent the creation of a group home for developmentally disabled individuals within their subdivision. Covenants that governed the subdivision restricted the use of lots within the subdivision to "single-family or two family dwellings," and while the state had enacted a statute invalidating restrictive covenants that prohibited the use of "property as a residential facility for developmentally disabled or mentally ill persons," association members went to court and won. The state statute was struck down because it was said to violate the contract clause of the state constitution, insofar as it applied to preexisting restrictive covenants. (The court considered such covenants to be issues of private concern, rather than of public policy.)

It is unlikely that participating in this kind of local politics teaches the "lessons" that Tocqueville had in mind. Instead of being "schooled" in civic virtue and increasing commitment to the good of the overall society, participants learn to act *in opposition* to the interests of the wider community and to evade their responsibility for a fair share of

the burdens (e.g., housing the mentally ill) that political communities normally undertake.

Critics point to another manifestation of RCA politics, one with similar negative effects on nonmembers. Local government officials and even state legislatures are facing increasing demands from RCA members for tax reimbursements for the provision of local services such as snow and ice removal, street lighting, and the collection of garbage. RCAs argue that since they pay for their own services through their homeowner associations, why should they pay property taxes for duplicating public services that they do not need? The problem, as McKenzie explains, is that for RCA members “tax equity” means that they would provide for their own private parks and private streets, from which the public could be excluded, while members would still make use of outside services such as public parks and streets, for which they would not have to pay. And one may add that RCA members in all likelihood would expect federal disaster relief aid if, say, severe floods or earthquakes hit their local communities.

Nonetheless, the issue of double taxation is gathering steam among those who live in RCAs. In Naugatuck, Connecticut, according to McKenzie, an organized RCA contingent made double taxation an issue in a local election and claimed to have “turned the town around from being completely Democratic controlled to Republican controlled....We were a force to be reckoned with.” In New Jersey, a law was recently approved requiring all cities to reimburse RCAs for the cost of providing for their own snow removal, street lighting, and trash collections. On an even larger level, a nationwide RCA voting bloc is a possibility. As Dilger explains, “Another tax equity issue involves the national government. It allows taxpayers to deduct their property taxes from their taxable income when determining national tax liability....To promote tax equity, RCA members want the national government to allow them to deduct from their taxable income the portion of their assessment fees used to pay for services that are provided by their local government to other residents in their community.”

The consequences of greater political participation by RCA members are predictable: for members, a decreasing sense of loyalty and

commitment to the national community and the local communities in which their RCAs are located; for nonmembers, a decreasing tax base to provide for public services; and for the nation as a whole, greater alienation from the political system and an increasing gap between rich and poor.

NEITHER NATURAL NOR INEVITABLE

If the above diagnosis is at least partly correct, the United States needs to pay more attention to the baleful effects of RCAs on the public sphere. Whereas extremist forces among certain ethnic groups may be a more visible cause for worry—for example, Diane Ravitch worries about the possibility that “if all we have is a motley collection of racial and ethnic cultures, there will be no sense of the common good. Each group will fight for its own particular interests, and we could easily disintegrate as a nation”—in actual fact RCA mobilization constitutes a far more serious long-term threat to the public good. They are more numerous, more powerful, more wealthy, and potentially better organized than any marginalized ethnic group can ever hope to be now or in the foreseeable future.

So what can be done to make RCA growth a matter of public debate and concern? First and foremost, it is important to emphasize that the development of RCAs is not “natural.” They are scarcely existent in the rest of the industrialized world. But in the United States, the national and local governments facilitate the formation and expansion of RCAs. Developers make contributions to local politicians who then provide municipal assistance of various kinds (e.g., infrastructure, public regulation of the land surrounding RCAs) that help to keep development costs as low as possible. Sales are promoted by having transportation (especially freeways) near RCAs. And most explicitly, the Federal Housing Administration helps by advocating RCA construction in its own publications and by providing developers with federal mortgage insurance and hence assuming much of the risk should RCA projects prove to be unprofitable.

Thus one can question whether or not public authorities should continue to promote the construction of RCAs as opposed to, say, insuring loans for modernizing older homes or for building more cooperative housing. On another level, local governments could use

their zoning powers to make entry-level housing more affordable by encouraging developers to build smaller lot sizes and placing public parks and other recreational amenities within walking distance of these homes. Zoning can also be used to help promote home construction in relatively heterogenous settings (with a mixture of social classes, cultural groups, and residential and commercial uses). Some urban planners propose that RCAs themselves can be reorganized around principles more beneficial to the polity at large—for example, covenants that favor mixed-income homeowners and mixed-use neighborhoods. Perhaps the granting of favorable zoning decisions and mortgage subsidies to relatively civic-friendly RCAs can be raised as a public issue.

The statement (by historian Kenneth Jackson) that “no agency of the United States government has had a more pervasive and powerful impact on the American people over the past half-century than the Federal Housing Administration” may be a slight exaggeration. But there is no doubt that more public scrutiny must be brought to bear on the social and political implications arising from the FHA’s administrative preferences and the zoning authority delegated to local governments. It is an area of public policy that demands our attention.

Public Deliberation: What Talk Radio Can't Do

DAVID MATHEWS

Why make a case for public deliberation? Because it is an endangered political species and not many people are alert to the danger. This is one endangered species that is not the subject of a documentary, not even a news story. Yet we are going to need more public deliberation to get through the political upheavals of the nineties. Just as it takes “a lot of loving to make a home,” it takes a lot of deliberation to make democratic communities.

The heart of the case for public deliberation is that it is essential for responsible public action—that is, people acting together to solve their common problems. Before we can act together, we have to decide *how* to act. Though we need not completely agree on one program or action, we must share a sense of purpose and direction in order to move ahead. To increase the chances that our decisions will be wise, we need to go beyond merely sounding off, arguing over solutions, or talking *about* issues. We have to talk *through* issues and struggle with the hard choices that every issue entails—weighing the pros and cons of every option. That is deliberation.

Still, for all of its importance, deliberation is easily dismissed. The conventional wisdom does not distinguish public deliberation from general discussions or other forms of public talk. Some critics write off any kind of public talk as a waste of time, and the more generous just see it as a form of political therapy—any sort of talk will do if it makes citizens feel better. Deliberation, however, is not just any kind of talk; it has a specific and critical role to play in a democracy.

Deliberation, or a deliberative dialogue, has a precise meaning. Etymologically “dialogue” refers to making a choice about how to act. Originally the word meant examining and selecting. (It still means “to choose” in modern Greek.) The role of a deliberative dialogue is to

prompt action by making a choice about how to act. It is not something distinct from action, it is an ingredient of action.

“Deliberative” is an appropriate adjective for dialogue because it tells us about the kind of thinking that is integral to this kind of public talk. The word has roots in the practice of putting pound weights on one side of a scale and produce on the other side in order to determine value. Making choices about how we should act as a public requires *carefully weighing* the costs and consequences of possible actions—as well as the views of others on those costs and consequences. This weighing increases the chances that our choices will be sound. For a choice to be sound, we have to know—and be willing to accept—the consequences of our actions on what is most valuable to us. We cannot know that without deliberation.

Deliberative dialogue is not group think. It does not homogenize different points of view nor merely tolerate diverse perspectives. Deliberation uses differences. It builds on each person’s unique perspective in creating a comprehensive picture of political realities. Deliberative dialogue, which is surely more than a casual discussion, is also quite different from a debate. The objective is not for someone to win; the objective is to make sound decisions.

Tellingly, while not all languages use the Latin-based term “deliberation,” they usually have a way to describe this kind of talk and reasoning. For example, Hungarians describe the way they make a choice—one with serious consequences for what is most valuable to them—as being like “talking in a family circle.” This seems an apt phrase. It expresses both the importance of the decision and the bonds between those making the decision. Yet in the United States, where we not only have the word “deliberation” but have books on the subject, we seem to have forgotten the importance of deliberation in the public sphere.

CAN THE PUBLIC BE TRUSTED?

The problem is not that deliberation itself is rare. Major businesses and civic leaders deliberate among themselves all the time. And, like Hungarians, Americans deliberate in their families and private lives. People know what it means to weigh carefully costs and

consequences before choosing a job or buying a house. The problem is that we do not think about taking deliberation into *public* life. We do not see the necessity of the *public* deliberating.

Why? The source of the problem is that politics as usual has no provision for the public to make choices that require deliberation. Conventional politics does not consider the public a political actor. The public, the citizenry, is the *object* of politics. Citizens are clients, consumers, constituents. While they may react to the services they receive or to the political leaders who represent them, they do not produce anything political themselves. Too absorbed in their private lives and too limited by their private interests, supposedly they are incapable of such political action.

What is worse, the criticism continues, peoples' opinions are too fickle to guide political decisions and no amount of deliberation can remedy that. Even those who might concede that deliberation could have a useful effect on opinions about purely local issues would insist that the citizens' opinions have—and should have—limited effect on national policy. They would point to instances where citizens favored one course of action and the government, wisely and courageously, took just the opposite course (perhaps citing foreign aid as an example). The charge would be that popular opinions are too inconsistent, too irrational, too prone to change to be a basis for government policy.

This criticism makes no distinction between *popular* opinion and *public* judgment. Popular opinion consists of first impressions and individual reactions, whereas public judgment is the more reflective and shared response of people who have spent some time deliberating. Even though this distinction is important, one should not go as far as to argue that even a deliberative public will always make sound choices. While deliberation increases our chances of acting wisely, it is no guarantee. Yet to charge that people are not capable of deliberation, that deliberation has no effect on attitudes, or that all forms of opinion are unreliable, is to make overstatements as silly as claiming that the voice of the people is the voice of God.

Consider the study that Benjamin Page and Robert Shapiro have done on the quality of public attitudes over the long term (as contrasted to the reactions captured in polls). Based on their analysis

of citizens' responses to thousands of questions on a variety of policy issues over 50 years, Page and Shapiro found that long-term attitudes have been quite stable, rational, and consistent. They found public attitudes to be stable in that they changed incrementally in understandable response to real changes in circumstances. They were reasonable in that people had clear reasons for their attitudes. And the public's views were consistent in that the policies people favored corresponded to what they considered valuable. What produced this consistent, rational, stable public judgment? Page and Shapiro concluded that the "cool and deliberate sense of the community" had prevailed. They added a warning, however. They worry that certain changes—such as the decline of town meetings and the spread of modern election campaigns that rely on images at the expense of substance—are reducing opportunities for public deliberation.

FALLING UPON DEAF EARS?

The case against deliberation is made from another angle, not by claiming that deliberation is not possible or does not affect attitudes, but by arguing that what the public does has no effect on policy. Even if the public does deliberate and make sound judgments, the government—those in power—will not respond. There are any number of instances, such as the public's support of gun control, that might lead one to this conclusion. This is not a question about the power of deliberation; it is a question about the power of the public itself. And there is no denying that the public, *in the short run*, is no match for special interests with a great deal of money or other constellations of power.

But what of the long term? The reality is that although public deliberation can affect policy-making, it rarely works overnight—and for good reason. Most political issues, even the problems of one community, take time to understand and act on. As Daniel Yankelovich has shown, changing a major policy can take a decade or more as the public moves through the numerous stages leading to public judgment. The role of deliberation is to keep that long journey on track and out of unproductive complaining and blaming. Deliberation is not good at quick fixes; it is more likely to be used in recovering from them.

Looking for immediate impact misses the gradual and cumulative effects of public deliberation. Does the deliberation of citizens eventually affect official policy-making? There is considerable evidence that it does. Page and Shapiro found many issues where public opinion developed independent of government policy and paved the way for a change in that policy. For instance, the gradual change favoring more pragmatic relations with what was once called Red China shows how public opinion anticipated and provided a foundation for what Presidents Nixon and Carter would do two decades later.

Those who have been responsible for making official policy, such as the late Secretary of State Dean Rusk, have testified to the power of public opinion and the inability of the government to sustain long-term policy without public support. In Rusk's words, "At the end of the day, the American people are going to have to decide. No president can pursue a policy for very long without the support and the understanding of the Congress and the American people. That's been demonstrated over and over again." On issues that citizens care about deeply, there is usually a rather high congruence between official positions and the views of the public.

REVIVING A LOST ART

While making the case for public deliberation by taking on each criticism point by point might be effective in a class on logical reasoning, the case is being tried today in an atmosphere where anything public is suspect. Headlines now warn that "the people are a dangerous master." The frequent referenda in California are described as destroying government by plebiscite. We are revisiting the ancient charge that democracy will lead to mob rule. In this charge, though, the distinction between popular and public is again lost. Whether we have mob rule or a responsible public—in fact whether we have a public at all—depends to a large measure on how much deliberation we have. Studies of how private individuals become public citizens show how important deliberation is when people are answering key questions such as: "Does this issue affect what is valuable to me?" "Can I do anything about the problem?" "Will anybody join me?" And when it comes to elections and referenda,

states are learning that it is dangerous for people to vote unless they have talked among themselves first. Deliberation is the DNA of democracy; it both forms and informs a public.

Given our differences and the current distrust of authority, we do not have much choice but to deliberate with each other. We cannot continue the practice of talking *about* one another more than we talk *with* one another. Public deliberation is the only democratic alternative to sound bites, talk-show emotionalism, and partisan rancor.

Happily, there are Americans trying to keep deliberation alive in their communities and in the country. Though endangered, these kinds of citizens are not extinct. Often dismissed because they do not have immediate, tangible, and dramatic impact, they persist in deliberating in thousands of national issues forums, study circles, and league meetings. It is a good thing they do. We are all beneficiaries of the public judgment and public action that grow out of these Americans holding counsel with one another. Maybe, in time, we will be able to hear what their example is trying to tell us about an essential element of all forms of democratic politics.

Disagree with one of the essays you read in this issue? Don't hold back. Put your thoughts on paper—or on disc—and send us a commentary. Fewer than 700 words, please. See page 3 for our address and fax number.

When “Taxpayers” Become “Citizens”: One Mayor’s Story

DANIEL KEMMIS

When I first ran for the city council, almost half of the 60,000 people inhabiting the Missoula, Montana urban area actually lived within the city limits. The other half lived “in the county,” in neighborhoods indistinguishable from “the city” except by the fact that their city neighbors paid for all the services and investments that enable a city to be a city. Those living “in the county” derived all the benefits of economy and culture that only a city can provide, and for which they chose to live right next to the city (which they might acknowledge in an unguarded moment), but for which they had so far not had the privilege of paying.

It happens that my tenure at city hall has coincided with a substantial shift in this state of affairs. A series of major annexations has increased the city’s population by more than 50 percent, and while most of them would have occurred under anyone who happened to be mayor just at this time, I have steadfastly if not stubbornly nudged the annexations forward, a stance that has put me time and again in what friends have come to call my Daniel in the Lions’ Den role.

The scene for this little drama is always a junior high school gymnasium. The mayor and a few of his stalwart department heads sit at a table on the gym floor. One entire wall of bleachers seethes with “county residents” who have come to express their opinions about annexation. At some point during the evening, to ensure that those opinions are in fact expressed, someone, in the name of democracy, will ask if everyone who wants to be annexed would please stand up. When, to all our amazement, no one stands, this champion of democracy will turn to me with an expression of mingled rectitude and contempt, which I should by now know better than to engage.

Perhaps to my credit, I do not succumb to the temptation to suggest that the question is a little like asking if everyone who wants to be lynched by neighbors would please stand up. I do not even offer the argument that if you ask people whether or not they would like to keep getting something for nothing, or whether they would like to join their neighbors in being taxed for it, you can be pretty sure what the answer will be. What I do say, sometimes, is that perhaps the truly democratic approach would be to draw a line around what looks—from an aerial view—to be the city, and then let everyone who lives on the line vote on whether to be a city or not. There is in this argument enough logic (or at least enough of the kind of logic you would expect from a mayor) to slow the city-bashing temporarily, but it will soon be back up to full volume, and the mayor will once again be its personified target.

TWO-FACED POLITICIANS

Of all the insults I have fielded in these scenes (or allowed to bounce into the stands for a ground rule double) the one that has haunted me the longest occurred during the early stages of our third major annexation, the Reserve Street Corridor. From my seat on the gym floor, I had listened to a hostile inquiry about what the questioner saw as the city's hopelessly inadequate snow removal procedures, and had given what I thought was a balanced and fair enough answer. My questioner, though, stepped back up to the microphone, and with a sneer you could spread on a cracker, asked, "Now would you please turn your head so we can see your other face?" I was, his tone reminded us all, a politician. Worse, I was from the city. I had, then, to be lying. And the beauty of it was that nothing I could say would do anything but confirm that logic, since my words would still be the words of a shifty politician, so that the more convincing they might seem, the less they should be trusted.

At the end of that meeting, we asked several members of the audience to sign up for one of several committees to help the city address issues of zoning and land use, police and fire protection, sewer extensions, and park planning—issues that would have to be faced with or without their help if the annexation was in fact going to occur. Having witnessed the city's determination and ultimate suc-

cess in two earlier annexations, several members of the crowd decided to at least hedge their bets by trying to make this annexation as palatable as possible. Over the next few weeks, they outlined the issues, organized their committees, and elected people to chair them who then met with me and our city staff to plan the next public meeting.

Still hearing echoes of the “turn your head” remark, I suggested that the committee chairs, all from the area to be annexed, take on the job of running the next meeting. Their first response was astonished silence, followed by a clamor of universal rejection. This annexation, they reminded us, was our idea, not theirs, and they were not about to take this burden from my shoulders. I persisted, though, arguing that if their efforts to make the annexation work better for the neighborhood were going to gain broader legitimacy, we needed meetings that moved beyond city-bashing to the kind of engagement with the issues that they and their committees had already achieved. Finally one of the hardest-bitten of all the anti-annexation champions turned to her colleagues and said, “I hate to say it, but the mayor is right. If we want this meeting to be anything but a gripe and whine session, we’re going to have to run it ourselves.”

Which is what they did, sitting with us now on the gym floor, making it clear to their puzzled neighbors that they were still as opposed to the annexation as ever, but that they thought the neighborhood should see our bet (or call our bluff) about making the annexation more palatable. They went out of their way to explain that, while they still disagreed with me about the annexation itself, the purpose of the meeting was not to trash the mayor, but to work on the issues.

CIVILITY AND CITIZENSHIP EMERGE

None of these people had run such a large meeting before, and their neighbors, sensing this, tried to help them, at least on that score, to succeed. In deference to the committee chairs’ courage in taking on this task, their neighbors began paying closer attention and asking more germane and constructive questions than in the first meeting. When one still-angry resident, trying to rouse resentment against city taxes, asked how much of their tax increase would be going to the

mayor's salary, several people sitting near him groaned, and one man shouted from the other end of the bleachers, "That's not what we're here for!" When another self-described "taxpayer" complained about the city's propensity to waste money on nonsense such as riverfront parks and trails, I decided to appeal to the audience's pride in their city by describing how most Missoulians enjoyed showing off our riverfront to visitors, or taking them to Out to Lunch at Caras Park. Winding up with an unabashedly chauvinistic challenge to any other city in the region to match the charm of Missoula's riverfront, I was greeted, for the first time ever in one of these meetings, with a vigorous round of applause.

In an unexpected way, either the balance of power or the center of gravity had shifted substantially away from me at the very moment several members of the audience told their angry neighbor that my salary was not what they were there to talk about. By deflecting that form of criticism from me, they knew that they risked strengthening my hand in terms of what they had seen until now as a mere power struggle. But in fact, by claiming a kind of moral high ground, they had shifted authority away from the officials onto themselves, and when, a few minutes later, they applauded my remarks, it was from that position of moral authority that they did so. The stage for this shift had been set by the committee chairs when they decided to risk their own standing in their neighborhood by running the meeting. This was an act of courage, and their neighbors responded first with respect, and then with a positive response to the committee chairs' call for civility in the conduct of the meeting. And it was because they had made this implicit promise of civility that a number of what would otherwise have been angry "taxpayers" were able to take on the role of citizens as the meeting progressed. It was precisely when members of the audience took responsibility for the civility of the meeting that citizenship claimed its authority, and that the mayor and other officials could assume what I would argue is their own more modest and appropriate role.

The degree of civility that this handful of people brought to bear on this particular meeting may seem trivial compared to the intractability of the problems faced by most cities. In fact, I would suspect that most of the people who enforced civility in that setting would minimize its significance compared to the "real" issues of sewer

extension costs, snow removal, and fire protection that they had come there to talk about. But for my part, I would not trade that moment of “That’s not what we’re here to talk about!” for all the technical fixes I have ever encountered. If every meeting that dealt with a difficult public issue could, by its own dynamic, produce a half-dozen people who took upon themselves some measure of responsibility for the way people treated each other, we would solve problems at a much higher rate than most of us in most of our cities have ever experienced.

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Children, Parental Guidance, and Emotional Intelligence

DANIEL GOLEMAN

It is a low-key family tragedy. Carl and Ann are showing their daughter Leslie, just five, how to play a brand-new video game. But as Leslie starts to play, her parents' overly eager attempts to "help" her just seem to get in the way. Contradictory orders fly in every direction.

"To the right, to the right—stop. Stop. Stop!" Ann, the mother, urges, her voice growing more intent and anxious as Leslie, sucking on her lip and staring wide-eyed at the video screen, struggles to follow these directives.

"See, you're not lined up...put it to the left! To the left!" Carl, the girl's father brusquely orders.

Meanwhile Ann, her eyes rolling upward in frustration, yells over his advice, "Stop! Stop!"

Leslie, unable to please either her father or her mother, contorts her jaw in tension and blinks as her eyes fill with tears.

Her parents start bickering, ignoring Leslie's tears. "She's not moving the stick *that* much!" Ann tells Carl, exasperated.

As the tears start rolling down Leslie's cheeks neither parent makes any move that indicates they notice or care. As Leslie raises her hand to wipe her eyes, her father snaps, "Okay, put your hand back on the stick...you wanna get ready to shoot. Okay, put it over!" And her mother barks, "Okay, move it just a teeny bit!"

But by now Leslie is sobbing softly, alone with her anguish.

Excerpted from *Emotional Intelligence: Why it can matter more than IQ* (Bantam Books)

LASTING LESSONS

At such moments children learn deep lessons. For Leslie one conclusion from this painful exchange might well be that neither her parents, nor anyone else, for that matter, cares about her feelings. When similar moments are repeated countless times over the course of childhood they impart some of the most fundamental emotional messages of a lifetime—lessons that can determine a life course. Family life is our first school for “emotional learning.” In this intimate cauldron we learn how to feel about ourselves and how others will react to our feelings; how to think about these feelings and what choices we have in reacting; how to read and express hopes and fears. This emotional schooling operates not just through the things that parents say and do directly to children, but also in the models they offer for handling their own feelings and those that pass between husband and wife. Some parents are gifted emotional teachers, others atrocious.

There are hundreds of studies showing that how parents treat their children—whether with harsh discipline or empathic understanding, with indifference or warmth, and so on—has deep and lasting consequences for the child’s emotional life. Only recently, though, have there been hard data showing that having emotionally intelligent parents is itself of enormous benefit to a child. The way a couple handles the feelings between them—in addition to their direct dealings with a child—impart powerful lessons to their children, who are astute leaders, attuned to the subtlest emotional exchanges in the family. When research teams led by Carole Hooven and John Gottman at the University of Washington did a microanalysis of interactions in couples on how the partners handled their children, they found that those couples who were emotionally competent in the marriage were also the most effective in helping their children with their emotional ups and downs.

The families were first seen when one of their children was just five years old, and again when the child had reached nine. In addition to observing the parents talk with each other, the research team also watched families (including Leslie’s) as the father or mother tried to show their young child how to operate a new video game—a seemingly innocuous interaction, but quite telling about the emotional currents that run between parent and child.

Some mothers and fathers were like Ann and Carl: overbearing, losing patience with their child's ineptness, raising their voices in disgust or exasperation, some even putting their own child down as "stupid"—in short, falling prey to the same tendencies toward contempt and disgust that eat away at a marriage. Others, however, were patient with their child's errors, helping the child figure the game out in his or her own way rather than imposing the parents' will. The video game session was a surprisingly powerful barometer of the parents' emotional style.

The three most common emotionally inept parenting styles proved to be:

- *Ignoring feelings altogether.* Such parents treat a child's emotional upset as trivial or a bother, something they should wait to blow over. They fail to use emotional moments as a chance to get closer to the child or to help the child learn lessons in emotional competence.
- *Being too laissez-faire.* These parents notice how a child feels, but hold that however a child handles the emotional storm is fine—even, say, hitting. Like those who ignore a child's feelings, these parents rarely step in to try to show their child an alternative emotional response. They try to soothe all upsets, and will, for instance, use bargaining and bribes to get their child to stop being sad or angry.
- *Being contemptuous, showing no respect for how the child feels.* Such parents are typically disapproving, harsh in both their criticisms and their punishments. They might, for instance, forbid any display of the child's anger at all, and become punitive at the least sign of irritability. These are the parents who angrily yell at a child who is trying to tell his side of the story, "Don't you talk back to me!"

Finally, there are parents who seize the opportunity of a child's upset to act as what amounts to an emotional coach or mentor. They take their child's feelings seriously enough to try to understand exactly what is upsetting them ("Are you angry because Tommy hurt your feelings?") and to help the child find positive ways to soothe

their feelings (“Instead of hitting him, why don’t you find a toy to play with on your own until you feel like playing with him again?”).

LIKE PARENT, LIKE CHILD

In order for parents to be effective coaches in this way, they must have a fairly good grasp of the rudiments of emotional intelligence themselves. One of the basic emotional lessons for a child, for example, is how to distinguish among feelings; a father who is too tuned out of, say, his own sadness cannot help his son understand the difference between grieving over a loss, feeling sad in a sad movie, and the sadness that arises when something bad happens to someone the child cares about. Beyond this distinction, there are more sophisticated insights, such as that anger is so often prompted by first feeling hurt.

As children grow, the specific emotional lessons they are ready for—and in need of—shift. Many lessons begin in infancy, with parents who attune to their baby’s feelings. Though some emotional skills are honed with friends through the years, emotionally adept parents can do much to help their children with each of the basics of emotional intelligence; learning how to recognize, manage, and harness their feelings; empathizing; and handling the feelings that arise in their relationships.

The impact on children of such parenting is extraordinarily sweeping. The University of Washington team found that when parents are emotionally adept, compared to those who handle feelings poorly, their children—understandably—get along better with, show more affection toward, and have less tension around their parents. But beyond that, these children also are better at handling their own emotions, are more effective at soothing themselves when upset, and get upset less often. The children are also more relaxed *biologically*, with lower levels of stress hormones and other physiological indicators of emotional arousal (a pattern that, if sustained through life, might well augur better physical health).

Other advantages are social: these children are more popular with and are better liked by their peers, and are seen by their teachers as more socially skilled. Their parents and teachers alike rate these

children as having fewer behavioral problems such as rudeness or aggressiveness. Finally, the benefits are cognitive; these children can pay attention better, and so are more effective learners. Holding IQ constant, the five-year-olds whose parents were good coaches had higher achievement scores in math and reading when they reached third grade (a powerful argument for teaching emotional skills to help prepare children for learning as well as life). Thus the payoff for children whose parents are emotionally adept is a surprising—almost astounding—range of advantages across, and beyond, the spectrum of emotional intelligence.

Communitarian Criticisms and Liberal Lessons

Daniel A. Bell, *Communitarianism and Its Critics*
Derek Phillips, *Looking Backward*
Stephen Mulhall and Adam Swift, *Liberals and
Communitarians*

Reviewed by Peter Berkowitz

It is well known that a single work published in 1971, John Rawls's *A Theory of Justice*, has been largely responsible for placing a form of liberalism, one devoted to both the protection of individual liberty and the securing of the social and economic bases of equality, at the top of the agenda of academic political theory. Inadequate consideration, however, has been given to the fact that, even though liberalism has a long and varied history, the family of criticisms of liberalism that sprang up in the 1980s understood liberalism—even when not explicitly addressing Rawls's work—in roughly the way Rawls presented it.

This family of criticisms focused primarily on three areas: liberalism's alleged indifference to conceptions of human flourishing; its supposed exclusion of the pursuit of higher goals from the domain of politics; and its inattention to the ways in which a well-ordered society and a good life depend upon the exercise of virtue, the responsibilities of citizenship, and participation in a common political life. Somewhat misleadingly, this family of criticisms came to be known as the communitarian critique of liberalism.

The communitarian critique was promptly countered by a rejoinder from a variety of liberals, including Rawls himself. The liberal rejoinder tended to pursue two lines of argument: First, that the communitarian critics mischaracterized liberalism, attributing to it

rigid theoretical dichotomies and implausible assumptions about moral psychology and social life to which liberals were not committed either by intent or by implication; and second, that many of the practical reforms that communitarians endorsed were viable and indeed desirable within a liberal framework.

Several books published in the last few years show that the time is ripe to take a step back and assess the course that the argument between liberals and their communitarian critics has run. There can be little doubt that the debate has been fruitful for liberalism. It has spurred liberals to articulate a richer and more flexible liberalism that is less embarrassed to acknowledge its dependence on institutions, practices, and beliefs which fall beyond the range of the liberal theorist's special expertise and the liberal regime's assigned jurisdiction. This more reflective and self-conscious liberalism is also better able to recognize its limitations and thus take measures to compensate for its weaknesses and disadvantages. And thanks in part to the communitarian challenge, liberal theorists have increasingly come to appreciate the capacity of a liberal framework to respect the role of moral virtue, civic association, and religious faith in the preservation of a political society based on free and democratic institutions.

A COMMUNITARIAN CRITIQUE OF LIBERALISM

Daniel A. Bell, author of *Communitarianism and Its Critics*, might well take exception to the emphasis I have placed on the advantages that have accrued to liberalism as a result of its encounter with communitarian criticism. For Bell argues that communitarianism constitutes a distinctive and desirable alternative to liberalism, and in his book, a lively dialogue between two Ph.D. candidates, one a communitarian and the other a liberal, he seeks to set forth a communitarian moral vision and explore some of its political implications.

Bell's charming dialogue captures the spirit of the countless lively conversations that have transpired in university classrooms and cafeterias over the last decade as students have struggled to make sense of the varieties of criticism that leading communitarian theorists have leveled at liberalism. Yet Bell's dialogue is also valuable for the way in which it inadvertently displays a characteristic weakness of communitarian criticism. Although Bell plainly seeks to lay out the

best arguments available on both sides of the debate and often admirably succeeds, he stacks the deck against liberalism by idealizing his communitarian heroine while depicting her liberal antagonist as inept and slightly pathetic. By making the communitarian, Anne, cosmopolitan, loyal to friends and family, progressive, and sensitive to the variety of ways of being human, while depicting Philip, the liberal, as an insecure, uncultivated, smug, sexist boor, Bell gives dramatic expression to the tendency on the part of communitarian thinkers to direct their criticism against a narrow and one-dimensional understanding of liberalism.

This unfairness to liberalism should be embarrassing to communitarians, for in criticizing liberalism, communitarians have often neglected their own interpretive principle that to understand a belief or practice it is necessary to see it in the context of the tradition of shared meanings out of which it arose. Communitarians themselves have typically failed to appreciate that liberal thought is a tradition with a rich and varied history, and have neglected to understand liberal regimes in context as basic institutional frameworks for coping with a specific array of concrete challenges in a particular set of historical and cultural circumstances.

Bell understands liberalism as Rawlsian liberalism, and understands Rawlsian liberalism as a comprehensive doctrine that is rooted in a vision of the autonomous self always capable of standing apart from and revising its ends. This comprehensive doctrine, according to Bell, requires state neutrality toward competing conceptions of the good life and hence is incapable of remedying or even addressing the harmful effects of the atomizing tendencies generated by contemporary liberal society. Giving too much attention to individual choice and paying too little attention to the common good, liberalism, Bell maintains, is responsible for a variety of social pathologies and is unable to respond to “communitarian concerns about loneliness, divorce, deracination, political apathy, and everything else connected with the breakdown of community in contemporary Western societies” (p. 11).

Communitarianism, Bell argues, can offer a more compelling vision of the self, a richer account of politics, and a better understanding of the common good. And Bell maintains that communitarianism’s

superiority as a moral and political theory stems from the fact that it reflects our deepest shared understandings about the role that constitutive communities play in a well-lived life. Communitarians emphasize that human beings are not fundamentally autonomous or unencumbered selves but first of all social beings embedded in practices and beliefs that we do not make but which rather, in a sense, make us by constituting our identities and forming the frameworks within which we come to understand ourselves and know and care about others. From this metaphysical claim about the constitution of the self, and out of concern for the dignity and well-being of the *individual* selves that are so constituted (though they often fail to reflect on the provenance of *this* concern), communitarians infer the practical imperative to sustain and protect constitutive communities such as families, religions, the nation, and the variety of civic associations that give human life substance and depth.

Bell is aware of the standard liberal fears that communitarianism arouses—that communities can be conformist, stultifying, and seedbeds of prejudice and superstition, and that communities may trample over individuals in the quest to achieve collective goals—but he does not take them very seriously. He claims that such fears arise from purely abstract theoretical concerns but in practice do not reflect real threats. His own examples, though, suggest otherwise.

For instance, Bell quickly dismisses the idea that the German people's embrace of Nazism reflected anything important about their shared values. Instead he speculates that Hitler managed to seduce them into embracing ideas at odds with their "prevailing moral beliefs and intuitions" by exploiting Weimar's economic and political instability. Ironically, while Bell chides liberals for engaging in counterfactual history and neglecting the traditions of actual communities, he himself here substitutes a speculative hypothesis for a consideration of the considerable historical evidence that traditional German culture—especially the well-documented prejudice against the Jews that had marked German culture since the Enlightenment—made the Germans particularly vulnerable to Hitler's terrible demagoguery. Similarly, Bell briskly rejects the view that Apartheid reflected the "prevailing moral beliefs and values" of white South Africans. Instead, Bell suggests, Apartheid stemmed from a failure by white South Africans to recognize the import of their deepest beliefs

and intuitions. Maybe so. But Bell provides little evidence to support his suggestion and scarcely acknowledges the possibility that belief in the need to segregate the races—even if it was in tension with an unarticulated belief in the equality of human beings—was deeply held by white South Africans.

In short, in his effort to dispel liberal fears about the communitarian abandonment of universal moral standards or rights, Bell comes very close to relying on the hope that “prevailing moral beliefs and intuitions” always more or less conform to basic liberal or universal principles; when they appear not to do so it is only because the community has failed to recognize or live up to the principles most its own. Gliding by the experiences of actual historical communities, Bell escapes to abstract theory to arrive at the dubious proposition that communities cannot be constituted by deeply held beliefs that are wrongheaded or evil.

COMMUNITARIANISM?—OR LIBERALISM PROPERLY UNDERSTOOD

Bell believes that the theoretical differences between liberalism and communitarianism have important practical consequences, and he seeks to show the distinctiveness of communitarian theory by identifying policy recommendations for the United States that flow from it. His communitarian proposals include stricter divorce laws, legalization of gay marriage, mandatory national service, civic education, and in general, laws that encourage citizens to recognize that their own good consists in seeking the good of their nation.

But despite Bell’s insistence on the distinctiveness of communitarian theory, liberal principles are hard at work in his vaguely familiar amalgam of prescriptions. For example, Bell favors gay marriage in part based on the argument that homosexuals, like all citizens, “should have access to structures that enable them to express their identity” (p. 169). In other words, respect for individual choice and egalitarian claims about personal dignity and self-expression—the very stuff of contemporary left-liberalism—undergird Bell’s communitarian view that homosexuals be permitted by the state to enjoy such shared goods as flow from the institution of marriage.

In his suppressed but fundamental reliance on moral principles rooted in contemporary liberalism, Bell is not alone among communitarian theorists. For example, in an instructive article on religion and constitutional law, Michael Sandel appears to take a stand against liberalism by arguing that the liberal principle of neutrality embedded in recent Supreme Court jurisprudence not only unwisely limits the public role of religion, but also discriminates against those for whom religious belief is constitutive of their identities (“Religious Liberty—Freedom of Conscience or Freedom of Choice?” in *Utah Law Review*, 1989). Yet Sandel does not defend believers in traditional religion because he thinks their beliefs are true, or even useful to the larger political community. Rather, Sandel’s key criticism of the contemporary liberal doctrines of freedom of choice is that it “fail[s] to *respect persons* bound by duties derived from sources other than themselves” (p. 611, emphasis added). In effect, Sandel attacks contemporary liberal jurisprudence because it fails to make good on the liberal promise to respect persons by promoting neutral laws. Sandel does not so much argue against neutrality, but rather, animated by an appreciation of the ways in which individuals are constituted by attachments and obligations not of their own making, he argues in favor of a truer neutrality, a more expansive and inclusive notion of neutrality than that envisaged by Rawlsian liberals.

The time has come for communitarian-inspired theory to recognize the extent to which its criticisms and aspirations rest on and derive support from liberal principles. To do this, communitarians must avoid confusing Rawls’s liberalism with liberalism as such. They must develop a greater appreciation of the historical varieties of liberalism. And they must reflect upon the political institutions and social conditions that their visions of reform usually presuppose, in particular a limited constitutional government, and a free, democratic, secure, stable, and prosperous society.

In a revealing passage, Bell has his protagonist explain that there is no need for communitarians to worry about state coercion in measures designed to foster deeper communal attachments, because “basic civil and political liberties are taken as self-evident truths in liberal democracies, not in need of any justification” (p. 229). This belief, however, is historically uninformed and politically naive. As Rogers Smith has vigorously argued, liberalism in the United States

has always had to contend with multiple and conflicting traditions (“Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America,” in *American Political Science Review*, September 1993). Smith emphasizes, moreover, that liberalism’s triumphs have been achieved through great struggles; and recent controversies in the United States—the multicultural quest for inclusion, the attack on civil liberties at the universities in the name of upholding a civilized community life, the debate over electoral reform to insure minority representation—along with the explosion of ethnic and nationalist hatred abroad, suggest that liberalism’s struggles have by no means come to an end. What is especially needed now is a better understanding of the delicate interplay in liberal democracies between the goods of liberty and community, and a more supple appreciation of the alarming process by which the actualization of liberal and democratic principles has worked to corrode the very forms of association which sustain the practices of democratic self-government.

A LIBERAL CASE AGAINST COMMUNITY

Like Bell, but this time on behalf of liberalism, Derek Phillips seeks to drive a wedge between liberals and communitarians. In *Looking Backward*, Phillips argues that communitarian aspirations are in fact rooted in mistaken notions about the extent and quality of community in the past. Communitarian theorists, Phillips observes, routinely contrast atomistic and acquisitive liberal society to a past in which people enjoyed the benefits of rich and robust community life. But, Phillips charges, communitarian theorists seldom define carefully what is meant by community and rarely supply historical evidence to support their contention that community as they understand it was once widespread and vibrant.

Phillips sets out to correct these oversights. Drawing on key statements by principal communitarian thinkers, Phillips defines community as, “a group of people who live in a common territory, have a common history and shared values, participate together in various activities, and have a high degree of solidarity” (p. 14). He then seeks to refute or at least discredit communitarianism by showing that such community did not flourish during the periods—revolutionary America, the High Middle Ages, and classical Ath-

ens—that communitarians characteristically invoke. Yet the evidence of hierarchy, conflict, and severely limited political participation in each of these eras that Phillips assembles actually shows something quite different: What was rare in the past was a specific form of community, egalitarian community.

Such historical knowledge is a welcome element in all thoughtful consideration of programs for building community in the present. Yet one can no more refute communitarianism by revealing a historical association between a politics of the common good and hierarchical and fractious social relations than one can rebut liberalism by showing that it has a tendency to produce atomized individuals and a culture of narcissism. Critics of communitarianism such as Phillips, who focus on the shortcomings of the historical communities from which communitarian theorists draw inspiration, offer scant reply to the central communitarian criticism: By resolutely working to emancipate the individual from authority, liberalism has contributed to the breakdown of the family, the dissolution of religious faith, the neglect of the wisdom embodied in custom and tradition, the erosion of civic associations, and consequently, to the formation of self-centered, isolated, and apathetic individuals poorly suited to the demands of self-government.

Let us grant Phillips's key points: Egalitarian community seldom flourished in the past; the realization of an unqualified communitarian ideal would require an oppressive cultural homogeneity; a vigorous pursuit of community requires distinguishing members or insiders from nonmembers or outsiders and hence policies of exclusion; and a politics of the common good can be, and historically has been, an aristocratic undertaking by the wealthy few. What do such revelations tell us about the steps American liberalism may take, consistent with its own principles, to fortify itself by fortifying the various forms of community and voluntary association within the liberal state?

Phillips thinks that revelations about the patterns of community in the past are extremely damaging to the communitarian perspective. In forming this judgment Phillips, like Bell, sharply distinguishes between the communitarian and liberal viewpoint; and, like Bell, Phillips asks us to choose between a communitarian political theory focused on community, virtue, and the common good, and a liberal

one devoted to protecting individual rights and securing equality. But is this not a false choice?

TOWARD A LIBERAL SYNTHESIS

That the dichotomy on which Bell the communitarian and Phillips the liberal agree is false is one claim of an impressive and tightly argued volume called *Liberals and Communitarians*. The co-authors, Stephen Mulhall and Adam Swift, blend their voices to produce a sympathetic reconstruction of the twists and turns that the quarrel between academic liberals and their communitarian critics has taken, and in the process Mulhall and Swift effectively offer a “synthetic resolution.” Their fine book is not really an introduction but rather a perceptive and critical exposition, for those already immersed in the controversy, of the major voices in the debate over academic or Rawlsian liberalism. Although, as the preface explains, one of the authors has more liberal leanings and the other stronger communitarian inclinations, their book is not a conversation between the two authors, but rather the ripe fruit of a long dialogue between themselves and the political theorists whose views they explore. Mulhall and Swift conclude that a political theory that recognizes the primacy of the liberal principle of personal liberty or autonomy while giving due weight to the communitarian insight into the self’s dependence on constitutive communities is possible, desirable, and well on the way to being worked out by leading liberal theorists.

In their discussions of Rawls’s recent work and the liberalism of Joseph Raz, Mulhall and Swift indicate the nature of the “synthetic resolution” they favor by showing how communitarian considerations can be incorporated into a liberal framework. Thus, for example, they show that in *Political Liberalism*, Rawls in effect responds to the criticism that his theory of justice relies upon a controversial metaphysical notion of the autonomous self by arguing that the principles of liberal justice as he understands them should not be embraced on metaphysical grounds, but because they can be publicly justified to the vast majority of members of a pluralist society. His own theory of justice, he explains, is an elaboration of basic, widely shared intuitions about justice among citizens in liberal democracies.

Insofar as his empirical claim about what such citizens actually believe is correct, Rawls can be seen as engaged in the communitarian project of refining and elaborating his community's shared meanings. But this cannot be all that Rawls is doing. As Mulhall and Swift shrewdly point out, Rawls's motivation for finding and articulating the deepest beliefs of citizens and his commitment to the public justification of basic principles of justice is itself motivated by the liberal premise that citizens are free and equal, and that citizens show one another the respect each deserves by framing political arguments in terms that all reasonable persons can acknowledge.

Like Rawls, but more explicitly and deliberately, Joseph Raz rejects the hard and fast opposition between liberalism and communitarianism. Mulhall and Swift show that in *The Morality of Freedom*, Raz puts forward a perfectionist liberalism that defends autonomy as an ideal that liberal states should actively pursue. But autonomy, as Raz understands it, depends upon the discipline provided by a specific political culture and is achieved in a variety of voluntary associations and common activities. In carrying out its task of promoting autonomy, and consistent with the principle of toleration, the liberal state, Raz argues, ought to foster the forms of community in which autonomy can be most effectively exercised and most fully enjoyed.

By building on arguments and insights made prominent by communitarian thinkers, Rawls's political liberalism and Raz's perfectionist liberalism admirably exemplify the flexibility, sympathy for the viewpoint of others, and self-critical rationality that characterize the liberal spirit at its best. But their contributions to the liberal tradition should not be confused with the tradition itself. To appreciate the liberal spirit in its fullness, one must go beyond the local and at times parochial debate that Mulhall and Swift have so skillfully reconstructed. One must explore the neglected resources within the classical liberal tradition—a tradition ranging from Milton and Spinoza, through Locke, Montesquieu, and Madison, to Kant, Mill, and Tocqueville—to understand the always changing and ever elusive balance between right and duty, private life and the public good, and the claims of equality and the demands of excellence on which limited self-government depends. This is not at all to say that the liberal tradition has all the answers to the questions raised by critics,

communitarian or otherwise, but it is to maintain that one will not understand the real limits of contemporary liberalism before one understands liberalism at its best.

The communitarian critique of Rawlsian liberalism did a great service by focusing attention on dimensions of moral and political life that recent academic liberal theory had neglected. This was a genuine achievement. “Rights talk” is now balanced by attention to responsibility and duty; leading liberal thinkers find themselves preoccupied with the content of character; and concern for the dignity and well-being of individuals has been complemented by consideration of the role that communities play in forming individuals who are capable not only of caring for themselves and cooperating for mutual advantage, but also of developing enduring friendships, sustaining marriages, and rearing children.

Despite initial, giddy speculations about theoretical breakthroughs and eager expectations of the development of a new political alternative to liberalism, few communitarian critics are eager to say farewell to fundamental liberal principles. And liberal theorists have increasingly come to recognize that the practice of limited constitutional government, the protection of basic individual rights, and the promotion of virtues such as toleration depend in part on citizens who are experienced in the art of association. It is high time that the communitarian critique of liberalism be seen for what it has been at its best—in Michael Walzer’s felicitous phrase, a “communitarian correction” of liberalism, that is, a form of criticism generated by and especially pertinent within a liberal framework. The serious question is how well contemporary liberalism can be taught to care for what in the recent past it has been inclined to neglect—the responsibilities of citizenship, the cultivation of moral virtue, and the art of civic association—but which political theory and historical experience suggest it ignores at its peril.

ESPECIALLY NOTED

DANA MITRA

Torry D. Dickinson, *Common Wealth: Self-Sufficiency and Work in American Communities, 1830 to 1993* (Lanham, Maryland: University Press of America, Inc., 1995). 224 pp.

At the turn of the century, individuals and communities maintained a great deal of control over their material world through self-employment and informal work. But after World War II, communities were transformed by the impersonal forces of economic development and state welfare bureaucracy. According to Dickinson, nothing has shaped the structure of community life today more than this decline of informal work. Through historical analysis, Dickinson contributes to a revised understanding of how the U.S. working class formed and sustained itself. Dickinson thus asks: Can the work alternatives that sustained U.S. communities during the nineteenth and early twentieth centuries provide clues to alternatives to the low-wage service jobs and unemployment of today's global economy?

1995 Environmental Success Index (Washington, D.C.: Renew America, 1995). 148 pp.

Billed as a "clearinghouse of environmental success stories," the guide provides a snapshot of over 1300 programs across the country that have helped to improve the environment. The entries include a description of the efforts and full contact information.

Howard Kirschenbaum, *100 Ways to Enhance Values and Morality in Schools and Youth Settings* (Massachusetts: Allyn and Bacon, 1995). 269 pp.

This book describes the history and current intricacies of values education and also provides practical steps for implementing values-education programs in schools and youth settings. It includes exercises for groups to perform, curricula to teach, and tips on working with the community. This book is useful both

for those who want to understand the ideas behind values education and for those who want to get to work on implementing a values-education program in their communities.

Douglas W. Kmiec, *Cease-Fire on the Family and the End of the Culture War: A Family Handbook* (Notre Dame, Indiana: Crisis Books, 1995). 151 pp.

Family is the way out of today's culture war, claims the author. Law, media, and politics emphasize rights and the demands of individuals and thus they cannot promote personal and cultural virtues. Using both social analysis and moral reflection, Kmiec instead argues that through community-based agents—schools, the workplace, churches, and especially the family—an understanding of our responsibilities and an emphasis on the virtues that bind us together will bolster civility and cultural goodness, thus helping to put an end to the culture war.

DiversityWithinUnity

I want to be able to take special pride in a Jessye Norman aria, a Muhammad Ali shuffle, a Michael Jordan slam dunk, a Spike Lee movie, a Thurgood Marshall opinion, a Toni Morrison novel. . . . Even so, I rebel at the notion that I can't be part of other groups, that I can't construct identities through elective affinity, that race must be the most important thing about me. Is that what I want my gravestone: Here lies an African American? So I'm divided. I want to be black, to know black, to luxuriate in whatever I might be calling blackness at any particular time—but to do so in order to come out the other side, to experience humanity that is neither colorless nor reducible to color.

Henry Louis Gates

Uniforms in Public Schools: Deterrence to Violence or Window Dressing?

DAN GERSTEIN

Parents wish they could find a way to shroud their children from the threat of gangs and guns because of the proliferation of violence in America's inner-city schools. Many communities are, in fact, taking that quest quite literally. A growing number of public school systems are choosing to shroud their students in matching uniforms in hopes of eliminating intimidating gang regalia and the conflicts they generate, ultimately creating a more productive learning environment. Once a distinguishing badge of prep and parochial school students, uniforms can now be found in dozens of metropolitan-area public school districts across the nation.

The policies adopted by these public schools have been almost uniformly voluntary, for education officials have been wary of litigation arising from freedom of expression complaints. But that barrier was broken in January 1994, when Long Beach, California, became the first large district in the country to require all of its middle and elementary school students to wear uniforms. This mandate covers 57,000 students in 70 schools. Seven months later the envelope was stretched yet again, when the California state legislature enacted a landmark law that cleared the way for other school districts to implement like-minded compulsory uniform rules.

We can probably expect more communities to follow suit (and more suits to follow). Even the state of Iowa, not exactly a poster child for urban unrest, is contemplating a law similar to that passed by the California legislature.

One must ask, however: Is there any proof that uniforms limit intimidation and violence, instill a sense of pride in students, and contribute to improved attendance and academic performance? And if there is truly something to be gained, is it worth infringing on the individual autonomy of students and choking their ability to express themselves as they choose?

PRO: TOWARD SAFER, BETTER SCHOOLS

For uniform advocates, the issue is black and white—and any other color that serves as a signature for a particular gang. Like many supporters, Dick Van Der Laan, a spokesman for the Long Beach school district, says there is a direct link between, on one hand, the increasing acts of violence in schools and the climate of intimidation, and, on the other hand, the dress favored by gang members. “Their clothes really are an unofficial uniform of intimidation,” Van Der Laan said.

Van Der Laan and others explain that gang-specific apparel—ranging from professional sports insignias to accoutrements like earrings and kerchiefs—send clear messages to other students that the wearer belongs to a gang. One student said the gang presence is so distracting he cannot concentrate in class. “Instead, I think: Are they going to jump me after school?”

That student is far from the exception when it comes to being intimidated, uniform advocates point out. By one estimate, 160,000 students stay home from school each day because they fear for their safety. “Very few weeks go by when students go unchallenged because of the way they look,” said Edward Eveland, a Long Beach school board member. “If a gang doesn’t recognize you, they say, ‘Where you from?’ If you give the wrong answer they beat the hell out of you or you get shot at.”

Yet the messages sent by gang clothing are only part of the violence problem, uniform advocates say. Students often attack other students, sometimes killing them, to steal expensive sneakers or sports teams jackets favored by gang members, such as those made by the Starter company. This brand of crime became so commonplace

in Chicago that police created a separate category for Starter Jacket Murders.

Many communities that have adopted uniform policies tried at first to fight gang influence through narrowly focused dress codes, which ban specific items known to be associated with particular gangs. But dress codes are ineffective, many uniform supporters say, because gangs can simply choose a new form of signature to stay a step ahead of the administrators. "School dress codes are constantly changing because gang attire is constantly changing," said one parent in La Mesa, California. "Having uniforms eliminates that problem entirely."

Uniforms also offer many ancillary benefits, parents and educators say. One of the most important is that uniforms erase class distinctions and jealousies that spring from the expensive clothes some students wear; thus uniforms promote equality. "Without uniforms, [kids] talk about the way you dress," said one 10-year-old from the Cincinnati area. "They say 'you're ugly' or 'you're poor.' If you wear uniforms, they can't say anything because there's nothing to say about uniforms."

Another advantage in the eyes of many parents is that uniforms can save families a lot of money by relieving the pressure kids feel to compete in the school fashion wars. At one Cincinnati school, a mother said she spent \$60 for her daughter's uniform: three blouses and three jumpers. By comparison, a recent survey of Marshall's stores found that an average family spent \$375 on back-to-school clothes and shoes.

And educators say there is little doubt that uniforms instill a sense of pride in school and self, along with a sense of purpose. Teachers at Grant Elementary in Rock Island, Illinois, reported a noticeable difference in their students' focus on their school work soon after the uniform policy went into place. "It's like a new generation of kids," one teacher said. "I noticed they sat taller in their chairs, walked taller in the hall."

While there are no conclusive studies documenting the merits of uniforms, educators and parents from across the country believe there is enough evidence to show that uniforms help decrease vio-

lence and improve the learning environment. Roy Bennett, the uniform consultant with the Baltimore schools, said that prior to the use of uniforms there, 12 young boys had been killed in clothing-related incidents. "Since we started the program, we haven't lost any more children because of their tennis shoes or leather coats," he said. And in the Long Beach school district, as the accompanying chart shows, the first year of required uniforms seems to have had an impact.

Long Beach Unified School District Crime Report

The Long Beach Board of Education required student uniforms beginning with the 1994-5 school year.

Crime category	1993-94	1994-95	Change
Assault/battery	319	212	-34%
Assault with deadly weapon	6	3	-50%
Fighting	1135	554	-51%
Sex offenses	57	15	-74%
Robbery	29	10	-65%
Weapons possession	165	78	-52%
Vandalism	1409	1155	-18%

(Overall, reported crimes dropped 36%.)

Source: Long Beach Unified School District

In response to concerns about individual freedoms, uniform advocates say they are sympathetic, and that is why a new California law requires any school establishing a compulsory policy to include an opt-out provision for students who can show good reason why they should be exempt. Proponents also note that students have many other outlets to express themselves personally, such as painting or poetry or various school activities, and they can always dress as they want after school.

And when reduced to the bottom line, uniform advocates argue, the sacrifice is rather small when weighed against the positive impact

uniforms have in making schools safer. “I want to live to be 65 years old,” one Pittsburgh eighth-grader said. “[W]earing a uniform stops certain problems....”

In terms of the legality, some supporters believe that the Long Beach policy, even without the opt-out provision, is constitutional. The Supreme Court and lower federal courts have traditionally accorded schools wide latitude in regulating student appearance, especially when it comes to what is known as “non-communicative” dress, clothing with no discernible written or visual message that might be protected by the First Amendment. The test that school regulations generally must meet is that there is a “rational basis related to a legitimate government interest”—in this case, curbing gang intimidation and violence. Uniform advocates argue that this standard was applied and met in *Olesen v. Board of Education*, the only major court ruling on gang-related dress codes, when a federal district court upheld a ban on certain gang-associated earrings by an Illinois school.

CON: TRADING RIGHTS FOR A BAND-AID

Opponents of mandatory uniform policies do not dispute the gravity of the threat posed by gangs. They support taking strong steps, even extreme steps, to stop the violence, if there is proof that the tactics will be effective. But that is just the point, opponents say. There is very little evidence to show that uniform policies succeed in reaching the goals held up by their advocates. “We believe there is no relationship between school safety and uniforms,” said one official with the American Civil Liberties Union (ACLU). There are no hard facts to contradict that conclusion, the ACLU adds, for not one scientific study on the subject has been done.

To many of these opponents, uniforms are nothing more than a band-aid in the fight against gangs. No matter what schools do, gangs will find ways to express themselves and send the messages they want to send. In the words of an ACLU spokesperson, “If they can’t do it over clothing, they’ll do it over backpacks. If they can’t do it over backpacks, they’ll do it through patches or rings.”

Many opponents argue that those who favor uniforms are fooling themselves. “They’re trying to help us, but they’re not changing

anything,” one seventh-grade student said. “We’ll still get jumped. This is the inner city, it’s not going to change. You have to change the neighborhoods first, put the kids behind bars who belong there.” Some parents even worry that the growing popularity of uniforms will divert attention from finding more effective solutions, and thus prolong the problems. “All this does is impart a false sense of security,” one California parent said.

The cost of that band-aid, as measured by many parents and students, is heavy—the loss of the freedom to express oneself. These opponents claim that uniform requirements send a strong message to students that their constitutional rights are not as important or worth protecting as those of adults. That was the conclusion David Hudson came to after being suspended for refusing to stop wearing a scarf that violated a school dress code. “All this stuff they have been teaching us in government classes about our rights just doesn’t make sense in view of this,” he said.

Some parents say they are concerned about the impact this encroachment on personal freedom will have on the development of their children. At a time when students are struggling to find an identity, these parents contend, schools will be denying them one of the most important means of expression they have at their disposal. “It turns our schools into a sterile, uncreative, uniform environment,” said one outspoken critic of the California law. “You want to crank out some creative personalities, not people who think they all have to conform to some norm.”

After balancing all the facts, opponents believe that mandatory uniforms pose a clear-cut violation of students’ First Amendment rights. They claim that students’ choice of dress is fundamentally tied to their ability to express themselves, and that deserves the same protections accorded to pure speech or “communicative dress,” such as t-shirts with political expressions. As one student said, there should be “no difference between freedom of press and freedom of dress.”

Some civil libertarians go a step further and contend that uniform requirements infringe on a student’s individual liberty as protected by the 14th Amendment argument. As the ACLU sees it, mandatory uniform policies step on the rights of too many children in an attempt

to influence the behavior of a limited number of gang members. What makes the matter worse, the ACLU argues, is that this overly broad rule is not effective in stopping gang members from intimidating other students. Thus, in their view, uniform requirements do not meet the “rational basis” test.

“If a school is aware that specific colors or kinds of clothing are likely to expose a child to harm, then they should impose a dress code that meets certain restrictions,” an ACLU official said. “We are comfortable supporting a school prohibiting certain types of clothing if the school can prove that wearing certain apparel is, in fact, related to gang identification that could pose a direct physical threat to a child.”

CONCLUSION

This issue is almost certain to generate even more controversy and, as the uniform movement gains momentum, the issue will surely wind up in the courts. Based on past precedents, such as the landmark school clothing case *Tinker v. Des Moines*, the odds are that compulsory uniform policies will be upheld if advocates can demonstrate that there is a reasonable connection between their policy and their goal of combatting gang-related violence and intimidation. What will happen in the court of public opinion, however, is anyone’s guess.

LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

DAVID E. CARNEY

From the Libertarian Side

Would They Let *Reverend* Jesse Jackson Be President?

When Wilby Casey received the call from the county that the mother of teenagers David and Jessica McCabe had died in her sleep, he went. He let the children know that he would aid and comfort them during their time of need. Casey helped set up a cremation, tried to contact relatives in the Midwest, and guided the two children through the Social Security application process. His services were free.

But, because Casey is a Baptist minister, the American Civil Liberties Union (ACLU) contends that his actions violate the separation of church and state. Casey is a member of the Tacoma-Pierce County Chaplaincy and taxpayers pay for the chaplaincy's office space, radios, dispatchers, jackets, and insurance; essentially paying for spiritual support, goes the argument.

Members of the chaplaincy, all of whom volunteer, counter that they do not proselytize, that they pray only when asked, and that they offer to contact a minister of the victim's religion. Thus the claim is that while the chaplains may be religious by trade, the work they do for the chaplaincy does not promote religion. It simply provides aid and comfort.

Teenager David McCabe said, "I don't know what we would have done without them." If the ACLU has its way—it has filed suit before the Washington State Court of Appeals to disband the chaplaincy—we will soon find out.

The News Tribune, 8 August 1995

Top Ten List

On August 1, 1995, with an eye toward passing legislation that would limit an inmate's ability to file suit, Bob Butterworth, Florida's attorney general, unveiled his top ten list of frivolous inmate lawsuits:

10. An inmate claimed discrimination because he was not issued a raincoat.
9. A prisoner filed suit to be served fresh, as opposed to reconstituted, milk.
8. Another sued to receive martial arts training as part of his religion.
7. A convict brought a claim because he received only cheese sandwiches while in solitary confinement for a week.
6. An inmate sued because he was forced to eat off paper plates.
5. Another filed suit because he discovered gristle in his turkey.
4. A prisoner sued in order to receive three pancakes instead of two for breakfast. (Also sued for fruit juice.)
3. A person convicted of murdering five people took legal action because the televisions only received network stations (a storm had damaged the prison's satellite dish) which had programming that was too violent.
2. An inmate petitioned the court for designer shoes when he was issued cheap prison shoes.
1. A prisoner who lost his first suit claiming his rights as a Muslim were violated when he had to serve pork, sued to receive dove's blood and tarot cards after having converted to satanism.

Butterworth claims that suits of this type cost Florida \$2 million a year. About 1,000 such suits are filed in Florida each year; and the number is about 33,000 nationwide. Theorizing about the reasons frivolous suits are filed, Cecilia Bradley, head of the corrections

litigation division in the attorney general's office, says, "Some of them do it to amuse themselves; some of them do it for the pure expense it costs the state."

The Tampa Tribune, *2 August 1995*

From the Authoritarian Side

No Asians Need Apply

After applying for a Montgomery County, Maryland, school French immersion program, the parents of young Eleanor Glewwe and Hana Maruyama were prepared for the possibility that their requests for transfer from their current school might be rejected due to space constraints. They were not prepared, however, for the rejection of the applications because their children are of Asian descent.

The Montgomery County Board of Education does not permit the transfer of Asian students out of the Takoma Park Elementary School, where both girls are enrolled. Arguing that the Asian headcount is low (11 of 519 students) and that reduction of Asian students would further isolate the remaining ones, the board chooses to prevent transfers for the sake of diversity. Blair G. Ewing, a member of the board, explains, "When you take both things [diversity and school choice] on at the same time, you find yourself in all kinds of complex dilemmas. We've paid a price for that, and we've reaped some benefits."

These parents see the price as too high. Warren Maruyama, father of Hana, says, "It's painful to hear you cannot get into one of the programs Montgomery County is famous for just because you're Asian." Mr. Maruyama and Mary Yee, mother of Eleanor, saw children of white neighbors being granted transfers from Takoma Park Elementary to two Spanish immersion and the French immersion schools. Yee has used the fact that Eleanor's father is white to reclassify Eleanor as white in hopes of winning a transfer. But school officials rejected the revised application, pointing to changing enroll-

ment patterns and to the uncertainty surrounding the possible unification of Takoma Park's two school districts.

The policy was appealed to the Maryland Board of Education. In a 6 to 3 decision, the board upheld the Montgomery County policy by arguing that "there is no right to attend a particular school." Only some persons are allowed the choice.

The Washington Post, 22 August 1995

Editor's note: As this issue was going to press, the Montgomery County Board of Education reversed its decision.

From the Community at Large

Don't Leave Home With It

Arturo Garcia, a juice vendor in Harlem, sees the change: "With all the police vigilance, nobody dares carry their guns." A new law-enforcement strategy to reduce gun-related crime and to protect innocent victims and criminals alike has changed the culture from a gun-toting one to a leave-it-at-home culture.

Law enforcement officials credit a 40 percent decrease in the number of gun-related murders in New York City to a citywide policy of frisking persons who have broken other laws and appear suspicious. Police suspicions are raised by a number of indicators (which must be "articulable" for cases to hold up in court), such as bulges in clothes or nervous answers to questions.

In the 30th precinct in northwest Harlem (one of the city's busiest), police used pin maps to locate a "hot zone," an area where more than half of the precinct's 18 killings and 40 shootings occurred during the first five months of this year. Police stepped up the presence of plainclothes officers in the area and then increased the presence of uniformed officers. They frisked 50 percent more suspects this June than they had the prior June.

During the first two months of these patrols, no one was shot or murdered. In addition, police have noticed that only a small percent-

age of recent arrests have been gun-related. Lieutenant Robert T. Varieur of the 30th precinct, notes, "We're not taking that many guns off the streets because these people are anticipating our interactions....[M]ore guns are staying inside...." The numbers at this precinct are indicative of a wider trend: while citywide arrests are up 27 percent, citywide gun arrests are actually down 17 percent.

Not everyone is satisfied with these efforts. Civil libertarians have decried the friskings as aimed at African Americans and Hispanic Americans. Norman Siegel, executive director of the New York Civil Liberties Union, argues that the ends do not justify the means and that frisking is nothing more than "street justice tactics."

Others look at the end result. Thomas Reppetto, president of the Citizens Crime Commission, says, "It appears the tremendous decrease in shootings and the apparent fact that less people are carrying guns is due to the general effort of the department."

Similar programs in Kansas City and Indianapolis were noted in these pages in the Spring 1995 issue.

New York Times, 30 July 1995

Now We Can All Breathe More Easily

Increasingly, courts are ordering individuals on probation for violating drunk driving laws to install alcohol testing devices in their cars as a condition of probation. Currently, 35 states permit judges to order the installation of the device, with Texas the only state requiring the installation as a condition of bond.

The device is a small dashboard computer that collects data from a breath test by the driver of the car. If the driver's blood-alcohol level is too high, the computer relays a command to a microchip attached to the car's electrical system. The microchip prevents the car from starting. The computer also notifies the driver of random tests at odd intervals. If a test is not taken, an alarm trips, usually the horn honks and the lights flash. Although older versions of the computer could be "beaten" by hairdryers, children, or balloons, the newer computers are not so easily fooled. In addition, all test results are saved into memory and can be used by the courts.

Jay Jacobson, executive director of the American Civil Liberties Union of Texas, fears the courts' responses to such tests. Since one cannot determine who actually took a test on the device, he fears that someone other than the person on probation could blow a failing test. The computer would then report the failed test as if the person on probation had taken the test. Thus probation officers and the courts could receive results that do not relate to the probationer. Other critics, such as Michael Walton, the court administrator in Hamilton County, Ohio, feel that the machine is "a Big Brother type thing."

But according to Dr. Jay Winsten of the Harvard School of Public Health, "This technology is an important development, because we lack options." Suspension of a license can mean a sentence of unemployment. The developer of the idea, Donald W. Collier, argues,

The End of Political Correctness...

“Compared to license suspension, this probably reduces the recidivism rate by 90 percent.”

Even some traditional opponents of breathalyzer devices see merit in this program. Roger Pilon, director of the Center for Constitutional Studies at the libertarian Cato Institute, believes, “At some point, potential victims [of drunk drivers] have a right to step in and say, ‘I simply will not be exposed to this much risk.’”

New York Times, *4 August 1995*

Community Corrections

The traditional purposes of the criminal justice system have been deterrence, punishment, incarceration, and rehabilitation. Accord-

...The New *New Yorker*

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ing to Vermont Commissioner of Corrections John Gorczyk, “There’s a glaring omission: restitution. The community and the victim are nowhere in the equation.” Vermont has undertaken efforts to change this with its Community Reparative Boards.

Under the auspices of Vermont’s department of corrections, panels of individuals from the community will determine how first- and second-time nonviolent offenders will pay their debts to society. Despite this connection, the boards function with a fair degree of independence. John Wilmerding, Reparative Program Coordinator, says, “The reparative boards will be building their own ‘menus’ of possible sanctions using our communities’ existing resources....These new volunteer boards will have the opportunity to construct a community-based sanctions system that puts the healing philosophy

The End of Political Correctness...

of restorative justice into practice in our communities for everyone's benefit."

Vermont developed this alternative to traditional criminal justice both out of a desire to help communities and victims heal their wounds, and also for more practical reasons. Gorczyk states, "It's a waste to put a misdemeanor property offender in a \$25,000-a-year bed." Other administrators believe that it is in the community's interest to keep misdemeanor offenders out of jail, as they often leave prison more hardened and criminally adept than when they entered.

Doing Democracy, *Summer 1995*

...The New *New Yorker*

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A Lesson in History

In early democracies, as in American democracy at the time of its birth, all individual rights were granted because man is God's creature. That is, freedom was given to the individual conditionally, in the assumption of his constant religious responsibility. Such was the heritage of the preceding thousand years. Two hundred or even fifty years ago, it would have seemed quite impossible, in America, that an individual could be granted boundless freedom simply for the satisfaction of his instincts or whims.

Aleksandr Solzhenitsyn

The End of PC: Jumping in with Both Feet

THE COMMUNITY'S PULSE

UNITED STATES LEADS IN VOLUNTEERING¹

Percentage who currently do unpaid volunteer work:

United States	59%
Spain	53%
Canada	47%
France	35%
W. Germany	31%
Italy	30%
Mexico	27%

CUT ENTITLEMENTS: YES AND NO²

The public favors cutting government entitlement programs in order to curb the deficit, **61% to 25%**. On the other hand, when asked what they thought about cutting "programs such as Social Security, Medicare, Medicaid, and farm subsidies," the public is *opposed* to cuts, **66% to 23%**.

DANGEROUS DRIVING³

Annual cost of motor vehicle accidents in the United States:

40,000 deaths
5 million injuries
\$137 billion

Among persons aged 16 to 20, traffic accidents are the leading cause of death. This age group accounts for **6.7%** of the total driving population, but accounts for **13.5%** of drivers in fatal crashes, and **12%** of drivers in fatal crashes who had been drinking.

MORE SMOKING TEENS...⁴

Smoking Rates:

8th Graders:

1991	14.3%
1994	18.6%

10th Graders:

1991	20.8%
1994	25.4%

12th Graders:

1991	27.8%
1994	31.2%

...BUT AFRICAN- AMERICAN TEENS SMOKE LESS⁵

Have you recently smoked a cigarette? (percent saying yes)

White teens	23%
African-American teens	5%

FOR IMMIGRANTS, U.S. STILL A MELTING POT⁶

In a survey immigrants were asked, "Do you think it is better for the United States if immigrants are encouraged to blend into American culture, or if they are encouraged to maintain their own culture more strongly?"

Blend in	59%
Maintain own culture	27%

1. *The Public Perspective*, April/May 1995
2. *The Wall Street Journal*, 23 July 1994
3. *The Washington Post*, 25 August 1995
4. *U.S. News & World Report*, 31 July 1995
5. *Washington Post*, 20 August 1995
6. *The Public Perspective*, August/September 1995

Compiled by Frank Lovett

COMMUNITY NEWS

COURTING WHITES: DIVERSITY OR RACISM

MATTESON, IL, April 29, 1995 (AP)—This community 40 miles south of Chicago has begun a \$37,000 advertising campaign to lure affluent whites and slow racial change. Some experts say the effort may fail, and critics say it is offensive to the growing black population here. “Let’s be realistic,” said a black resident, Ernest Wooten, Jr. “There’s some racism behind this. They say they want to keep it mixed. But my feelings are if you don’t want to live here I don’t want you here.”

Village Administrator Ralph Coglianese said the difference from other communities was that Matteson was explicit. “Most of the people would just rather not do anything,” Mr. Coglianese said. “It’s the easy way out. We’ve seen no history of people being able to maintain racial diversity without working at it.”

Matteson has neat single-family homes and tree-lined streets, with little crime. A boom in the 1970s attracted middle managers seeking housing within easy train commuting distance to Chicago. Split in half by Interstate 57, the older east side is mostly white, and the west side has become predominantly black. The construction of \$100,000 to \$300,000 houses has continued into the 1990s, mostly on the west side. “When I moved here nine years ago, it was probably 50 percent black, 50 percent white,” said Mr. Wooten, a west side resident. “Now it seems they’re steering nothing but blacks here, and whites are moving out.” In 1980 the village was 12 percent black, according to the Census Bureau. In 10 years the black population grew 32 percent, and the white population dropped 31 percent. Today, experts say, 48 percent of the 11,500 residents are classified as black.

A panel made up nearly equally of blacks and whites has recommended promotions through brochures and advertising aimed at “white home-seeking prospects interested in residing in a racially diverse suburban community.” The advertisements could appear in

the summer. Village Trustee Denise Clemons said the drive was about economics, not racism. "If you have only one group of people looking at real estate in this area," Ms. Clemons said, "then you're not seeing the whole market. This is about home values and the quality of life here."

Historically after a community becomes mostly black, housing prices drop and decay follows, said Doug Massey, a professor at the University of Pennsylvania who specializes in studying urban segregation. The black middle class is often too small to make up for an exodus of middle-class whites, Professor Massey said, leading to increased renting to lower-income people who do not keep up the properties. "The racism is not the individuals in the community who are trying to fight the downward spiral in housing costs," he said. "The racism is in the structure of the housing and lending markets and in the general society."

Property values in communities that maintain predominantly white populations rise consistently, experts said. In Evanston, where the black population has remained at 22 percent for years, the median home value climbed 109 percent from 1980 to 1990, the Census Bureau said. In Matteson the increase was 31 percent, compared with 68 percent nationally. Trying to reverse such trends is difficult, and efforts can easily be perceived as racist, said Edwin Mills, a professor of real estate at the J. L. Kellogg Graduate School of Management at Northwestern University. "Nobody advertised to bring blacks in, I bet," Professor Mills said. "The evidence I see is that whites are more concerned about class than race nowadays. But many whites are obsessively prone to identify lower class with blacks."

LITHIUM, RAGE, AND RESPONSIBILITY

BOSTON, MA, March 16, 1995 (AP)—A judge has acquitted a man accused of attacking the Police Commissioner's driver on the ground that the man had neglected to take medication to help him control aggressive behavior. The judge, Elizabeth Donovan of Suffolk Superior Court, found the man, John J. Locke, not guilty of assault charges and a civil rights violation arising from the attack last April on the driver, Officer Quion Riley.

Mr. Locke is white and Officer Riley is black. Witnesses said Mr. Locke shouted a racial epithet as he attacked Officer Riley, who suffered cuts, a black eye, and loosened teeth.

Mr. Locke, who has manic depression, had not taken his prescribed lithium for nearly two months before the attack, which occurred as Officer Riley was sitting in Commissioner Paul Evans's car with Mr. Evans's wife and 9-year-old son. The Commissioner was attending a church service nearby for the families of homicide victims.

Mr. Locke promised the judge that he would take his medication and submit to random drug testing.

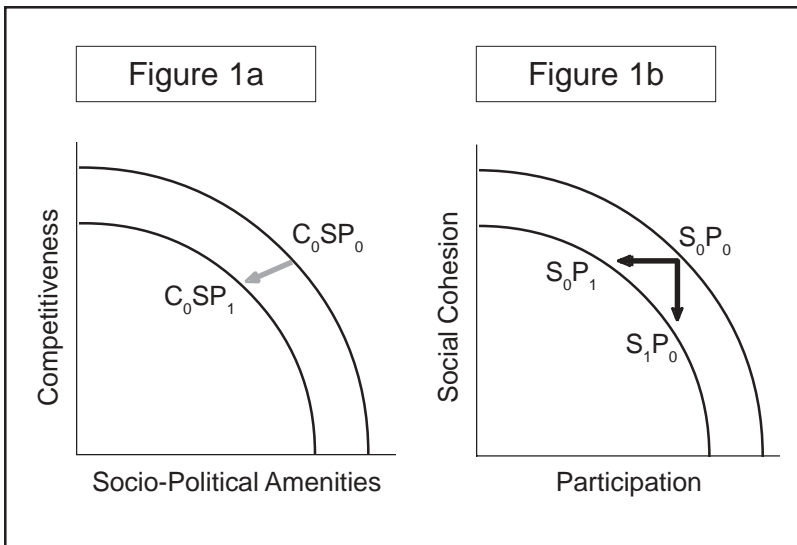
A police spokesman said the Commissioner was disappointed in the judge's decision. "If someone gets drunk and commits a crime, they get convicted," said the spokesman, Lieutenant Robert O'Toole. "This guy goes off his medication and does not get convicted? The Commissioner is a little upset over that."

COMMENTARY

Ralf Dahrendorf and the Economics of Canes

Ralf Dahrendorf's essay, "A Precarious Balance" (Summer 1995), presents a bleak prospect. To maintain economic competitiveness, he writes, we are pressured to sacrifice either social cohesion or political choice. We can choose the way of Thatcher—the raucous mobocracy of *Sammy and Rosie Get Laid*. Or, in the extreme alternative, the spiritual death of Singapore—a new oriental despotism, an economics of canes. While Dahrendorf urges steps to lessen the starkness of these options, these are, broadly speaking, the choices that he frames.

To an economist this sounds like an analysis of possibility frontiers. Something has happened: in one word, globalization. In a space defined by competitiveness on one axis and socio-political amenities on the other, feasible opportunities have been curtailed (Figure 1a). To maintain C_0 , S_0P_0 must be foregone. Since S_0P_0 is a compound commodity, choices can be taken along a secondary, socio-political frontier (Figure 1b). S_1P_0 yields Thatcher; S_0P_1 yields Lee Kuan Yew.



This is elegant, as economists say. But is it right? Or is it—to use an expression that Dahrendorf himself rightly applies to crusades in many countries against public health, welfare, education, housing, and the environment—another case of “economism running amok”?

The nub of the argument is that globalization undermines our economic chances. But why, one may ask, should this be so?

Dahrendorf calls attention to the turmoils and risks of the development process, to that supposedly dangerous period when emerging nations may threaten the stability of their neighbors or the world. He has in mind Imperial Germany and perhaps Tokugawa Japan. But the modern Asian and Latin American development processes are nonimperial. The modern wave of global development, in fact, could not occur under threat of military adventurism, and it does not occur—not in Iraq, not in Serbia, not in North Korea, not in Peru—where those threats persist.

First and foremost, globalism is actually the consequence of global peace. Companies can globalize because over 40 years the world has become a much safer place. War may engulf the Balkans, but for better or worse this time neither Russia, nor Austria, nor the United States will at any price become involved. Thus we have globalization because the world is safe.

Second, there is an incredible cheapness of transport and communication. Supertankers, container ships, jumbo jets, satellites, fiber optics, and computers have reduced long-distance carrying costs by very large margins. More precisely, they have restored the cost advantage that overseas transport historically enjoyed (in the eighteenth century, say) over inland haulage—an advantage eroded by railways and trucking during earlier industrialization. Today we have globalization because it is cheap.

Third, there is inherent globalism in the production and consumption of advanced goods. In many areas, the division of labor has extended to the limit of the global market. Advanced machinery, computer chips, software, jet aircraft, luxury consumption goods of all kinds, and many types of personal articles are produced on a global scale or along common global designs. Why? Because people prefer them that way. We have globalization because it is desired.

Safe, cheap, desired: What exactly is the problem? There are problems, of course, but globalization per se cannot be the cause. To the contrary, globalization is an index of rapidly expanding opportunities and of the potential for rising living standards and better social and political environments in all parts of the world.

If we in the First World are then not taking the opportunities that globalization creates—as of course we are not—then the fault must lie in our own First World politics, institutions, and habits of thought. Indeed, the most serious perils stem from internal breakdowns of democratic governance, and resulting wasted chances, in the wealthy countries—not from globalization nor from the development process.

The rich nations—only with difficulty and only in this century—somewhat tamed their long-dominant forces of rapacity and greed. But now, the irresponsible overclass has returned—that is the simple moral tale and essential modern political story.

The rise of inequality which Dahrendorf rightly decries has benefitted not the top 10 to 20 percent, as he writes, but exclusively the top 1 to 5 percent of income earners. These emboldened rich have embarked on a campaign—who, living in the United States in 1995, can deny it?—against their own national social orders, attacking programs that provide employment, security, environmental protection, and health care. They have used the levers of globalization, and specifically of competition against low-wage labor, to undermine the wage position of First World workers and the latter's effective political support for active government. Meanwhile, these same social forces have massively transferred national income toward undertaxed sectors (capital gains, offshore incomes, corporate profits) and so undermined the fiscal stability of the state.

Are these the *necessary* consequences of globalization? I think not. They are rather due to the form globalization has taken and the politics under which it is controlled. In an earlier time, the United States advanced Bretton Woods and the Marshall Plan, achieving globalization across the Atlantic with progressive political effect. The difference today is that we have globalization with an inhuman face. The real choice is not high skills versus low wages. It is wages against

profits, public against private, the community against the corporate autocracy. The real question is: Who rules?

The problem is grave, as Dahrendorf believes. Indeed, down the present road lies the eventual dissolution of the First World. For what is a country but the agglomeration of widely accepted national myths? And if the United States, or the United Kingdom, or (less likely) Europe, come to be seen as sovereignties unwilling to provide for, protect, and defend the rights, interests, and welfare of their citizens, what loyalties will they ultimately command? The fate of the Soviet Union was rooted in the collapse of national myths. It is all not so very far in principle from what could happen elsewhere, particularly as people understand that the abuse they are taking is not necessary for their own good.

Are there solutions? The first step, I think, is to recognize that competitiveness per se is a false imperative. Steady progress in raising living standards always was and remains the legitimate national and global economic objective. With globalization, this objective becomes more attainable, not less so. *And therefore, when living standards fall for any appreciable population group, even in the short run, something is being done badly.* The problem is not resources, but their mobilization. It is not inherent limits of politics, but a question of who controls the political apparatus and to what ends.

Thus we should set our goals once again on concrete objectives for the improvement of economic life. Here Dahrendorf is right but, perhaps, unnecessarily timid. Employment, housing, environmental standards, health, education, culture, leisure, and a more even distribution of wealth have been, through history, the enduring means whereby social progress can be measured. And collective effort has been, through history, the means whereby societies have achieved such goals. There is no reason why globalization or any other ill-defined external force should be accepted as making this impossible today. Competition with Japan does not dictate, in any way, scuttling the income tax or the National Endowment for the Arts.

What then remains of the tensions Dahrendorf speaks of? I would concede that they exist—but only for those nations that fail to refuse them. While there is not any chance (by the way) that Lee Kuan Yew's

puritanism will prevail in China, the new oriental despotism may, indeed, attract safety-conscious and culture-blind Wall Streeters to Singapore. But will the next generation of scientists, artists, designers, scriptwriters, performers, software nerds, and creative scribblers follow on? Did they flock to Italy 60 years ago because the trains ran on time?

Give me New York City, or Austin, Texas for that matter, any day.

*James K. Galbraith
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Asian Authoritarianism: Not What It Seems

Professor Dahrendorf is nostalgic for what was for him the best of the First World—concurrent expansion of the economy, civil society, and democracy. His nostalgia arises out of his dissatisfaction with the present.

The essay begins with the contemporary First World, where the flexibility in finance, technology, and management that is required to increase productivity and stay competitive within global capitalism is shown to bring with it other, less desired changes. Increased labor displacement and unemployment uproot individuals from secure jobs and communities. Intensifying income inequalities are accompanied by a dismantling of parts of the welfare state. Individual competition to avoid marginalization results in a malignant individualism which erodes social commitment. In the end, the displaced begin to threaten those who are still surviving (even prospering). As a sense of disorder spreads, so does the desire for more authority to impose social discipline. This, Professor Dahrendorf fears, may lead to “authoritarianism” in the First World.

The essay then shifts its focus to Asia. Apparently, First World citizens who desire more authority know where to look for guidance: to the ascending capitalist economies in Asia, where “political authoritarianism” is rationalized with so-called “Asian values.”

Before taking up the political question of Asia, I would like first to elucidate four practices in Singapore. These practices, interestingly enough, reflect four of Professor Dahrendorf's six proposals to save the First World from authoritarianism, leading one to question Dahrendorf's essential dismissal of the Asian option.

Linking school and work: Rapid expansion of education has been in step with economic expansion since 1960. University enrollment has always been kept small and highly competitive, while enrollment in postsecondary, vocation-based polytechnics has expanded rapidly. As up to 50 percent of the work force has only primary school education (a legacy of colonialism), there is extensive on- and off-the-job workers' retraining, funded by a Skills Development Fund that is financed by a small tax on the payroll of companies.

Reaching out to the underclass: Subsidized public housing, giving 99-year leaseholds to families, is practically universal. Families with a monthly income of less than 1,000 Singapore dollars are given cash grants of 30,000 dollars each to purchase their leasehold flats. The long-term housing tenure provides stability and enables the families to invest in their children. Thus it helps "cut the supply route to tomorrow's underclass."

Sustaining local communities: Social-service agencies are founded by volunteer groups, with the state subsidizing up to 80 percent of the development costs and 50 percent of the operating costs. The voluntary component is essential because the state explicitly eschews direct provision, for the same conservative reason that it would not want to replace and undermine the altruism and collective responsibilities of families and local communities. In one such program, each working adult contributes one dollar per month, taken from his or her government-managed social security savings fund, to ethnic-based agencies that are mandated to provide additional academic assistance to needy children.

A positive role for the state in public service provision: The state is active in a number of areas. Education is free up to the secondary level and subsidized up to 80 percent at the tertiary level. Development costs for the rapid train system are state financed; however, operating costs are not subsidized. The public-listed profit-oriented

bus and taxi companies are placed under a watchdog committee which includes bureaucrats and commuters. And health care is affordable in public hospitals, which are greater in number than private hospitals, although users are increasingly being asked to bear more of the costs.

These practices are installed by a strong and interventionist, single-party dominant state—the single party being the long-governing People’s Action Party (PAP). One example of its interventionist style is that universal public housing is made possible by draconian land acquisition measures that pay less than market value compensations. “Violations” of conventional property rights are justified in terms of the greater good of the whole population against that of relatively few landowners. Conversely, meager monthly contributions from all working individuals provide collectively to the advancement of the children of the lowest 10 percent of income earners. These instances of collective interests overriding private ones are what the government would call “communitarianism” or, if you will, Asian values in practice.

These practices have contributed greatly to the material life and social security of Singaporeans. Since fixed-term elections have always been cleanly run (albeit with gerrymandering that advantages the ruling party), the absolute parliamentary majority of each successive PAP government is a reflection of high degrees of legitimacy, earned from an appreciative electorate. Indeed, it is this electoral legitimacy that undergirds the PAP leadership’s self-assured pronouncements in international public fora and should be kept in mind when one assesses the darker side of the single-party dominant state.

Undoubtedly, the political sphere in Singapore is constrained. For example, the power to detain an individual without trial on suspicion of subversion elicits, in most individuals, a fear of publicly expressing contrary opinions; that such detention is seldom exercised is cold comfort. Also, some PAP leaders admit to being authoritarian in style if not character. However, as long as the electoral mechanism is in place and run honestly, the PAP can be challenged. And challenges are increasingly apparent.

The PAP has begun to lose political ground in successive elections since 1984, in spite of continuing economic growth. This has led to the

nascent presence of opposition MPs in parliament. Also, pressures on the government to be more responsive to popular demands are being generated by the same anti-PAP votes. This is apparent in the softening attitude, especially after 1990, toward some level of welfare transfers within a continuing anti-welfarist ideology. Unfortunately, the continuity of the PAP government has overshadowed these political developments, especially for those who watch it from afar.

Thus it appears that it does not help to continue to simply label Singapore, or other Asian nations, as authoritarian. Many "authoritarian" actions by the government of Singapore help achieve the very goals Dahrendorf desires; and when it comes to political liberty, the picture is far from the static authoritarianism portrayed by many in the West. The continuing dismissal of Asia as authoritarian amounts to a demonization of Asia, the exact Other of Asia's demonization of the West. If Professor Dahrendorf is concerned to disabuse some First World citizens of the idea of an Asia that will save them from chaos, it would be better to examine closely the actual administrative and political practices of the nations in Asia. And he should not excuse himself for having said too little about the role of government, for that is where some of his own proposals will have to be instituted, as they have been in Singapore.

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