

The Responsive Community

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ESSAYS

Enforcing Norms: When the Law Gets in the Way

Richard A. Epstein

The subject of norms is once again hot. Although norms as a topic never quite disappeared from view, today it receives ceaseless discussion across disciplines: law, economics, philosophy, political theory, and the like. The norms resurgence depends on a rich confluence of factors, of which the dominant one perhaps is the recognition of the critical role that norms play in overcoming the ubiquitous collective action problems that crop up in all sorts of social settings. The destructive logic of the prisoner's dilemma (PD) game is by now so well known that it is pointless to demonstrate anew why in many simple two-party games both players defect from the cooperative solution to their dual ruin. That simple model explains not only why individuals confess to crimes when they and their confederates should remain silent, but also why individual sellers cheat on cartels, why individual drillers overexploit productive oil fields, and why some drivers crowd an intersection on a yellow light. So central is this problem of noncooperative behavior that much social science thought fixates on one single question: what social institutions and strategies can overcome this familiar, if deadly, collective action problem?

The standard answer to this question is often encapsulated in a single word: norms. The norms in question set the standards of cooperative behavior for individuals living and working in groups.

When all individuals comply with the applicable norm, the group is able to achieve its ideal cooperative solution, and most likely will (probably by other norms) find some acceptable way to distribute fairly the cooperative surplus generated by norm compliance.

Stating the question in this fashion, however, only pushes back the inquiry. What conditions allow for the emergence and stability of norms? That inquiry in turn is plagued by a further ambiguity that is the chief subject of this short essay. Norms come in all forms. In the simplest case, a norm could result from an express agreement among group members that norm violations count as breaches of contract for which the violator must answer in a court of law. Yet this equation of norm with contract ignores vital social norms whose emergence cannot be traced to an agreement of any sort. Usually, the discussion of social norms is steeped in common practices, social standards, implied rules of conduct, and language of custom and usage. All of these conventions are widely shared and respected by group members, but do not rest on formal or explicit agreement. Yet in turn this reference to implicit social norms misses the role played by legal norms, the violation of which is met with a coercive response from the state: damages, fines, imprisonment, and the like. Any complete theory of norms must deal with all three variations on the common theme: private agreements, social conventions, and public enforcement. How is that best done?

Positive versus Normative

A complete answer must approach this question from at least two angles. First, there is the descriptive question: different norms are enforced in different ways. What accounts for the distribution of norms across these three categories? Why, historically, are some norms generated by explicit contract, others by social convention, and still others by legislation or common law adjudication? The second question, which closely dovetails with the first, is normative. Which substantive norms should be placed in which class and why? Even if we assume that *all* norms are designed to overcome PD games or other collective action problems (which I take to be almost a truism) it is necessary to select the proper enforcement mechanism to counteract the breach. Which norms *should* be defined and enforced by explicit

agreement, which by custom and common usage, and which by legislation?

In dealing with this question, it is important to note an initial complication that is often lost in the more detailed discussion of specific norms. It is a mistake to assume as a matter of course that we know what count as good norms, and what count as bad ones. In each case we have to accept the intrinsic merits of given norms before we decide on the appropriate mode of their enforcement. And in conducting that argument it is important to recognize that the mere fact that some norm has been enshrined into law does not conclude the matter of its desirability in any debate over the nature and structure of the good society. All too often some laws are ripe for repeal, and the normative case (so to speak) for their retention does not in any obvious matter depend on the fact that it is already in place, save for the fact that it always costs more to undo a law that is already in place than it takes to establish one to begin with. In dealing with norms, I tend to focus on some of those I regard as desirable, and confine my attention to the question of what mode of enforcement is proper: legal or social.

The standard literature does not appear to have a good deal to say about this question. Rather, it confines itself to the question of why enforceable norms are needed, without asking the question of which type of enforcement mechanism is appropriate for what norm. In answering that first question, the lines between the positive and normative tend to blur, for the customary distribution of norm enforcement often reflects the desirable distribution, perhaps for the same reason that customs are efficient guides in other contexts. In this short paper, I cannot comment at great length on the positive question, but I hope to give some clues on how best to answer the normative question swirling about the issue of norm enforcement.

This normative problem asks what should be the role of the state in creating and enforcing social norms. To look at earlier legal systems, it seems that a good many social norms were just that: norms that were enforced exclusively by social sanctions. Yet to the modern mind, a system that relies exclusively on the social enforcement of norms seems to suffer from some kind of a gap or defect. If social enforcement is good, then why isn't legal enforcement even better? The expressive power of condemnation and approval is made stronger if the entire

state stands behind the norm. Individuals have been known to hold out against social pressures and sanctions; indeed some social practices can be undone by persistent behavior that stands in opposition to norms. If there is a social norm against integration, then why not institutionalize the norm with Jim Crow laws? If there is a social norm for integration, why not enforce that norm with a busing order or an antidiscrimination law? If there is a social norm that calls for survival of the fittest, then why not a law that prohibits the giving of charity to the weak and needy? If there is a social norm that the rich must give of their wealth to assist the poor, then why not a legal statute that requires compulsory contributions to a social welfare scheme?

Over and over again individuals who are confident in the soundness of social norms are tempted to argue that the legal enforcement of their preferred moral vision is an unmixed blessing, and that the separation of law and morals should be regarded as a regrettable lapse to be overcome by prompt legislative or judicial action. Even persons whose own world views are widely divergent often share one common belief about their preferred norms: they all believe the norms should be legally enforced. The set of purely social norms is often regarded as falling in an awkward no-man's land between the world of purely subjective preferences (vanilla against chocolate ice cream) and the law of fully enforceable legal norms. The older term, "imperfect obligation," refers to obligations enforced by conscience and social pressures but not law, and was thought in classical natural law theory to represent the *correct* way for society to implement norms of benevolence.

Both halves of this proposition bear notice. Appeals to conscience count because individuals do alter their conduct when others point out the error of their ways. On the other hand, self-education is not the sole source of social control, as social sanctions for persons who deviate from general norms can take far more concrete forms. When divorce was regarded as socially unacceptable, divorcees found it difficult to get jobs, join clubs, or run for public office. In ordinary life various forms of criticism, hostility, ridicule, snubs, and boycotts were, and are, used against individuals who violate rules of dress, decorum, and behavior, even if no legal sanctions are imposed. These social sanctions work well in cohesive groups, and while they may be intended to educate the offender, they usually carry out an implicit threat to

punish certain actions as well. The traditional hostility toward illegitimacy showed the power of these social sanctions even when civil and criminal punishments were assiduously avoided.

Viewed in this context, the traditional emphasis on imperfect obligations was not taken as a verbal dodge or a pious evasion of social obligations. To the contrary, moral and social sanctions were the preferred mode of their enforcement. Consistent with the current era's dominant pressure for writing norms into law, that phrase has fallen out of common use. In principle, there is no a priori reason to think that legal sanctions should back all social norms. The separation of law from morals is sometimes a good thing, and sometimes a bad one. How do we draw the distinction?

A Tentative Typology

Our basic task, then, is to decide which rules are to be subject to which form of sanctions. Here it is very difficult to give a clear answer, but a couple of relevant considerations could be pointed out. One constant of the system is that legal sanctions are more expensive than social ones. They require the use of police, lawyers, judges, administrators of all different kinds and sorts, whose behavior must be coordinated up and down the line. One way to put the question, therefore, is to ask whether the use of these additional resources is justified in terms of improving the outcome by an amount that justifies the extra cost. That question of marginal impact in turn depends on the cost to society of the defection of a single individual from the operation of the basic norm. A few examples might illustrate the point.

Start with the critical cases of aggression and theft. Social sanctions against these practices should be very strong owing to the enormous losses that they impose on others. These individual losses are, moreover, typically social losses in that they are offset only in small part by the gains to the aggressor or the thief. Take physical aggression. Does anyone think that the momentary pleasure of the rapist is larger than the permanent physical and psychological scars of his victim? As for theft, in most cases the fence will pay the thief only a fraction of the value of property to its owner. (And where the fence values it more, he can do the unthinkable: buy it.)

The size of the dislocations caused by aggression and theft is likely to be huge, given the repetitive nature of the wrongs. But social sanctions will not be sufficient to deter the harm. The single individual who is willing to bear the scorn and ostracism of his neighbors could kill (and threaten to kill) with impunity. The ability of the wrongdoer to increase unilaterally the size of the gain is not stopped by any broad social consensus that things should be otherwise. The social equilibrium is massively destabilized even if 99 percent of the population responds to the social sanctions by avoiding the bad conduct. Sooner or later force must be met with force, lest the behavior of the outsider sets the norms for the group. Self-defense is one option that is routinely available, but some collective public force is often necessary to deter offenders before they attack an isolated victim. While serious disputes might arise as to how many resources should be directed toward the prevention of aggression, no one will dispute the initial collective decision to subject it to legal sanctions. The attack on libertarian theory always comes from those who want government to have a greater role. It never comes from those who think that private aggression and fraud are good things.

The enforcement of promises raises much more complicated questions, as the discussion of the law set out above indicates. There are in fact many situations where parties who are entitled to seek legal enforcement of promises decide that they are better off in keeping their disputes out of the legal system. One reason for doing this is that they have no confidence that judges and juries will sensibly apply the correct legal rules to their disputes. They prefer to rely on the informal sanctions imposed by the operation of the trade. Typically, however, that response arises in those cases where the parties have repeat relationships in close-knit communities. In such cases the reputational sanctions that deter future transactions will usually be large enough to prevent even the unscrupulous trader from taking advantage of a situation, as was the case in the earlier days when the diamond industry was largely the province of Hasidic Jews who traded in close proximity to each other in New York City.

Regulatory Blindness

Modern regulators typically underestimate the importance of these reputational sanctions and often insist on direct legal sanctions

where the parties to a transaction might have agreed otherwise. One important illustration of this modern practice is the question of whether employees (but never employers) should be afforded legal remedies against unjust dismissal on the ground of employers' greater power. A very large percentage of private contracts take the opposite tack, by allowing firing and quitting both to take place "at will," that is, without showing any "just cause" for terminating the relationship. But many states, both by statute and common law rule, today seek to regulate the practice of dismissal on the ground that reputational sanctions are inadequate to deter the large institutional employer from serious misconduct. But that conclusion misunderstands the whole situation. The firm that unjustly fires a single worker faces the risk of demoralizing its entire workforce. The costs of hiring and training and socializing new workers to a firm is immense and is known on both sides of the relationship. The employer that pushes too hard in one case risks retribution in many others, and thus has powerful incentives to stay its hand. Ironically, the larger the employer, the more powerful the social retribution if it steps out of line. In contrast, the worker who quits and leaves the employer in a lurch will be subject to much weaker reputational sanctions, especially today when employers are afraid that they will expose themselves to defamation actions by giving candid employee evaluations to prospective employers.

In this social setting, the cost and unreliability of the legal system could make the system of social sanctions standing alone far more efficient than the combined legal and social sanctions routinely adopted under modern law. After all, dismissal still leaves the worker free to seek employment elsewhere, and thus has far different consequences than the killing and maiming that are universally subject to legal sanction. The older distribution of power between the legal and social system had much more sense than the modern critics understand.

The employment relationship is illustrative of a common pattern that can be found in many social settings. The informal norms of the workplace, like the informal norms of an industry, club, or school, may well contain detailed specifications of what are and are not proper forms of behavior. People likely will understand that acts taken in violation of these norms are indeed wrongs for which social sanctions are appropriate. The social norm may be one of termination or separation only for cause while the legal norm is one for termination or

separation at will. Yet there is no irrationality in that disjunction. Owing to the cost and unreliability of the legal sanctions, it may well be that the parties all accept the basic proposition that they are better off using the less coercive set of social sanctions than subjecting themselves to legal rules. The best run apartment buildings reserve the right to evict tenants at the expiration of leases; yet they are thrilled to renew good tenants at reasonable rates, which they routinely do. The best run firms may reserve the right to fire capriciously; yet these firms spend thousands of dollars working to build good employment relationships with their staffs. And charities reserve the right to turn away the needy at the door, and yet routinely take them in. In each of these cases the social norms are often used when the sole sanction available to a private party is the refusal to deal with other people.

The older legal position allowed persons to protect themselves by contract against dismissal, eviction, and rejection, and indeed set the background legal rule in ways that precluded the creation of legal liability unless otherwise assumed. That system could result in certain miscarriages of justice which galvanize courts and legislatures into action. It is easy to rally around the tenant dispossessed in the dead of winter or the sick patient turned away at the hospital door. Yet all systems are subject to individual cases of failure. The acid test comes in the overall evaluation of the system, taking into account the melancholy fact that excesses committed in the name of enforcing community norms are often far greater than those of allowing private parties to do their own thing. It is too easy to miss the tenants who leave a public housing project because no one will evict the one tenant who terrorizes the others. It is too easy to forget that the lavish treatment demanded for the hopeless addict fills the emergency rooms that could be used for more worthy recipients.

Let me just mention one instance here where the difference between legal and social norms apparently did hold well. In his recent book, *Regulatory Takings: Law, Economics and Politics*, Professor William Fischel, an economist, examined the social aftermath of one of the most famous takings cases in the Supreme Court literature: *Pennsylvania Coal Co. v Mahon*. At issue in the 1922 case was whether Pennsylvania could pass, without compensation, a statute that returned to surface owners the right of support that they had previously deeded away to the mining companies that owned the rights to coal beneath

their lands. As a matter of technical property law, this so-called “support estate” was an interest in property that had been sold by landowners to coal owners. It was difficult therefore to resist the conclusion of Justice Holmes that a state statute which gave the right of support back to the surface owners had taken property of the mining companies, just as if the state had given back the mineral rights to the surface owners after they had been sold.

The question here is what set of consequences followed from this decision to allow mining companies to conduct their operations in ways that *could* have sent the houses of mineworkers tumbling into the ground below. Professor Lawrence Friedman, a legal historian, wrote that the decision of the Court to interpose itself between the legislature and the mining companies led to “the ruin of an entire community” by the creation of a “series of petty losses,” all of which went without compensation. But Fischel’s close examination of the historical setting falsified that dire (after-the-fact) prediction. The miners who owned the houses supplied key labor for the mines. The loss of good will associated with the collapse of one of their homes was something that the mining companies wished for the most part to avoid. So the companies’ common practice both before and after the decision in *Pennsylvania Coal* was to repair damage even when not legally obliged to do so.

Of course, this is not to say that the distribution of legal rights is of no consequence in dealing with the incidence and frequency of repair. We should expect that the absence of the legal threat made a difference in some cases at the margin, either in the timeliness or extent of the repairs. But noting the difference hardly justifies junking the result in *Pennsylvania Coal*, for it could well have been that imposing too great a cost on the mineowners would have led to the premature contraction or cessation of the mining activities on which the homeowners depended. It should be clear that the legal decision that allows the terms of a land sale to dominate cannot be casually attacked for its untoward social consequences. So long as there are repeat transactions between parties, there is good reason to believe that social norms will be respected even if not backed by the force of law.

The Acid Test: Redistribution

Fischel's illustration should give pause to anyone who thinks that dominant private institutions always wield their economic power in ways that can be contained only by some strong community response. Yet the bigger challenge to the question of social norms concerns the scope of the imperfect obligations discussed above in connection with redistribution to parties in positions of need. The modern legal position on this question comes in two parts. The first, which insists on the moral strength of the obligation, rests on the assumption that those who have wealth should share it with those who are in need. That position takes it for granted that economists' quibbles over interpersonal comparisons of utility are just that, quibbles: in many cases it is easy to see that a dollar will do far more good in the hands of someone who needs it than it will in the hands of someone who earns it. The second step is that the obligations in question should not remain imperfect, or social, but should be enforced by explicit state laws. That enforcement cannot, moreover, come in the form of private lawsuits of the sort that a pedestrian brings against the driver who ran over his foot. Obligations based on need are not triggered by wrongful acts of other individuals. Rather, they rest upon need, and are imposed on the collectivity as a collectivity. Their enforcement depends on some more comprehensive social means, be it the tithe on the one hand, or the taxation system on the other.

Anyone engaged with communitarian values has to take dead aim at both questions. He has to accept the power of these obligations, and typically will insist that "the nation has a responsibility to provide a decent level of health, education, and welfare for its citizens, regardless of their ability to pay." This very argument was elegantly made by Michael Sandel in a *New Republic* article, "Anti-Social Security," which attacked the recent proposals to restructure benefits under social security with an eye to preserving its long-term viability.

Social security differs in many important ways from other types of redistribution. Yet the program is large enough to make a small stab at so large a question. The approach that I have taken to the matter of social norms does not quarrel with the first point that individuals within a community have some responsibility for those in need. But it does differ in the form of emphasis in the location of the duty. I place

it on individuals, and assume that a mix of social sanctions and conscience will lead persons with wealth to help some individuals, even though it is highly unlikely that they will choose to help all individuals. That is a far cry from the notion that the community, as a community, has an obligation to assist, much as it has an obligation to maintain order and to control the private use of force.

Yet on the second question—should this obligation be made legal—I fully part company with Sandel, at least insofar as we write on a blank slate, and can thus avoid the immense transitional problems that present policies (and politics) have created. The first point to note is that single defections from the policy of charitable giving do not bring down the system. So long as we conceive of charities as a way to make sure that the needy receive assistance, we cannot argue that state compulsion is required in order to control the free-riding of wealthy noncontributors. That concern would only be valid if we thought that social security was an alternative to police power as a means to prevent violence and civil unrest. But the moment the beneficiary of the charitable activity is the recipient, then the free-rider argument is neither here nor there. You give money to the needy and they are helped by what you give, whether or not others have joined your ranks. The lack of full participation does not lead to a disintegration of the system.

The reply, of course, is that the amounts that will be transferred under this system are too small to matter, so that tax revenues are needed to cover the shortfall. But that way of looking at the problem ignores at least three further complications. First, there is little reason to believe that a dollar of public assistance will go as far as a dollar of private assistance. Ordinary individuals and private groups are, I suspect, better monitors of charitable care than impersonal institutions. Second, the amount of money needed will go down if the amount of aid is reduced. With social security, in particular, the loss of tax revenues would lead to an increase in private savings, which if prudently invested hold out a far higher potential rate of return (especially for the younger generation today, which will receive little or no return on its investment). Third, and most importantly, the politics of social security bear no relationship to the lofty communitarian ideals that helped bring about its adoption. The interest group pressures for keeping the program in place are large and well-oiled,

and the obligation is not imposed on the community in the abstract. It is imposed on working individuals, many of whom are of more limited means that the older population who receives the benefits of this program and others (of which Medicare and Medicaid, for long-term nursing care, are only the two most conspicuous).

Taking Stock

In sum, the question of redistribution requires the same tough-minded attitude that is brought to other disputes that lie at the intersection of law and social norms. First, it is necessary to give a full explanation of the efficiency of the social system under the alternative legal arrangements. But when that task is finished, we should not routinely and complacently regard the separation between social practices and legal enforcement as a gap in immediate need of a cure. In some settings, including some in which we address the epochal struggles over redistribution, we should regard the gap as a stable and sensible feature of social life. When legal norms cause more mischief than they cure, they should be avoided. Social norms without legal enforcement do an enormous good. They should not be disparaged simply because they are not perfect. No system is perfect, least of all the law. The excesses of big government today often stem from a systematic misevaluation of the relative value of social and legal norms.

Social Mores Are Not Enough

William A. Galston

Richard Epstein argues that the gap between social practices and legal enforcement is not always a bad thing, and that we should avoid legal norms when they cause more mischief than they cure. At this level of generality, how could anyone disagree? Law is a blunt, expensive instrument wielded by imperfect human beings. The proliferation of legal rules and regulations can never keep pace with the variety of circumstances and may come to strangle the very individual and social goods they seek to protect. The hard work is to specify, with some useful degree of precision, the conditions under which these disadvantages become decisive objections to the legal enforcement of norms.

As a communitarian of sorts, I have no difficulty accepting Epstein's proposition that it is often better to rely on the force of society's moral voice than on the official coercive mechanisms of the law. But we must be clear about how this social enforcement operates. Epstein seems to suggest that social norms are sustained by equilibrating mechanisms in which the consequences of norm violation automatically redound to the disadvantage of the violator. (For example, a firm that unjustly fires a single worker risks demoralizing its entire workforce.) But there are many circumstances in which norms are not backed by self-executing sanctions.

Consider the following homely example. It snowed one night last winter. The next morning I shoveled the sidewalk in front of my house. I am unaware of any city ordinance requiring me to do so. (Anyway, what difference would it make? I live in the District of Columbia, where it seems only parking laws are enforced.) Nor was I moved by

fear (though maybe I should be) that someone will slip and sue me. The point is rather that my neighbors were out shoveling their walks, and I felt impelled to do likewise—to do my fair share to create a block along which pedestrians can make their way with relative ease. To an extent that is hard to gauge, I have internalized the “fair share” norm. As well, I experience a vague fear that my neighbors will think worse of me if I fail to do my part. This combination of principle and sentiment suffices to produce the socially desirable action. The sum of these actions generates a social practice that—in this case, in my neighborhood—doesn’t have to be backed by societal enforcement.

But what if it did? Epstein asserts that legal sanctions are always more expensive than social sanctions. Measured simply in dollars, this is probably true. But Epstein is silent about the nonmonetary costs of social enforcement, which are very real and may loom large enough to induce us to turn to the law. To begin with, in social enforcement an individual or group must directly and personally confront the wrongdoers. Such confrontations may well be experienced as highly distasteful, and not just by individuals on the receiving end. In addition, strategies of social enforcement typically lack procedural safeguards. Individuals who are condemned or ostracized unfairly may have no effective recourse. Whether the accusations are fair or unfair, they can easily breed resentment and lead to cycles of retaliatory escalation that impose further strains on the enforcers. Finally, as Epstein recognizes, the effectiveness of social enforcement rests largely on the existence of “close-knit” communities from which opportunities for exit are limited and costly. Not infrequently, such communities are mixed blessings: the price of membership can be significant restraints on privacy and liberty.

Still, Epstein’s observation provides the basis for an important insight: legal enforcement may be the only realistic option when the civil conditions for social enforcement have broken down. If communities are not close-knit—if neighbors do not know or trust one another, if individuals do not care what others think about their conduct—then it may be necessary to resort to the law, even when public institutions are themselves mistrusted.

Legal enforcement may also be necessary when social norms improperly shield certain forms of conduct from scrutiny and redress.

An important example of this is spousal abuse. Few individuals ever suggested that this behavior was morally permissible or good. But whatever the intention, insisting that it be dealt with privately rather than legally had the effect of allowing more of it to go unchecked than would otherwise have been the case. I do not want to suggest that social norms are of no account in such matters. Jean Elshtain has recently described how the small town in which she grew up intervened successfully against a wife-beater. But in the aggregate, it seems fair to say, such social tactics did not suffice.

Another case arises when local norms conflict with the principles of the larger political community. There are circumstances in which the larger community should accommodate such norms. In the famous case of *Wisconsin v. Yoder*, the Supreme Court allowed the practices of the Old Order Amish to trump the mandatory school attendance laws of the state—and rightly so, in my view. But there are cases in which such accommodation of local norms is clearly wrong—for example, when communities are denying certain individuals or groups the basic rights and privileges of American citizenship. It was possible to argue—and many did—that legal coercion to uproot racial segregation was doomed to fail, or could only succeed at inordinate costs. History refuted these claims.

When Norms Fail

What should happen when the weakening of certain social norms damages the entire community? Epstein raises the pertinent examples of divorce and out-of-wedlock births. Most analysts believe that reduced social disapproval has contributed to the rising incidence of these phenomena. One possible response is resignation: law at best mirrors, but cannot lead, social and cultural change. Another response—the one I favor—is activism: if (as many believe) the costs of divorce and out-of-wedlock births for children and for society are very great, then it is worthwhile to experiment with legal changes of incentive structures that might alter behavior.

Epstein is optimistic about the consequences of responding to the “cost and unreliability” of legal sanctions by turning to the “less coercive set of social sanctions.” But what should we do when *both* fail as enforcement mechanisms? Consider the following example (names

omitted to protect both the innocent and the guilty): A delivery truck goes to the wrong address and pumps a large quantity of home heating oil through an abandoned pipe into a homeowner's finished basement, rendering the home uninhabitable. Neither the firm nor its insurance company accepts the norm of making the homeowner whole; the costs they would incur by adhering to this norm are very high. Negative publicity (including extensive coverage on local television news) leaves the offending parties unmoved. Meanwhile, the costs of litigation to the homeowner may be so high as to preclude full recovery within the range of expected court awards (among other difficulties, tort law does not explicitly allow reimbursement for legal expenses).

Is there a general social interest in creating institutional structures (penalties and/or transaction costs) that allow wronged parties in such circumstances to defend themselves more effectively? If so, the interest may take moral rather than material form. From a utilitarian point of view, it may be more cost-effective to permit such transgressions to go without remedy. Only if one believes in the defense of legitimate property claims as a moral imperative will one have a secure basis for state-imposed or state-financed procedures and sanctions for defending these claims.

Law as the Voice of the Community

On one level, it is hard to fault Epstein's insistence that we examine the costs of law as an instrument of enforcement. But in many circumstances law is more than a means. It is meant to express the considered moral judgment of the community. A fair opportunity to work, to earn a living, to support oneself and one's family is—as the late Judith Shklar reminded us—one of the core elements of American citizenship. From this perspective, I would suggest it is appropriate that we have laws against employment discrimination. Even if, as Epstein asserts, unjust dismissal leaves the worker free to seek employment elsewhere and imposes a reputational penalty on the discriminatory employer, throwing the force of the law against core injustice is the right thing to do. This is all the more true if we cannot fully share Epstein's confidence in the capacity of social and market mechanisms to cure injustice in the absence of the law.

Epstein does not focus exclusively on legal versus social enforcement of agreed-upon norms; his discussion shades over into disagreement about the content of the norms themselves. For example, his critique of Social Security rejects the proposition that there is or ought to be a norm of redistribution binding on the community as a whole. Some individuals may have duties to assist some other individuals, but the community as a community has no such obligation. Epstein goes on to make some significant empirical predictions concerning the consequences of replacing Social Security with private charity. But the key point for Epstein is that even if these predictions turned out to be inaccurate, no moral norms would be violated.

I am not as well versed in Professor Epstein's *oeuvre* as I no doubt should be, but on the basis of this brief essay it appears to me that a central thrust of his analysis is to deny the appropriateness of state-enforced redistribution under most (all?) circumstances. This is, to repeat, not merely an issue of the best means of enforcing shared norms. The question is rather, and more fundamentally, what if anything we owe to one another as fellow citizens. Here libertarians and communitarians part company in principle, at the threshold.

How is this question to be adjudicated? I am less confident than Epstein that utilitarianism in any of its forms illuminates the way forward. My belief that the fortunate among us have a general obligation to the less fortunate does not rest on any assumptions about interpersonal comparisons of utility. Indeed, if I were a libertarian (which I am not), I would be very careful about resting my position on utilitarian arguments, which may well point toward antilibertarian policies in a wide range of cases. To be sure, our moral response to human misfortune is not unaffected by the sequence of events that leaves particular individuals in need of assistance. But I suspect that the differentially distributed propensity to imagine that one could end up in the other's place plays a key role in the differential willingness to accept general (and if need be enforceable) obligations toward those in need.

Physician-Assisted Suicide: What Next?

Herbert Hendin

The U. S. Supreme Court decision on physician-assisted suicide was first and foremost a victory for patients. The importance of what the Court rejected—a constitutional right to assisted suicide—was at least equalled by the importance of what the majority of Justices embraced: the right of terminally ill patients not to suffer.

But the Court's opinion raised, without resolving, concerns about whether it is possible to regulate assisted suicide and euthanasia within any acceptable standards. Although the Justices gave a number of reasons for believing that legalization was both dangerous and not necessary, the Court's decision did not preclude assisted suicide as a possibility the states might consider in addressing the needs of terminally ill patients. Thus while deciding there was no constitutional right to assisted suicide, the Justices left it to the individual states to decide whether legalization might be necessary and how it should be regulated.

These questions facing the states naturally raise concerns about unstable standards—commonly called the “slippery slope” argument. If a state does choose to permit physician-assisted suicide, how can it ensure that the new law will not soon lead to practices we would find abhorrent? This is clearly a valid concern. But a fear of “sliding” cannot be an automatic reason for opposing major social change. As Amitai Etzioni has shown, a slope can be “notched”—practices can be moved in one direction without a fear of sliding as long as appropriate principles and practical measures serve as notches, arresting any potential slide before it even begins.

The issue confronting the states can therefore be restated on a more practical level: Is legalization of physician-assisted suicide an appropriate new notch that is required in order to deal with the suffering of patients who are terminally ill? To answer this question we should first be clear about what we know about suicide, the request for assisted suicide, and the relation of both of these to medical illness. After that, we will examine the Netherlands, where physician-assisted suicide and euthanasia are accepted and practiced.

Suicide and Assisted Suicide—An Overview

Illness and Suicide. People assume that seriously or terminally ill people who wish to end their lives are different from those who are suicidal for other reasons. Yet clinicians who treat such patients know otherwise. Anxiety, depression, and a wish to die are the first reactions of many people who learn that they have a serious or deadly illness. As such, these patients are not significantly different from people who meet other crises with the desire to end the crisis by ending their lives.

Further, most suicide attempts reflect a person's ambivalence about dying, and patients requesting assisted suicide show an equal ambivalence. When interviewed two weeks after a request for assisted suicide, a 1996 study led by Dr. Ezekiel Emanuel revealed that two-thirds of these patients show a significant decrease in the strength of the desire to die. Patients may voice suicidal thoughts in response to transient depression or severe pain, but these patients usually find relief with treatment of their depressive illness, or with pain medication, and thereafter are grateful to be alive. Strikingly, the overwhelming majority of people who are terminally ill fight for life to the end: only two to four percent of all suicides occur in the context of terminal illness.

Depression. Mental illness raises the suicide risk even more than physical illness. Nearly 95 percent of all people who kill themselves have a psychiatric illness diagnosable in the months before suicide. The majority suffer from depression which can be treated. This is particularly true of those over 50, who are more prone than younger victims to take their lives during an acute depressive episode.

Like other suicidal individuals, patients who desire an early death during a serious or terminal illness are usually suffering from a

treatable depressive condition. Although pain and other factors, such as a lack of family support, contribute to their wish for death, depression is the most significant factor, and researchers have found it to be the only factor that predicts the wish for death. Both patients who attempt suicide and those who request assisted suicide often test the affection and care of others, confiding feelings like “I don’t want to be a burden to my family” or “My family would be better off without me.” Such expressions usually reflect depressed feelings of worthlessness or guilt and/or may be a plea for reassurance. Not surprisingly, they are also classic indicators of suicidal depression in people who are in good physical health. Whether physically healthy or terminally ill, these individuals need assurance that they are still wanted; they also need treatment for their depression. Unfortunately, depression is commonly underdiagnosed and inadequately treated.

Fear of the Unknown. The uncertainties surrounding death also play a role in patient requests for assisted suicide. Tim, for example, was a professional in his early 30s when he developed acute myelocytic leukemia. He was told that medical treatment would give him a 25 percent chance of survival and that without it he would die in a few months. His immediate reaction was a desperate, angry preoccupation with suicide and a request for support in carrying it out. He was worried about becoming dependent and feared both the symptoms of his disease and the side effects of treatment.

Tim’s anxieties about the painful circumstances that would surround his death were not irrational, but all his fears about dying amplified them. Once Tim could talk about the possibility or likelihood of his dying—what separation from his family and the destruction of his body meant to him—his desperation subsided. He accepted medical treatment and used the remaining months of his life to become closer to his wife and parents. At first he would not talk to his wife about his illness because of his resentment that she was going on with her life while he would likely not be going on with his. A session with the two of them cleared the air and made it possible for them to talk openly with each other. Two days before he died, Tim talked about what he would have missed without the opportunity for a loving parting.

Like Tim, the vast majority of those who request assisted suicide or euthanasia are motivated primarily by dread of what will happen

to them rather than by current pain or suffering—they fear pain, dependency on others, loss of dignity, the side effects of medical treatment, and, of course, death itself. Patients do not know what to expect and cannot foresee how their condition will unfold as they decline toward death. Facing this uncertainty they fill the vacuum with their fantasies and fears. When these fears are dealt with by a caring and knowledgeable physician, the request for an expedited death usually disappears.

The Dutch “Cure”

The basic guidelines for assisted suicide and euthanasia within the Dutch system are as follows: the patient must make a voluntary, well-considered, persistent request; the patient must be experiencing intolerable suffering that cannot be relieved; there must be consultation with a second physician; and all cases of physician-assisted suicide and euthanasia must be reported.

What happens in the Netherlands to patients like Tim who become suicidal when confronted with serious or terminal illness? Early in my work in the Netherlands, I was shown “Appointment with Death,” a film by the Dutch Voluntary Euthanasia Society that was intended to promote euthanasia. In the film, a 41-year-old artist was diagnosed as HIV positive. He had no physical symptoms, but had seen others suffer and wanted his physician’s assistance in dying. The doctor compassionately explained to him that he might live for some years symptom-free. Despite this, over time the patient repeated his request for euthanasia. Although the doctor thought his patient was acting unwisely and prematurely, he did not know how to deal with his patient’s terror. The doctor thus rationalized that respect for the patient’s autonomy required that he grant the patient’s request.

Consultation in the case was pro forma; a colleague of the doctor saw the patient briefly to confirm his wishes. And while the primary doctor kept establishing that the patient was persistent in his request and competent to make the decision, thus formally meeting those criteria, the doctor did not address the terror that underlay the patient’s request. This patient had clearly been depressed and overwhelmed by the news of his situation. Had his physician been able to deal with more than formal criteria regarding a request to die—and

such a physician is more likely to exist in a culture not so accepting of assisted suicide and euthanasia—this man would probably not have been assisted in suicide.

There is evidence that what happened to this man is happening many times over to patients who become depressed and suicidal in response to serious or terminal medical illness. In the decade between 1983 and 1992, by making assisted suicide and euthanasia easily available, the Dutch have significantly reduced—by a third—the suicide rate of those over 50 in the population. This is the age group containing the highest numbers of euthanasia cases (86 percent of the men and 78 percent of the women) and the greatest number of suicides. This was the period of growing Dutch acceptance of euthanasia. The remarkable drop in the older age group appears to be due to the fact that older suicidal patients are now asking to receive euthanasia. The likelihood that patients would end their own lives if euthanasia was not available to them was one of the justifications given by Dutch doctors for providing such help.

Of course, euthanasia advocates can maintain that making suicide “unnecessary” for those over 50 who are physically ill is a benefit of legalization rather than a sign of abuse. Such an attitude depends, of course, on whether one believes that there are alternatives to assisted suicide or euthanasia for dealing with the problems of older people who become ill. Among an older population physical illness of all types is common, and many who have trouble coping with physical illness become suicidal. In a culture accepting of euthanasia their distress is accepted as a legitimate reason for dying. It may be more than ironic to describe euthanasia as the Dutch cure for suicide.

A Slippery Slope?

Ignoring patients’ fears and depression is not the only problem that has arisen in the Dutch system. During the past two decades, the Netherlands has moved from considering assisted suicide (preferred over euthanasia by the Dutch Voluntary Euthanasia Society) to giving legal sanction to both physician-assisted suicide and euthanasia; from euthanasia for terminally ill patients to euthanasia for those who are chronically ill; from euthanasia for physical illness to euthanasia for psychological distress; and from voluntary euthanasia to nonvoluntary

and involuntary euthanasia. According to the Royal Dutch Medical Society, it did not seem reasonable medically, legally, or morally to sanction only assisted suicide, thereby denying more active medical help in the form of euthanasia to those who could not effect their own deaths. Nor could the Dutch deny assisted suicide or euthanasia to the chronically ill who have longer to suffer than the terminally ill, nor to those who have psychological pain not associated with physical disease. To do so would be a form of discrimination. And while involuntary euthanasia is not legally sanctioned by the Dutch, it is increasingly excused as necessary to end suffering in patients not competent to choose for themselves.

Even more slippery than the extension of euthanasia to more patients is the inability to regulate the process within established rules. The basic guidelines have failed to protect patients, or have been modified or violated. Many of the violations are evident from two studies commissioned by the Dutch government. (The 1990 and 1995 studies won the support of the Royal Dutch Medical Association with the promise that physicians who participated would be immune from prosecution for anything they revealed.) For example, the studies reveal that more than half of Dutch physicians feel it is appropriate to suggest assisted suicide or euthanasia to patients. Neither the physicians nor the study's investigators seem to acknowledge how much the "voluntariness" of the process—one of the official guidelines—is compromised by such a suggestion. Frightened and suffering patients are inclined to listen to suggestions made to them by doctors, even when the doctor is implying that their life is not worth living.

Underreporting is a serious problem. Despite a simplified reporting procedure and statute that protects them from prosecution if they follow established guidelines, 60 percent of Dutch cases are not reported, which by itself makes regulation impossible. Of equal concern is the substance of what is not being reported. The 1995 study's interviews with physicians revealed that in only 11% of the unreported cases was there consultation with another physician. Moreover, almost 20% of the physicians' most recent unreported cases involved the ending of a life without the patient's consent. Thus official regulations are being ignored, and physicians are circumventing this by not reporting those cases.

Death Without Consent

The most alarming fact to come out of the Dutch studies has been the documentation of cases in which patients who had not given their consent had their lives ended by physicians. The studies revealed that in about 1000 deaths each year, physicians admitted they actively caused death without the explicit consent of the patient. In addition, about a quarter of physicians stated that they had “terminated the lives of patients without an explicit request” from the patient to do so, and a third more of the physicians could conceive of doing so. The use of the word “explicit” is somewhat inaccurate, since in 48% of these cases there was no request of any kind, and in the others there were mainly references to patients’ earlier statements of not wanting to suffer.

Unfortunately, a close examination of the two studies reveals that the number of nonvoluntary (a term used when the patient is not competent to make a decision) and involuntary (a term used when the patient is competent) cases is even greater than they first appear, and the number is growing. Dutch investigators’ claim that there has been a slight decrease from 1990 to 1995 in the number of nonvoluntary and involuntary cases, and they do so by citing the number of “without explicit request” cases. But this approach is misleading. Another category on the list is those cases in which physicians gave pain medication with the explicit intention of ending the patient’s life. In 1990, there were 1350 cases in this category; by 1995 the number was up to about 1900. In more than 80% of these cases no request for death was made by the patient. Since researchers around the world have treated such deaths as nonvoluntary or involuntary, they see this as a striking increase in the number of cases terminated without request, which is contrary to the Dutch investigators’ claims.

The investigators also try to minimize the significance of the number of deaths without consent by explaining that the patients were incompetent. But in the 1995 study, 21 percent of the cases classified as “patients whose lives were ended without explicit request,” were competent; in the 1990 study 37 percent of these cases were competent. When asked the reason for not discussing the decisions with their competent patients, physicians usually said that they had previously had some discussion of the subject with the patient.

Yet it seems incomprehensible that a physician would end the life of a competent patient on the basis of a previous discussion without checking what the patient felt currently. Why, then, was it often “necessary” for physicians to end the lives of competent patients without their consent? To answer this question the attorney for the Dutch Voluntary Euthanasia Society favorably cited the case of a nun whose physician ended her life a few days before she would have died. The physician claimed that the patient was in excruciating pain but her religious convictions did not permit her to ask for death. In another case a Dutch patient with disseminated breast cancer who had said she did not want euthanasia had her life ended because, in the physician’s words, “It could have taken another week before she died. I just needed this bed.”

If one totals all the deaths from euthanasia, assisted suicide, ending the life of a patient without consent, and giving opioids with the explicit intention of ending life, the total number of deaths caused by active intervention by physicians has increased from 4,813 (3.7 percent) of all deaths in 1990 to 6,368 (4.7 percent of all deaths) in 1995. This is an increase of 27 percent in cases in which physicians actively intervened to cause death.

Interactive Decisions

Since the government-sanctioned Dutch studies in 1990 and 1995 are primarily numerical and categorical, they do not examine the interaction between physicians, patients, and families that determines the decision for euthanasia. We need to look elsewhere for a fuller picture. Other studies conducted in the Netherlands have shown how voluntariness is compromised, alternatives not presented, and the criterion of unrelievable suffering bypassed. A few examples illustrate how this occurs:

- A wife who no longer wished to care for her sick husband gave him a choice between euthanasia and admission to a home for the chronically ill. The man, afraid of being left to the mercy of strangers in an unfamiliar place, chose to die; the doctor, although aware of the coercion, ended the man’s life.
- A landmark case involved a physically healthy 50-year-old woman who had recently lost her son to cancer. She refused all psychiatric

treatment, and said she would only accept help in dying. She was assisted in suicide by her psychiatrist within four months of her son's death. Her refusal of treatment was considered by her physician and the Dutch courts to have made her suffering unrelievable.

- Another Dutch physician, who was filmed ending the life of a patient recently diagnosed with amyotrophic lateral sclerosis (Lou Gehrig's disease), said of the patient "I can give him the finest wheelchair there is, but in the end it is only a stopgap. He's going to die and he knows it." That death might be years away, but a physician with this attitude might not be able to present alternatives to this patient.

It would seem evident that there has been an erosion of medical standards in the care of terminally ill patients in the Netherlands when, as the government-sanctioned studies documented, 60% of Dutch cases of assisted suicide and euthanasia are not reported, more than 50% of Dutch doctors feel free to suggest euthanasia to their patients, and 25% admit to ending patients' lives without their consent. Social sanction has encouraged patients and doctors to see assisted suicide and euthanasia—intended as an unfortunate necessity in exceptional cases—as almost a routine way of dealing with serious or terminal illness. In the Netherlands that easy solution has led to another kind of slippage: a diminution in the quality of, and demand for, palliative care. Hospice care has been virtually nonexistent in the country.

Parallels

What parallels to our own experience do we already see, or are we likely to see, in that of the Dutch? Our legal system as well as our medical and ethical values would make it difficult for us to make a distinction between assisted suicide and euthanasia. Patients wanting to die make no such distinction, and the many of them who cannot swallow medication have only one choice. Nor if we legalize assisted suicide and/or euthanasia would we find it easy to exclude people who are suffering but are not terminally ill. Terminal illness is not, in any case, a definable medical category. It is even less so when the illness may be terminal because patients exercise their right to refuse treatment.

The leading medical advocates of assisted suicide in the United States have authored proposals that make clear that legalization of assisted suicide for so-called terminally ill patients is but a first step. For example, in the *New England Journal of Medicine* Timothy Quill, one of the most prominent advocates of assisted suicide, and five co-authors call for the legalization of euthanasia as well as assisted suicide for “competent patients suffering not only from terminal illness” but also for those with “incurable, debilitating disease who voluntarily request to end their lives.” “Incurable debilitating disease” would include conditions like diabetes and arthritis.

The case of the physically healthy woman who was assisted in suicide while grieving the recent loss of her son aroused such concern outside of the Netherlands that we are not soon likely to see pressure for assisted suicide or euthanasia for distress unaccompanied by physical illness. But, as should be clear by now, psychological distress is most often at the heart of the request for assisted suicide even when the patient has a physical illness. If legalization occurs, the combination of the two is as likely to be accepted as justification for euthanasia here as it is in the Netherlands.

Some areas where there are no parallels are also sources of concern. The United States is alone among the industrialized democracies in not guaranteeing medical care to large numbers of its population. Without such care, euthanasia could become essentially a forced choice for large numbers of the poor, the disabled, minority groups, and older people; many of them would be vulnerable to pressure for assisted suicide and euthanasia by family, physicians, hospitals, and nursing homes, or by the unnecessary suffering they are experiencing because they cannot obtain proper palliative care. Some awareness of this may be responsible for the fact that in contrast to younger groups that support euthanasia—56 percent of those in the 18-34 age group favor it—it is supported by only 37 percent of those over 65, the presumed beneficiaries of the practice. And while a slight majority of whites favor the practice, African-Americans oppose it by over two to one.

A more equitable medical system, however, has not protected the Dutch. Ultimately by virtue of their helplessness and dependence, all seriously or terminally ill people are vulnerable.

Guidelines and Autonomy

The Dutch model and Dutch guidelines have been accepted as models for the Oregon law permitting assisted suicide (now being reconsidered in a referendum) and for most of the state laws being considered in this country to legalize assisted suicide and euthanasia. As the Dutch experience shows, legal sanction seems to create a permissive atmosphere that fosters laxity toward the guidelines. And after euthanasia or assisted suicide has been performed, since only the patient and the doctor may know the actual facts of the case, and since only the doctor is alive to relate them, any medical or legal body reviewing the case will (as in the Netherlands) only know what the doctor chooses to tell them. Absent an extreme intrusion into the relationship between patient and doctor that most patients would not want and most doctors would not accept, no law or set of guidelines covering assisted suicide or euthanasia can protect patients.

People have the illusion that legalizing assisted suicide and euthanasia will give them greater autonomy. The Dutch experience teaches us that the reverse is true: doctors can suggest euthanasia, ignore patient ambivalence, not present suitable alternatives, and even end the lives of patients who have not requested it.

Ignorance of how to relieve suffering is probably the most frequent reason for doctors complying with or encouraging patients' assisted suicide and euthanasia requests. Consider the following: At a small, international workshop that addressed problems in the care of the terminally ill, two American cases were presented in which terminally ill patients requested assisted suicide. In one case a man was confined to a wheel chair with advanced symptoms of AIDS that included cystic lung infection, severe pain due to inflammation of the nerves in his limbs, and marked weight loss. By the appropriate use of steroids, antidepressants, and psychological sensitivity in dealing with his fears of abandonment, he was able to gain weight, be free of his pain and his wheel chair, and live an additional ten months for which he was grateful. In another case, a woman with great pain due to lung cancer wished for assisted suicide. A nerve block relieved her pain, and she was happy to be able to leave the hospital and live her remaining months at home.

I presented these cases to several euthanasia advocates in the Netherlands and in this country. They believed that the first patient had a right to have euthanasia performed, but were not so sure after they heard the actual outcome. In the second case, aware that a nerve block could provide relief, most would not have performed euthanasia. In other words, *doctors felt free to ignore patient autonomy when they knew how to help the patient. "Patient autonomy" was in essence a rationale for assisted suicide when doctors felt helpless and did not know what else to do.* This seems to be an argument for educating physicians, not for legalizing assisted suicide.

The Right Notch

If physician-assisted suicide is not the solution, what do we need to do to improve the care we give to patients who are dying? Under current law, affirmed by the U.S. Supreme Court in the 1990 *Cruzan* case and reaffirmed in the recent New York and Washington cases, the individual has the right to reject any and all unwanted treatment, including artificially administered nutrition and hydration. Such a right is rooted in common and tort law protection against bodily invasion and battery. (As the U.S. Supreme Court pointed out, contrary to the assertions of those who support assisted suicide, this right has nothing to do with a "right to hasten death," and everything to do with the fact that medical practice depends on the principle of informed consent.) Without such a right patients could become victims of every technological medical advance. This right protects patients without giving physicians the right to actively end life. Patients need to be made aware that they have this right; a recent poll indicates that only 61 percent of people are aware that, under current law, patients may refuse any and all unwanted treatments. Ten percent of the population believe that the law requires a patient to accept *whatever* treatment a doctor wants to provide.

Increasing people's awareness of their rights is but the first step. Our knowledge of how to minister to the needs of terminally ill people is one of medicine's finest achievements in the past decade. But dissemination of that knowledge to the average physician has only just begun. There is a great deal of evidence that in the United States, as in the Netherlands, doctors are not sufficiently trained in the relief of pain and discomfort in terminally ill patients. Knowledge of palliative

care cannot be reserved for specialists; it must be the province of every physician. Physicians undertreat even the most severe states of pain based on inappropriate fears of heavy sedation. Close to 90 percent of American physicians agree that it is sometimes appropriate to give pain medication to relieve suffering even if it may hasten a patient's death; nonetheless, when it comes to actual practice, fear of hastening death is a major reason physicians give inadequate doses of pain medication. The conflict between what physicians know and what they do will be resolved only when providing palliative care becomes a higher priority for every physician.

Medical school is the place to confront future physicians with the painful truth that they must develop the skills to help those patients they cannot cure. Medical students can no longer be kept away from dying patients on the grounds that there is nothing they can learn from them; on the contrary, they must be encouraged to learn that communicating with and caring for those who are dying is necessary to truly be a physician.

We also need to involve patients more in the decisions relevant to their illnesses. Physicians must be encouraged to discuss with seriously ill patients and their families their wishes regarding terminal illness before the final phase of the illness. In nursing homes such discussion should be mandatory.

We need to remove administrative and legal barriers that in many states prevent proper care of terminally ill patients. For example, difficult regulations intended to control narcotic distribution make it impossible for hospitals to acquire narcotics in adequate amounts to provide pain relief for terminally ill patients. State laws that permit proxies to make treatment decisions for incompetent patients are either too restrictive (New York and Missouri) or lack proper safeguards (most other states).

The Supreme Court virtually challenged the states to provide end-of-life care, indicating it would otherwise be receptive to reconsidering the issue. Each state will need to find its own way to deal with the problem. New York Attorney General Dennis Vacco, who argued the New York case before the Supreme Court, has done so by organizing the Commission on Quality Care at the End of Life, which is addressing virtually every aspect of this care, from changing regulations that

constrain the ways in which physicians can treat pain and training physicians in palliative care, to educating the public about their rights and fostering proper reimbursement for end-of-life care. Other states should follow suit.

We have the knowledge of how to relieve the suffering of terminally ill patients, but we must have the will to implement that knowledge. Legalization of assisted suicide is not a necessary new “notch” but a trap. The notch we have, however, must be carved deep enough so that people know it is there and learn to take advantage of its presence in a way that truly addresses the needs of those who are seriously or terminally ill.

A medical science that is in need of euthanasia has to be changed as soon as possible to a medicine that cares beyond cure.

D.J. Bakker

First, provide decent health care for the living; then, we can have a proper debate about the moral problems of death and dying.

Michael Walzer

Beyond Apologies: Can Religion Work Where Politics Has Failed?

Patrick Glynn

The first signs of a thaw in our long decade of discontent about race in America came last June with President Clinton's announcement of a new White House initiative on racial reconciliation. With the bitter memories of the Rodney King incident, the 1992 Los Angeles riots, and the O. J. Simpson verdict finally beginning to fade, the president evidently gauged the nation ready to revisit the subject of race in a calmer vein. The new initiative is modest by any measure. The president offered a few edifying words on the need for racial harmony, called for a year-long national "conversation on race," and pledged to establish an advisory board to study and encourage the grass-roots efforts on racial reconciliation that are already underway. It is emblematic of the diminished role of federal government in setting the national agenda that Mr. Clinton would not, or could not, contemplate doing more.

But in truth, the real action on race relations in the 1990s has been unfolding at the grass-roots level. The most important development has been the emergence of a major racial reconciliation movement among white and black Evangelical Christians. From rather modest beginnings in the early 1990s, the movement is rapidly growing into a national force. Several Evangelical organizations, including the Southern Baptist Convention and the National Association of Evangelicals, have launched fresh initiatives on race during the decade. But the backbone of the new reconciliation effort is the Promise Keepers organization—American Evangelism's new fast-expanding, all-male crusade—which has made racial reconciliation a major theme of its revival. Founded in 1990 by former Colorado University football

coach Bill McCartney and targeted at Protestant men, the movement has by now drawn well over 2 million to its revival rallies—typically held in major sports stadiums around the country. By the time this article appears, the organization will have staged its own “million-man march” on Washington in October, with racial reconciliation as a prominent theme.

Religiously based and largely confined to the Protestant community, the Evangelical racial reconciliation effort has so far played to a somewhat limited constituency. But its influence on national life is growing. Moreover, in both its theory and practice, the movement is pointing the way toward some fundamentally new and potentially promising approaches to the challenge of achieving racial harmony. In particular, the religiously oriented tactics of the Evangelicals often show a capacity for transcending many of the problems that have typically sabotaged our national political conversation on race in recent years.

The Capacity for Collective Apology

Few controversies could have better exemplified the awkwardness of our current national dialogue on race—or the need for a fresh reconciliation discussion—than the brief but heated quarrel over Congressman Tony Hall’s proposal for a national “apology” to black Americans for slavery. The controversy exploded when the president, following his June speech, indicated he might support the idea. Hall’s well-meaning suggestion managed to draw angry criticism from both white and black commentators and add steadily to the national sense of racial irritation before falling by the political wayside two months after it was introduced.

What was wrong with the idea of an apology? Even many who lashed out at the proposal acknowledged that slavery was a terrible evil with disastrous consequences persisting to our own day. The question was, who should apologize to whom? The original perpetrators and victims, it was pointed out, were long dead. Moreover, the majority of America’s contemporary white population could hardly be reckoned as descendants of slaveholders. “Why should I, as some in Congress propose, apologize for slavery?” wrote columnist Richard Cohen. “After all, during that era my ancestors were all in Europe,

living with very few civil rights themselves. The ones who remained all perished in the Holocaust, and the ones who emigrated to America all arrived poor and went to work in sweatshops.” A number of black commentators, including Jesse Jackson, took the position that the apology was essentially a “meaningless gesture,” at least in the absence of more serious efforts at restitution to blacks for the harmful effects suffered as a result of slavery and discrimination. Yet opinion polls registered a troubling—though by now familiar—racial split on the issue: while roughly two-thirds of white respondents opposed the apology, two-thirds of blacks said they favored it.

It is precisely such nettlesome issues—restitution and collective and historical guilt—and the often confused emotions accompanying them that complicate reconciliation efforts, whether one is talking about whites and blacks in the United States, Catholics and Protestants in Northern Ireland, or Serbs, Croats, and Muslims in the former Yugoslavia. How does one cope with major injustices of lasting impact whose perpetrators are long gone? At what point does one declare an amnesty on old grievances? Which is the more important focus for reconciliation efforts—historical grievances or present wrongs?

Typically, in such situations, each group has fallen into the habit of viewing the other as collectively responsible for the wrongdoing of its members. But, reasonably enough, no individual is willing to assume responsibility for the sins of his or her entire ethnic group or race, dating back to who-knows-when. All this tends to pose almost insuperable problems for politicians seeking to encourage calm discussion and rational resolution of such disputes—whether in an international or a domestic setting.

Yet many problems that seem insurmountable in a political context diminish greatly when one shifts to a religious, or perhaps we should say spiritual, venue. Evangelical religious leaders have had much better luck with the apology approach than politicians have. In 1995, the Southern Baptist Convention was widely praised for its resolution apologizing for past support of slavery and racism. The Southern Baptists were not alone. In the same year, the president of the National Association of Evangelicals publicly confessed and repented of past racism by white Evangelicals in an emotional meeting between white and African-American Evangelicals that culminated in a laying

on of hands by black ministers and a breaking-of-bread ceremony. A few months earlier, white and black Pentecostals engaged in mutual reconciliation at a meeting that evoked powerful emotions and climaxed in a foot-washing ritual. In February 1996, the Promise Keepers organization sponsored a major gathering in Atlanta's Georgia Dome of more than 39,000 male pastors of diverse racial, ethnic, and denominational backgrounds, under the theme "Breaking Down the Walls." At the end of the rally, wrote *Christianity Today*, "Pentecostals and Baptists prayed together; Anglos and men of color embraced. Suspicions had given way to respect, even love, for fellow believers with different beliefs."

No one would claim that such gestures or ritual moments constitute an instant cure for the problem of racial tension, even within the Evangelical community itself. (Evangelical activists themselves continually stress the need to translate such momentary sentiments into concrete, day-to-day action.) Nonetheless, there has been a greater willingness among observers, including many African-Americans, to accept such acts of repentance as sincere—and a greater capacity of such religious gestures to evoke genuine emotion and a sense of hope and change. This may be in part because apologies on the part of church organizations involve a damaging admission of guilt: for a church to own up to serious sin is a humbling gesture indeed. (This may be one reason why Pope John Paul II has generally earned high marks with commentators for his numerous recent apologies, whether for past Church support of slavery and racism, for the injustices done to Galileo, or—most recently—for the 16th-century massacre of Protestants by Catholics in France. There was a time when it was thought that being the pope meant never having to say you're sorry.)

But there is also a general recognition that the religious or spiritual motivation is by nature fundamentally different from, and usually purer than, the political. "It is one thing for the Southern Baptists to repent for their racism, as they did in 1995; repentance is part of their religion. Congress will inevitably find it quite awkward," wrote Deborah Sontag of *The New York Times*.

All this raises a further question. While reconciliation—and domestic peace between factions—seems a political necessity, is political action alone sufficient to achieve it? Political leaders who have en-

gaged in the politics of reconciliation—from Nelson Mandela to Mikhail Gorbachev—often have made implicit appeals to religious values. The Evangelical movement makes this appeal explicit. In effect, the Evangelical activists accept as their working premise that “only a miracle” will bring true reconciliation between the races, and they then proceed to try to bring this miracle about—an unusual approach that may help explain their relative success to date.

Guidance from God—and from Interracial Congregations

The activities of the reconcilers take various forms. Public apologies have constituted only a small part of the movement’s efforts, albeit the most widely publicized. At the core of the movement is a small group of grass-roots activists who have actually been involved in building and sustaining experimental interracial congregations in inner-city areas—in some cases going back as far as the 1970s.

The 1992 Los Angeles riots provoked soul searching about race relations in the nation in general and in the Evangelical community in particular. Partly in response to heightened concern about the lack of racial harmony in the country, each of two black-white interracial ministry teams—Spencer Perkins and Chris Rice from Jackson, Mississippi, and Raleigh Washington and Glen Kehrein from Chicago—published books describing their experiences. The books—very similar in theme—exhorted fellow Evangelicals to pursue better relations with believers of different races and outlined theories and techniques to guide the reconciliation process. The books received wide notice in the Evangelical press, and articles on race-related issues multiplied in *Christianity Today* and other Evangelical publications. It was probably this newly race-sensitized climate—marked by a certain measure of guilt among Evangelicals for having neglected the race issue—which prompted the public apologies from the Southern Baptists, Evangelicals, and Pentecostals in the mid-1990s.

At the same time, McCartney’s Promise Keepers movement was picking up steam. A veteran of one of the nation’s most integrated venues—the locker room—McCartney was already committed to the racial reconciliation idea. He had already included a promise to overcome racial and denominational differences in the “seven promises” that members of Promise Keepers make. He actively embraced

the themes of the new Evangelical reconciliation literature of the early 1990s, folding ever more reconciliation-related content into the Promise Keepers' increasingly well-attended rallies. Eventually he hired Washington—a black former Army colonel turned Evangelical minister and reconciliation activist—as Vice President for Reconciliation, and invested considerable sums building a staff to work on disseminating the reconciliation message through local church communities.

Three features distinguish the Evangelicals' approach to racial reconciliation from secular-based approaches such as conflict-resolution theory or multiculturalism: (1) an explicitly religious or spiritual motivation; (2) a sense of sin; and (3) a belief in the efficacy of ritual and in the reality of divine intervention in human relationships and human affairs. All three factors give the Evangelicals certain advantages vis-à-vis more conventional secular approaches.

Religious Motivation. Evangelicals understand the Biblical prescription for human relationships as going well beyond such secular criteria as reasonableness, fairness, or even justice. Gospel values, they repeatedly emphasize, are different from—and more demanding than—those of the secular world. “*Civil rights* is a political concept,” explains Perkins; “the *brotherhood* spoken of by biblical and contemporary prophets is a much higher calling.” Evangelical reconciliation activists speak frequently of having a special mission or “calling” to pursue racial healing, which they argue is shared to different degrees by all Christians.

This means that reconciliation activists can insist on a higher standard of conduct than the political realm normally demands of us. The criterion is no longer simply “justice,” but rather “love your neighbor as yourself” and “bless those who persecute you.” Equally important, in the context of the religious setting, the emphasis is no longer on the justice one gets, but rather on the mercy one gives. The reconciliation activists emphasize the obligation of the Christian to leave his or her “comfort zone,” in the words of Washington and Kehrein, and make an effort to encounter and be kind to persons of a different skin color.

Reconciliation activists argue that such a shift in perspective from the political to the spiritual is essential if aggrieved races and other

groups are to achieve a “more perfect union.” Political dialogue, premised on mere justice or rights and responsibilities, is insufficient, they argue, as experience has shown. Indeed, they explicitly contrast their premises with those of the secular-based politics and social engineering of the Great Society era.

It is precisely the failure of the secularly oriented Great Society, a number of them argue, that points to the need for a new, explicitly religious or faith-based approach to racial divisions. “The humanistic optimism of 1965 is totally discredited,” writes white Evangelical reconciler John Dawson. “The politician, educator, and scientists have failed,” leaving the task to the Church. “Someone forgot to tell us along the way that you can’t legislate people’s attitudes,” claim Perkins and Rice. “Changing laws will not change hearts. The civil rights movement has run its course, and we’ve gotten just about all you can expect to get from a political movement.” And according to Washington and Kehrein, “The L.A. riots are a reminder of how integration efforts have not brought an end to the prejudice in people’s hearts. Neither Congress nor the president can apply a remedy to cure our country’s ills.... We...say that Christ is the answer.”

Evangelicals say that in the absence of the spiritual imperative, it is simply impossible to find the motivation necessary to endure the difficulties of the reconciliation process. Writes Perkins, an African-American and son of perhaps the most famous black Evangelical, John Perkins: “To be honest, if I were a white non-Christian, I don’t know if I’d have any motivation to care. But I am a Christian, and claiming that distinction carries responsibilities.” By the same token, like many Evangelicals, Perkins sees the reconciliation effort as a means to vindicate Christianity in the eyes of secular society. Christianity can demonstrate its validity by succeeding where secular techniques have failed. “Together we are changing the way we do Christianity,” he writes, “making it visibly distinguishable from the world by our ability to embrace brothers and sisters from diverse racial and ethnic backgrounds. As our world becomes more multicultural, this unique trait will become even more crucial to our witness, providing credibility for a gospel competing among the many voices in the new global village.”

Sense of Sin. Secular thinkers have long looked askance at the powerful sense of sin that pervades the Calvinist worldview of the Evangelical Christian. But whatever its possible drawbacks, the Evangelical's strong sense of human sinfulness—matched with a belief in the possibility of divine forgiveness—tends to facilitate the reconciliation dialogue.

In a certain sense, it is precisely the problem of sin that tends to limit the effectiveness of the major alternatives to religious-based reconciliation techniques—conflict-resolution theory and the multiculturalist paradigm. In its emphasis on the need to find common ground, conflict-resolution theory tends to insist that parties to a dispute overlook grievances and avoid the issue of blame. That is perhaps one reason why conflict-resolution techniques often break down if wounds are deeply felt and the conflict is highly emotional in nature. Multiculturalism, on the other hand, is far more attuned to the historical and emotional dimensions of conflict; it is also focused on the issue of blame. But it tends to perpetuate the cycle of grievance by transforming oppressor into victim and vice versa. It also assesses blame on a collective basis, which is itself a form of injustice.

Yet if one is in the habit of admitting that one is a sinner and acknowledging the general sinfulness of the human race, it is in a sense easier to confess one's sins and admit wrongdoing publicly. There is always shame in wrongdoing, but less so if one is part of a community that acknowledges that wrongdoing is not an exceptional phenomenon in human life and that confessing wrongdoing is the necessary prelude to receiving divine forgiveness.

The acknowledgment of common guilt even makes possible what Evangelical reconciler John Dawson calls "identificational repentance." It is possible and also not inappropriate, Dawson argues, to express regret for the wrongs that have been perpetrated by the collectivities to which one belongs—one's nation, one's city, one's race, one's tribe. Citing a number of Biblical precedents for such gestures, Dawson writes:

Repentance, reconciliation, and healing could take place if Christians from the black and white community joined together in identification with the sins and griefs of our forbears.... The new resident of the city might think, "That's not

my problem. I just moved here last year.” However, when God puts you in a city you become part of the Church there and you inherit its legacy, good and bad. The unfinished business of the Church is now your responsibility, too.

Behind all this lies a simple psychological truth: imputing blame normally aggravates conflict, while accepting blame tends to diffuse it. By putting the onus on the believer to acknowledge and confess his or her own sin, the Evangelical reconcilers create a psychological setting more conducive to mutual support than mutual recrimination.

Ritual and Divine Action. Yet the whole process depends in the final analysis on the belief in God’s ability to provide healing and forgiveness where it would be impossible to arrive at such a resolution through human means alone. Whether or not one shares the theological beliefs of the Evangelicals who engage in reconciliation efforts and ceremonies, one can easily see how the mere belief in the possibility of divine forgiveness—and in divine aid at arriving at reconciliation—could provide a strong psychological impetus for positive group interaction, as well as a sanction for the release of powerful emotions. Faith provides a sense of safety that permits people to express and release strong emotions constructively, and in a way that they may not be inclined to do in ordinary social settings, even or especially political ones.

The Ultimate Goals

Of course in many ways the toughest question—and certainly the one that most nags at the reconciliation activists themselves—concerns how speeches, prayers, and ritual acts of forgiveness aimed at racial reconciliation translate into change in people’s day-to-day lives. Promise Keepers is investing considerable effort in spurring ongoing reconciliation activities at the local church level. Moreover, Promise Keepers materials encourage members to go out of their way to engage with those of different races and ethnic groups for purposes of advancing reconciliation. There are already a number of reports of successful local efforts under way—organizations in which men of different races have come together for purposes of promoting reconciliation in their communities. But only time will tell how extensive or how lasting the effects of this movement will be.

Politics strives to transform people by altering the structure of society; religion strives to change society by transforming individuals. In this respect, the racial reconciliation movement of the 1990s differs importantly from the racial equality movements of the past. In those earlier movements the main goal of religious activists—Evangelical William Wilberforce, who led England’s antislavery movement; the Quakers of American Abolitionism; or Dr. Martin Luther King—was to spur politicians to action. But in postmodern societies—where the greatest challenges we face are increasingly less purely political in nature than behavioral and attitudinal, or even moral and spiritual—social change can be expected to come increasingly from grass-roots community and religious activists like the Evangelical reconcilers, who strive to change the nature of society one community, and one soul, at a time.

Sharing the Burden

If people take responsibility for their own lives and assume a share of the responsibility for the common good and the public interest, the union will indeed be more perfect. The we, the we in “we, the people,” will indeed be more inclusive.

Barbara Jordan

Responsibility and Intimacy in the AIDS Epidemic

Ronald Bayer

Do people infected with HIV have special responsibilities to those with whom they have sexual intercourse? If such responsibilities exist, what do they involve? Merely raising the question in a direct manner has tended, until recently, to provoke extraordinary discomfort on the part of many involved in AIDS prevention efforts. For years many had asserted (and some still do) that the sole obligation lies with each individual to protect himself or herself. But now that the question of responsibility to others has achieved some currency, it is especially crucial to understand the history of the reluctance to confront the question of what those who are infected owe to their sexual partners. Such an understanding can help in formulating the appropriate role for moral considerations in the shaping of AIDS prevention efforts.

It is not difficult to understand why those committed to a “modern” understanding of sexual behavior would have deemed questions regarding sexual ethics profoundly troubling. It was not simply that such matters had a distinctly “old fashioned,” pre-scientific character; more disturbing, they seemed to derive from the very worldview against which the modern perspective on sexuality had revolted. To raise questions about sexual ethics, it was feared, would be to give credence to the concerns of moralists who had so effectively imposed repressive and restrictive codes of sexual behavior, both heterosexual and homosexual.

But with the onset of the AIDS epidemic in 1981, it should have become increasingly clear that questions of sexual ethics could not be avoided. Here was a terrifying disease that was spread in the context of intimate, typically consensual, sexual relations. In a fundamental

sense, the questions posed by AIDS were not very different from those raised by sexually transmitted diseases more generally. But the lethality of HIV infection added an urgency that made a refusal to consider these matters all the more problematic.

Responsibility as Anathema

In the epidemic's early years, the very concept of responsibility was viewed as alien and threatening. It was, after all, a concept more common to the moral and religious right, which had displayed a profound indifference to the plight of those with AIDS, and which threatened not only moral condemnation, but invasions of privacy and deprivations of liberty as well. The concept of personal responsibility also seemed to represent an echo of the traditional moralistic condemnation of sexual pleasure generally and of homosexuality specifically.

Three objections were raised either implicitly or explicitly to the claim that those with HIV had special responsibilities to prevent the transmissions of their infections and that such responsibility should inform AIDS prevention efforts. The first was pragmatic; the second philosophical; the third political.

Pragmatic Objections. On a pragmatic level it was claimed that a public health policy that focused on the responsibility of people with HIV to behave in ways that protected the uninfected—either by condom use or self-disclosure of HIV status—would in fact *increase* the risk of HIV transmission by making more vulnerable those who would, as a result of false expectations, fail to protect themselves. This perspective was captured in a letter by Susan Cochran and Vickie Mays to the *New England Journal of Medicine*. After describing the extent to which both men (34 percent) and women (10 percent) had lied in order to have sex, and believed they had been lied to for purposes of having sex (men 47 percent, women 60 percent), the authors declared that the implication for HIV prevention was “clear”:

In counseling patients, particularly young adults, physicians need to consider realistically the patients' capacity for assessing the risk of HIV in sexual partners through questioning them. Patients should be cautioned that safe sex strategies are always advisable despite arguments to the contrary from partners. This is particularly important for heterosexuals in

urban centers where distinctions between people at low risk and those at high risk may be less obvious because of higher rates of experimentation with sex and the use of intravenous drugs and undisclosed histories of high risk behavior.

This was the core of the ethos of self-protection that was to inform much of the AIDS prevention effort in the epidemic's first decade. Each person (both men and women!) had to be responsible for condom use. It was an obligation that fell equally to the infected and uninfected. As each person was responsible for his or her own health, neither was ultimately responsible for the health of the other. Under what David Chambers has called the "code of the condom," there certainly was no obligation to inform one's partner if one was infected. Thus an educational pamphlet distributed by one AIDS service organization declared:

If you follow these safe sex guidelines, you don't need to worry about whether your partners know that you're positive. You've already protected them from infection and yourself from reinfection. Some guys need to get their HIV status out on the table up front, especially if it's a possible relationship situation. Just use your judgment about who you tell—there's still discrimination out there.

As this excerpt shows, when the importance of self-disclosure was the subject of attention in this period, it was commonly in terms of the psychological burdens associated with secretiveness rather than in terms of the right of the sexual partner to be informed.

Finally, even some health departments sought to promote condom use *primarily* as the only effective means of assuring *self*-protection. In an AIDS prevention advertisement produced by the New York City Health Department, a man and woman are shown embracing each other thinking "I hope (s)he doesn't have AIDS!" to which the voice of the Health Department responds "YOU CAN'T LIVE ON HOPE."

Philosophical Objections. A second line of argument that emerged in the early years of the AIDS epidemic was philosophical. In arguing against the claim that those who were infected were culpable if they infected their partners, philosopher Richard Mohr wrote "the disease's mode of contagion argues that those at risk are those whose actions contribute to their own risk of infection." Since HIV largely occurred

in the context of consensual relationships, each individual bore the responsibility to protect himself or herself. Those who failed to protect themselves had no claim against those who had infected them. This line of reasoning—which sought to displace the romantic notion of “love conquers all” with the posture of deep suspicion derived from the commercial exchange “buyer beware”—received its fullest development in a volume entitled *AIDS and the Good Society*, by Patricia Illingworth.

Illingworth begins with the empirical assumption that among gay men there is no expectation that those who engage in high-risk activities will disclose their HIV status. Illingworth then builds her moral case by drawing on the legal maxim *volenti non fit injuria*—to one who consents no harm is done. Those who engage in unprotected sex place themselves at risk and in so doing forfeit the right to impose duties of disclosure on persons with HIV infection. For Illingworth, to become infected under such circumstances is, as Mohr had argued, to suffer a self-inflicted injury.

It may be that some gay men *hope* that their sexual partners will inform them of their antibody status and it might be *nice* of them to do so. But in the absence of a widespread expectation to disclose, neither of these will suffice to ground a *duty* to disclose HIV status.

Illingworth goes further and argues that given the ethos and expectations of those most at risk it would be dangerous to fashion programs that stress a duty to disclose. Returning to the pragmatic justification for nondisclosure she states:

To posit a duty to inform implies that the responsibility for transmission lies with the infected rather than with the uninfected to remain uninfected. This, in turn, may have the consequence of making the uninfected take fewer precautions to avoid HIV infection.... Positioning a duty to inform...may well lead to a rise in the spread of HIV/AIDS.

In only one situation did Illingworth suggest that a duty to disclose existed. Buried in a footnote she acknowledged that because of the expectations created in monogamous relationships—gay or heterosexual—a failure to disclose one’s HIV status would be to impose an injury on an unsuspecting partner. There would be some

who would reject even this proposition, arguing that monogamy was a dangerous myth.

Haunting the philosophical perspective enunciated by Illingworth and others was the specter of criminalization. If a moral duty to protect existed, would not such a duty ineluctably lead to the imposition of criminal sanctions for unsafe sex? Legislatures in many states enacted AIDS-specific statutes imposing criminal penalties for those who acted in a manner that could result in HIV transmission, sometimes refusing to distinguish between those who did and those who did not use condoms. And in jurisdictions throughout the United States as well as in nations with AIDS policies as diverse as those of Canada, Denmark, and Sweden, individuals had been imprisoned for infecting unsuspecting sexual partners.

Political Objections. A final objection to the claim that those with HIV infection had special responsibilities to prevent HIV transmission was political. In the face of threats to the privacy rights and the economic and social interests of the infected and those at risk of infection, it was crucial to articulate an ideology of solidarity—one that rejected as dangerously divisive all efforts to distinguish between “us” and “them,” between the “tainted” and the “pure.” Such efforts, it was feared, would lead to a “viral apartheid.” Divisions within the communities at risk would make more difficult efforts to develop broad-based social support for those affected by the epidemic. Social solidarity would best be founded on the concept of universal vulnerability to HIV and upon the universal importance of safe sex practices. Commenting on this political outlook, gay psychologist Walt Odets would write some years later, “the obvious idea that AIDS prevention is for HIV-negative men is a controversial, politically inflammatory assertion....The confused retort is that AIDS prevention is *for the gay community.*”

It is important not to overstate the extent to which the ethic of self-protection had rendered discussions of responsibility impossible in the epidemic’s first years. Some philosophers, like Michael Yeo, underscored the obligation to notify sexual partners about one’s HIV status by drawing on the doctrine of informed consent. Public health departments and the Centers for Disease Control and Prevention devoted considerable attention to issues of partner notification. Fi-

nally, “privilege to disclose” legislation in many states made it possible for physicians to breach confidentiality in order to warn those whose infected sexual partners had failed to use condoms about the risks to which they had been exposed.

Nevertheless, the ethos of self-protection had been accorded a central ideological role in AIDS prevention efforts—especially among community-based organizations and in those health departments that were especially sensitive to the fears and concerns of those at greatest risk for infection. In a 1995 review of AIDS prevention efforts among drug users, Don Des Jarlais noted, “most programs that have urged IVDUs [intravenous drug users] to use condoms thus far have focused on the self-protective efforts of condom use. Appealing to altruistic feelings of protecting others from HIV infection may be an untapped source of motivation for increasing condom use.”

Self-Protection Is Not Enough

How deeply rooted the ideology of self-protection had become, and how difficult it might be to develop programs that “appealed to altruistic feelings,” was starkly revealed by events that transpired in New York City in 1993. The city was approaching the occasion of its 50,000th AIDS case. To mark that event, Associate Commissioner of Health Mark Barnes—a gay attorney with a longstanding involvement in AIDS policy issues at federal, state, and municipal levels—proposed to the AIDS staff of the Health Department that the commissioner of health speak out on the question of responsibility. Cautiously framing the issues at stake, he underscored the many ways in which the concept of responsibility needed to be expanded—the responsibility of public health officials and health care professionals to protect and care for those with infection, and the responsibility of the uninfected to protect themselves. But central to the hoped-for message was the need of those with HIV infection to act responsibly.

Over the past decade of the epidemic, prevention efforts have focused almost entirely on the “self-protection” model: that is, upon the notion that if given enough information, education, training and support, each person uninfected with HIV has the ability to protect himself or herself from infection.

Such strategies, he argued, were not sufficient. They were inadequate for the protection of women, who often found it difficult if not

impossible to insist that their partners use condoms. They were insufficient for adolescents just beginning to engage in sexual behavior or drug use. They did not address “those persons engaged in sexual or needle-sharing relationships in which they do not know, may not suspect, or may be denying that their partner is or may be infected.” Finally, they were inapt in the face of the psychological pressures or passions that could lead to “relapse” and to unsafe sex.

To meet this challenge, Barnes proposed that the department begin to stress the duty to protect others as well as the importance of self-protection. Neither moralistic nor Panglossian, the proposed new strategy reflected a sober appreciation of what the new initiative could achieve.

No one expects that the strategy of “protecting others” will prevent all HIV transmission, just as the “self-protection” model has not prevented all transmission. We do hope, however, that sustained attention to this message will lead to fostering a sense of duty and obligation to others, with small but increasing gains in the prevention of primary HIV infection.

The proposed speech to commemorate the 50,000th AIDS case was never delivered. Those who had reviewed the proposed message—especially those directly involved in the health department’s AIDS programs—had reacted sharply to the proposed new emphasis on protecting others. What they saw was simply a poorly disguised example of “victim blaming.”

Both the observations by Des Jarlais and the undelivered speech proposed by Barnes reflected a growing discomfort with the ethos of self-protection. Two epidemiological considerations were driving the search for a new ethic of prevention: the growing number of women infected through heterosexual contact, and reports that in some parts of the country the incidence of infection among young gay men was disturbingly high.

The event that truly brought the issue of responsibility to the fore was *The New York Times*’ 1995 publication of an op-ed by the gay journalist Michelangelo Signorile. “If I am positive,” he wrote “I have a responsibility: not to put others at risk and to understand that not all HIV-negative people are equipped to deal with the responsibility of

safer sex.” It was the failure of what Signorile termed the “AIDS establishment” to address this issue that drew his ire.

The fact is that they [AIDS service organizations] have always placed most if not all of the onus on the HIV-negative person not to become infected...None of us when we go for testing and counseling are truly told that we're supposed to be *responsible*—that we as HIV-positive people have enormous, grave responsibility in this.

What matters more than the accuracy of this characterization is the perception that the underlying ethos of AIDS prevention efforts had profound limitations, and that this perception had emerged from within the gay community.

Not long after the appearance of Signorile's piece, later published in the gay magazine *Out*, the issue of responsibility resurfaced in the pages of *The Nation*, again underscoring the extent to which a gay voice critical of the ethos of self-protection had begun to emerge. David Kirp, a gay professor of public policy at Berkeley, challenged Signorile's assertion that AIDS service organizations were blameworthy because of their failure to teach the lessons of responsibility. But Kirp's critique reflected a new, emerging voice: he believed the importance of responsibility was self-evident: “The obligation to take responsibility for one's own actions is no revelation to anyone with even a kindergartner's moral compass.”

As this dialogue continued, more voices endorsed the notion of sexual responsibility. Gabriel Rotello, a gay columnist for *New York Newsday*, took the opportunity to note that the safe sex doctrine ignored the extent to which people with HIV infection had special moral responsibilities.

Safer sex guidelines in the gay world stress self-protection. We are told that we must assume that all potential partners are infected and most [of us] must drive defensively through the minefields of modern love. This is great advice for HIV-negative people, but it allows some who are HIV-positive to reason that if an uninfected partner is willing to take risks, that's the partner's choice. And if that choice results in infection, it's the partner's fault....A wiser doctrine would be to stress the idea of self-defense while equally stressing that those who are infected bear the further responsibility of not infecting others.

Even more striking were the observations of Dr. Lawrence Mass, a cofounder of Gay Men's Health Crisis, New York's largest AIDS prevention community-based organization:

When I wrote the earliest version of GMHC's Medical Answers about AIDS...I was maximally concerned about civil liberties. Today, I remain so, but with behavior modification looking as if it will remain the sole form of prevention for years to come, I am even more aware of and concerned about personal and moral responsibility.

The endorsement of the concept of personal responsibility by a number of prominent and vocal individuals should not be confused with an about-face within the world of AIDS prevention. Nevertheless, it does represent a challenge of profound significance. It is a challenge that, if accepted, will require a fundamental reformulation of the messages conveyed in the intimate context of counseling and in public efforts at education.

Towards a Definition of Sexual Responsibility

To acknowledge that personal responsibility has a central role to play in AIDS prevention efforts only opens the way to a number of complex questions, and here there remain great uncertainties and controversies. All who endorse the concept of responsibility believe that individuals with HIV infection must take some steps, under some circumstances, to protect their sexual partners. But there the agreement ends. There are proponents of responsibility who view it primarily as an alternative motivational strategy. Others see it as demanding important behavioral changes. For some the use of a condom alone would satisfy the moral claim of responsibility. Others underscore the concomitant obligation to disclose one's HIV infection, at least in ongoing relationships. Thus David Chambers, a gay professor of law, argued:

[T]he evidence of condom breakage and misuse strongly suggests that infected men, even men who insist on condom use on all occasions, ought to feel obligated to reveal their HIV status to the partners with whom they begin to have anal sex on a continuing basis so that their partners may protect themselves. While this may come at the heavy price of the loss of relationships, it may spare them the early deaths of the men they love.

For some, the unspoken implication of promoting both condom use and self-disclosure on the part of those *with* HIV infection is that those who are *not* infected can, in the context of intimate relationships, agree to have intercourse without condoms. Two partners would come to such an agreement only if each believed the other to be fully open. Candor and trust thus appear to be conceptually wedded. Denominated as a strategy of “negotiated safety” by some, this approach has been decried by others as a perilous strategy of “negotiated danger.” For researchers at the Center for AIDS Prevention Studies at the University of California/San Francisco,

Anything other than a mutually monogamous relationship involving two HIV-negative people involves some risk of virus transmission and requires the use of a condom during anal intercourse to be considered safe. How can we as health educators promote any behaviors or strategies that may expose a person to HIV or to any other pathogen that may accelerate disease progression?

It is in this context of the role of self-disclosure about one’s negative HIV status that the concept of responsibility poses the deepest challenge to the ethos of self-protection, and also raises the most complex questions. For some, the very concept of trust—even within the marital relationship—“disempowers” partners by making the routine use of condoms by those who deem themselves mutually monogamous unacceptable. Based on her analysis of inner-city African-American women, Elisa Sobo concludes that “...unsafe sex within a so-called faithful union helps a woman to maintain her state of denial [about the risk of AIDS] and her belief that her partnership is one of love, trust, and fidelity.... AIDS risk denial is tied to monogamy ideals.” Given that understanding, it is not surprising that some have argued that romantic feelings serve as impediments to effective AIDS prevention.

Is such a perspective on marriage compatible with the intimacy of such relationships? Given the very different social conditions under which heterosexual marriages and committed gay relationships have evolved, ought similar standards of candor and trust be expected of them? Can AIDS prevention efforts subvert expectations of trust within intimate relationships and still remain socially and psychologically credible? Can one encourage an ethic of responsibility on the part

of those with HIV without extending trust to those who claim they are not infected? Can an ethos of candor and trust between sexual partners be fostered if the continued need for vigilance and self-protection is underscored?

To those questions there are no simple answers that respond both to the need for trust and candor in intimate relationships and to the need for security in the time of AIDS. They are questions that call for systematic behavioral research. They are also questions that demand searching inquiry into the ethical and psychological underpinnings of intimate relationships. But whether subject to empirical or normative analyses, these questions make clear that matters of sexual ethics are not moralistic diversions. They are at the heart of AIDS prevention. It is time for all public and community-based HIV prevention programs to confront openly the challenges of sexual responsibility, challenges that too many for too long have addressed in, at best, an oblique and morally cramped fashion.

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A Textbook Assault on Marriage

Norval Glenn

Generations ago, Americans turned most often to family, friends, or religious figures for advice about family and marriage. Today, we are increasingly dependent on an array of experts, including marriage counselors, lawyers, psychologists, teachers, therapists, popular authors, and advice columnists. And if you want to know how these professionals typically view family issues, and from where, either directly or indirectly, they are getting their basic information, the first and arguably most important place to look is today's leading textbooks on marriage and family.

The impact of textbooks is especially significant because the college instructors who are training the next generation of family professionals often rely on precisely these books for their own understanding of the scientific consensus on family matters. In addition, because textbooks represent the conventional "expert" wisdom accepted by such a wide array of family professionals, the ideas, errors, and attitudes they contain constantly reverberate throughout the larger American culture whenever the public turns to family professionals for advice, whether in personal affairs or public policy. Because of this broad impact, this essay will look at 20 recently published college-level textbooks, which taken together closely approximate the full universe of currently available and widely used textbooks in this area.*

* For the full report, with complete citations and a list of the textbooks, contact The Responsive Community at 800-245-7460, 202-994-7997, or comnet@gwis2.circ.gwu.edu. Or contact the Institute for American Values at 212-246-3942.

A Dangerous Institution

What kind of story do today's family textbooks tell about marriage? An anthropologist from Mars who knew nothing about American families but what was contained in these textbooks would come away with several basic beliefs. First, our Martian friend would "learn" that marriage is just one of many equally acceptable and equally productive adult relationships. These various relationships include cohabiting couples, divorced non-couples, stepfamilies, and gay and lesbian families. In fact, if anything, marriage as a lifelong child-rearing bond holds special dangers, particularly for women, who, if they do not find marriage physically threatening, will very likely find it psychologically stifling. Americans who suspect otherwise have had their brains befuddled by various "myths" that modern science has definitively refuted—or so the Martian would read. Moreover, according to the textbooks there is little evidence that divorce or unwed motherhood (with the possible exception of teen pregnancy) harms either adults or children; the more pressing danger is posed by negative stereotypes about alternate family forms, which encourage racial prejudice and may create social pressures that discourage us as individuals from choosing freely.

The most overtly anti-marriage rhetoric is in *Changing Families*, by Judy Root Aulette. In it the author devotes three of fourteen chapters largely to marriage—"Battering and Marital Rape," "Divorce and Remarriage," and simply "Marriage"—none of which contains a single mention of any beneficial consequences of marriage to individuals or society. As an example of the book's focus, consider what Aulette offers students under the heading of "Theoretical Debate on Marriage":

Marriage is an institution that exists in some societies but not in others and varies greatly from one society to the next. Therefore, the idea and practice of monogamous marriage must have been created for the first time at some specific 'moment' in history. According to Engels, it was created for a particular purpose: to control women and children.

The only debate the author then discusses is the one between feminists and Marxists over the precise source and nature of the oppression that marriage creates.

The chapter summary of “Theoretical Debate on Marriage” reflects the flavor of Aulette’s treatment:

- Theoreticians have debated why marriage was established and what purpose it currently serves.
- Engels proposed that marriage was originally designed to facilitate both maintenance of class inequality and the oppression of women.
- His ideas have been criticized by radical, socialist, and Marxist feminists but the central argument he makes about the connection of marriage and the oppression of women is one upon which they agree.

Contrary to the author’s spectacular assertion that marriage exists only in some societies, marriage is a virtually universal institution. (There are a few societies about which the anthropological record is ambiguous; there is no human society in which marriage is known not to exist.) Because marriage appears in every known human society, it is highly likely that it fulfills beneficial functions, either for the individual or for society as a whole or both. Anthropologists, sociologists, and psychologists have written extensively about what the functions of marriage are. But in Aulette’s textbook, the reader receives no hint that this vibrant and important conversation about the purpose of marriage as an institution even exists. Instead, the reader is left with the clear impression that there is an academic consensus that marriage originates in a desire to oppress women, and that the only debate is over the relative contributions of class and gender to that oppression.

Aulette’s depiction of marriage is no isolated flaw. Her anti-marriage animus may be more explicit, but, almost without exception, these textbooks downplay the value of marriage, especially by what they fail to say. Not a single one of these textbooks, for instance, includes a systematic treatment of what scholars call the social functions of marriage: that is, the role of marriage historically and currently in the biological and cultural reproduction of populations and societies.

Strawmen and Fantasies

Most current marriage and family textbooks, while at times professing respect for marriage as a relationship, offer a determinedly

bleak view of marriage as an institution, and especially of marriage as a morally or legally binding commitment. Consider, for example, the portrait of marriage sketched by John Scanzoni. In *Contemporary Families and Relationships: Reinventing Responsibility*, Scanzoni, unlike Aulette, allows those who disagree with his fundamental premises to appear in his text, at least briefly.

In Scanzoni's schema, there are three ideological views of the family: the "fixed philosophy" outlook, which he says is held by 20 percent of the public; the opposing "process-oriented" outlook, also allegedly held by 20 percent of the public; and a "mixed" perspective that is between the two extremes. The "fixed philosophy" school, according to Scanzoni, holds that

People...should start investing more 'time, money and energy in family life,' and invest less 'in themselves'...People should stop having sex—and especially stop having babies—outside of marriage. And people should get married; they should stop living together if they're not married. And they should have children. And parents should put the well-being of their children ahead of their own interests. Among other things, that means that mothers of preschoolers should stay home and take care of their children. And married couples with resident children should not divorce.

Scanzoni states these views in such an extreme and unqualified way that even very few traditionalists would agree with them. For instance, few people at any point on the ideological spectrum believe that couples with resident children should never divorce, even if one spouse acts violently against the other or the children. Now compare the extremist views attributed to the "fixed philosophy" outlook to Scanzoni's description of his own personal favorite, the "process-oriented" outlook. The eminently more sensible people holding this view want to

Invest in themselves (self-fulfillment) but they want to do so in a responsible manner. For them, "responsible" means helping (and not hurting) their partner (whether spouse, cohabitor, or boy/girlfriend), children, parents or other family members. It means investing in others and in oneself at the same time.

Of course, it would be hard to find anyone at any point on the ideological spectrum who believes that each individual should invest

only in others and not at all in oneself. By this formulation, Scanzoni conveniently typecasts those who are concerned about the decline of marriage as rigid, unattractive extremists. He also conveniently avoids all the hard questions about what “helping and not hurting” one’s spouse and children might mean in the context of deciding, say, whether or not to divorce one’s spouse. (After all, most spouses and almost all children find the experience of divorce an emotionally “hurtful” one.) Apparently, in Scanzoni’s universe, the possibility of actual conflict between self and others, between desires and responsibilities, between obligation to others and self-actualization, is never permitted to disturb or even inform the reader.

Marriage versus Women

Other family textbooks, while avoiding Scanzoni’s flawed framework, share his basic assumption that marriage is bad for women. The evidence for this surprisingly common idea rests largely on a persistently influential but now 25-year-old book by the sociologist Jessie Bernard called *The Future of Marriage*. Serious social scientists have long looked askance at the quality of the evidence that Bernard offers for her thesis that marriage is distinctly good for men, but generally harmful for women. To support her conclusion Bernard turns to two bodies of data. First, she finds from national surveys that married men report a much higher level of personal happiness than any category of unmarried men (never-married, divorced, separated, or widowed). This fact she presents as clear evidence that marriage benefits men.

In an appendix, however, Bernard reports almost identical data on women taken from the same surveys. But she does not consider these data on women to be evidence that marriage benefits women because, she reasons, married women only say they are happy because society expects them to say so. To call this reasoning weak would be an understatement.

Her other data deserve to be taken more seriously. A few studies have shown that some symptoms of stress, including chronic depression, occur more often among married women than among either unmarried women or married men, which does suggest that marriage is either more stressful for, or less helpful to, at least some married women when compared to men. However, most family scholars no

longer consider this evidence as supportive of Bernard's core thesis that the effects of marriage are typically opposite for men and women. A large body of earlier research, as well as research conducted since Bernard's book was published, has shown that married women fare better on average on most indicators of well-being, both physical and emotional, than do unmarried women, even though on some indicators the gap between married and unmarried men is larger than the gap between married and unmarried women. Nonetheless, a surprising number of current family textbooks repeat Bernard's core thesis as though it were a proven fact. "We do know, for instance, that marriage has an adverse effect on women's mental health," claims one book. "Bernard's investigation showed that the psychological costs of marriage were great for women," asserts another. Faulty research dies hard.

Is Marriage Good for Anyone?

While playing up doubtful theories about the excessive costs of marriage to women, the current generation of family textbooks shows remarkably little interest in the much more well-established evidence of the benefits of marriage to both sexes. No book gives more than glancing attention to the substantial literature showing that marriage confers major psychological and emotional benefits on adults.

These findings—published in major scholarly journals including *Journal of Marriage and the Family*, *American Journal of Sociology*, and *Social Forces*—are amazingly consistent: married persons, both men and women, are on average considerably better off than all categories of unmarried persons (never-married, divorced, separated, and widowed) in terms of happiness, satisfaction, physical health, longevity, and most aspects of emotional health. Some of the advantages accruing to married people are due to selection: healthier, happier people are more likely to attract mates and to keep them than the mentally or physically ill. But the most sophisticated studies indicate that the effects of marital status itself are substantial, probably accounting for as much of the observed advantages as does selection. This accumulating body of evidence led sociologist Linda Waite to conclude in her 1995 presidential address to the Population Association of America:

I think social scientists have an obligation to point out the benefits of marriage beyond the mostly emotional ones, which

tend to push people toward marriage but may not sustain them when the honeymoon is over. We have an equally strong obligation to make policymakers aware of the stakes when they pull the policy levers that discourage marriage.

It is hard to think of research that is more directly relevant to students' lives or to ongoing public policy debates. Yet how much space do current textbooks devote to this evidence? Five of them have no treatment at all of marital effects on well-being. Five others devote from one sentence to less than one page to the topic. No book devotes more than 3.5 pages to the topic; the mean treatment per book is 1.25 pages.

Even more oddly, though the evidence indicates that marriage has positive effects for both men and women, almost half of the meager space devoted to marriage effects is taken up with discussions of how marriage hurts women, including almost all the space devoted to the topic in *Diversity in Families*, by Maxine Baca Zinn and D. Stanley Eitzen, the book with the longest treatment on the topic. It is as if these textbook writers have all tacitly agreed to wear the same blinders, causing them to live in a strange world in which all bad things about marriage (domestic violence, marital fragility, and career costs to women) are clearly visible, but all good things about marriage are either only dimly visible or not visible at all.

Hiding the Costs of Family Disintegration

Regarding the so-called nontraditional families—divorced, re-married, and unwed households—the filtering process employed by these textbook writers is completely reversed. Information about any possible costs to children and society from growing up outside of intact marriages enters these books, if at all, with great difficulty, and in greatly weakened form. At the same time, virtually any optimistic theory about the benefits of “family diversity” gets magnified far out of proportion to the data that generate it. Consider, for example, the relationship between family structure and juvenile misbehavior (ranging from disciplinary problems at school to felonies). Explanations for why some children become delinquents are varied, but virtually no serious scholar would claim that family influences are unimportant. As criminologists Michael R. Gottfredson and Travis Hirschi summarize the research:

Such family measures as the percentage of the population divorced, the percentage of households headed by women, and the percentage of unattached individuals in the community are among the most powerful predictors of crime rates.

How much space do family textbooks give to this topic? Only four books discuss it at all, and these four do so in one page, two-thirds of a page, one-sixth of a page, and three lines, respectively, for an average of less than half a page each. By way of comparison, seven out of the twenty textbooks contain discussions of “swinging” as a social lifestyle; these discussions occupy on average about two-thirds of a page each. In sum, these family textbooks are almost twice as likely to devote space to the topic of swinging, which is practiced by a minuscule portion of couples, than to the relationship between family structure and the problem of juvenile crime.

This is not an isolated example. Family textbooks display remarkably little interest in the effects of marital disruption or single parenting on children, devoting an average of only 3.5 pages directly to this topic, including pictures and boxed inserts. Two books—Aulette’s and *Marriage and Family: Diversity and Strengths*, by David H. Olson and John DeFrain—have no discussion at all of the topic. Scanzoni mentions the idea (in a chapter on “Divorce and Its Responsibilities”) only to dismiss it: “The belief was, and still is for many people, that when adults fail to perform their roles properly, children suffer and thus the whole society is weakened.” But for Scanzoni this belief is no longer held by intelligent people; concern for children is apparently no longer a major component of the “responsibilities” of divorce.

The books that do review at least some of the evidence of the harmful effects of divorce and solo parenting often tend to minimize the topic. In *The Intimate Environment: Exploring Marriage and the Family*, Arlene S. Skolnick’s discussion of the effects of family structure on children is typical:

The majority of well-designed studies...find that family structure—the number of parents in the home or the fact of divorce—is not in itself the critical factor in children’s well-being. In both intact and other families, what children need most is a warm, concerned relationship with at least one parent.

This is a remarkably misleading statement, especially when presented, as it is by Skolnick, as an argument against popular and

scholarly concern over recent trends in family structure. In the first place, even after controlling for a variety of factors, current research suggests that an intact marriage in itself appears to make a positive difference in a child's well-being. Intact marriages also have important indirect effects on child outcomes by strongly affecting the probability that a child will have a "warm, concerned relationship" with a parent. Indeed, because the possibility, not to mention the quality, of family relationships is so obviously linked to the realities of family structure—because, to cite only one example, it is considerably harder for a child to have a "warm, concerned relationship" with her father when her father is estranged from her mother and living far away—it borders on educational malpractice to tell students that process matters, but structure does not, as if these concepts were somehow competitors for our ideological allegiance rather than descriptions of two closely interrelated aspects of family life.

Consider another obvious example. Well-designed studies show that single parents, because of the pressure and stress they are under, often find it more difficult to maintain moderate, consistent discipline with their children. At the same time, children may respond to the loss of the intact family by acting out in various ways and becoming more difficult to handle, which may in turn harm the quality of the parent-child relationship. It is certainly much harder to maintain a warm parental style when you come home after a hard day's work to a pile of bills, a recalcitrant child, and messages from his teacher complaining about his behavior at school. Is this a problem of process, structure, or both? (Answer: both.)

Overall, most of these textbooks remain rather dogmatically dedicated to the proposition that intact marriages are not especially important for raising children. The great majority of Americans who persist in thinking otherwise are, as these authors frequently suggest, merely ignorant. As a result, any future therapist, marriage counselor, minister, teacher, or family lawyer would come away with the distinct impression that marital disruption and unwed childbearing have few if any harmful effects on children and society.

It is not surprising, given the ongoing academic debates on the subject, that some textbooks would take this view on some particular questions. But it is a bit surprising and highly revealing that all 20

textbooks would take this view on virtually every question. The result is a textbook story that seriously downplays the important role of marriage in benefitting adults and in protecting children emotionally, financially, and academically. It suggests an “expert consensus” that is sharply at odds with much of the weight of social science evidence, as well as with the conclusions of numerous leading family scholars, many of whom, as the scholarly evidence has mounted in recent years, have largely abandoned this sanguine, 1970s-style view of contemporary family change.

Missing Children

On top of denying the negative impact of family breakdown on children, these textbooks ultimately pay little overall attention to children. One might expect that a major focus, if not *the* major focus, of family textbooks would be about the ways in which family life shapes children. Yet these 20 textbooks are overwhelmingly preoccupied with adult relationships. Just 24 of 338 total chapters in these textbooks deal primarily with family effects on children. Moreover, in some of those chapters, up to half of the space is actually devoted to other matters. Far more space—at least three times as much—is devoted to adult relations, without regard to how they affect children.

Moreover, the same strange reluctance to draw any conclusions that might be construed as “pro-marriage” is also evident in the discussions of child abuse. Child abuse is empirically more common in certain family forms. Sexual abuse is more common in stepfamilies, for example, and child abuse and serious injury are more common in single-parent families. Surely this relationship between family structure and risks of violence is important enough to merit mention in any balanced discussion of family violence. However, less than half these books (only 8 of 20) do so.

Even those textbooks that do note the connection between family structure and child abuse fail to draw the obvious conclusion that the rapid increase in single-parent families and stepfamilies has very likely increased the amount of child abuse in the United States. Similarly, not one of these books suggests a strategy of reversing recent family structure trends as one path to reducing violence against children, although several equally hard-to-accomplish measures—

such as reducing sexism, racism, poverty, and violence-provoking stress—are all vigorously recommended.

A Failing Grade

Overall, these 20 textbooks are dedicated to exploring many issues, but a balanced examination of the consequences of recent family change is not one of them. These books highlight the problems of marriage, both perceived and real, while essentially ignoring research on the benefits of marriage. When dealing with alternate family forms, the formula is reversed. These textbooks emphasize the strength and validity of nontraditional relationships while ignoring or downplaying important research on the long-term costs to children and to society of the decline of marriage.

Why are all of these books so poor? The reasons are many. On the production side, those who review the manuscripts are usually undergraduate teachers (as opposed to family scholars) who are given from \$200 to \$250 to review as many as 500 pages of manuscript. They simply do not have either the time nor the expertise to detect factual errors, misinterpretations of data, or other similar flaws. On the demand side, academic journals rarely review textbooks, so college instructors make choices based on personal preferences—an unfortunate confluence of circumstances, since these instructors' knowledge in the field is highly dependent on the textbooks themselves. Thus with no quality control on the production or demand sides, and with no professional association exercising oversight, the textbooks are especially liable to being shaped by the authors' strong ideological biases. As students use these textbooks, and then use what they have "learned" to inform their professional and personal lives, the losers are individuals, individual marriages, and society as a whole.

Authority, Community, and a Lost Voice

E.J. Dionne Jr.

Last year, in the midst of a presidential campaign in which both sides shunned grand arguments about first principles, the country lost one of its most provocative and elegant conservative thinkers. Robert A. Nisbet, who died in September at the age of 82, was so resolutely unfashionable that he regularly came back into fashion. His love was for old ideas and traditional dispositions. Old ideas are easily forgotten, and so they seem innovative when rediscovered.

Nisbet's driving concern was a belief that the modern world had undermined the bonds of hierarchy, community, authority, and tradition. The basic conflict of our time, he thought, was captured by the words *Tradition and Revolt*, the title of one of his many books. Nisbet was a visionary traditionalist.

Authentic conservatism of the sort Nisbet defended is controversial in America, even among conservatives. People we now call liberal embrace egalitarianism, dislike hierarchies, and mistrust authority. People we now call conservative defend that most socially disruptive of institutions, the economic marketplace of modern capitalism, and laud the efficiencies created by economic change even when they come at the expense of the traditional communities Nisbet defended.

"Community" is the idea most associated with Nisbet, who taught at the University of California-Riverside, the University of Arizona, and Columbia. It is the idea responsible for the several bouts of popularity he enjoyed during his life. His best-known book is *The Quest for Community*, published in 1953. "The quest for community will not be denied," Nisbet wrote, "for it springs from some of the powerful needs of human nature—needs for a clear sense of cultural

purpose, membership, status, and continuity.” But the modern world and its big institutions, Nisbet argued, had torn asunder the bonds that created authentic community. “It is very difficult to maintain the eminence of the small, local units when the loyalties and actions of individuals are consolidated increasingly in the great power units represented by the nation-states in the modern world.”

What terrified Nisbet were the efforts of centralizing ideologies, communism and Nazism, to “confer upon the individual some sense of that community which has been lost under the impact of modern social changes.” These ideologies provided fake forms of community built on “force and terror.” One of Nisbet’s central ideas is that there is a vast difference between true authority, which is earned and exercised with restraint, and raw power, which is seized and unaccountable. Nisbet thus called for strengthening communities “small in scale but solid in structure.”

“Freedom cannot be maintained in a monolithic society,” he wrote. “Pluralism and diversity of experience are the essence of true freedom.... Neither moral values nor fellowship nor freedom can easily flourish apart from the existence of diverse communities, each capable of enlisting the loyalties of its members.”

The one time I met him, Nisbet noted the irony that *The Quest for Community* was brought back into print in the 1960s because of its popularity among New Leftists, whose politics Nisbet despised. In principle, the anti-authoritarian, anti-hierarchical New Left had little in common with a conservative sociologist who thought hierarchy and authority were essential to true community. But Nisbet’s mistrust of modern bureaucracy and his fears for the fate of the isolated individual articulated well with the New Left’s concern about “the loneliness and estrangement” of modern life. Another Nisbet revival is on right now, this one fueled by political conservatives searching for a coherent philosophy to support their efforts to tear down the modern welfare state and replace it with more localized and voluntary efforts to lift up the poor.

You can appreciate Nisbet without agreeing with him on everything. Like many conservatives, Nisbet could underestimate the costs imposed by traditional hierarchies and inequalities. Revolt against such hierarchies is often the right response. And his fears about the

national state—shared by his latter-day enthusiasts—could keep him from acknowledging how democratic countries have used social insurance and economic regulation to protect rather than undermine the traditional communities he revered.

But Nisbet commands our attention because of his brilliant, bracing, and humane criticism of certain modern assumptions that usually go unquestioned. He threw out a particular challenge to liberals and leftists who love to talk about community but often mistrust authority and tradition. Communities without authority fall apart, Nisbet observed, and tradition has usually provided community life with a glue far stronger than any afforded by modern ideas.

We have still not fully responded to Nisbet's challenge, which is his legacy to all who would nurture both freedom and community.

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COMMUNITY ACTION

When a Public Space Is Privately Owned

BOB EDWARDS (Host): The shopping mall is sometimes described as the new American gathering place, the modern equivalent of Main Street. But a mall is different from a street or a public square in one important respect: it is private property. And the right to speak, or to preach, picket, or hand out leaflets, usually does not apply on private property. Free speech advocates argue that shopping malls function like public places, so First Amendment rights should be recognized there. That argument has had mixed success in the courts. Minnesota Public Radio's John Biewen reports.

JOHN BIEWEN (Reporter): The Student Organization for Animal Rights, or SOAR, is a small but zealous Minneapolis group that holds public demonstrations from time to time.

SPEAKER AT RALLY: Want do we want?

CROWD: Animal liberation!

SPEAKER: When do we want it?

CROWD: Now!

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BIEWEN: On this occasion last fall, the group picketed a McDonald's near the University of Minnesota campus. A few members were arrested for trespassing, but only because they left the public sidewalk and chained themselves to the roof of the fast food store. Those who merely chanted and held signs were within their free speech rights. But on another day in May of last year, about a dozen members of SOAR conducted a low-key demonstration in front of a Macy's store inside the Mall of America, the giant shopping mall in the Minneapolis suburb of Bloomington. The group held signs and handed out leaflets urging a boycott of Macy's because it sells furs. Twenty-two-year-old Peter Eckholdt was one of the protesters.

PETER ECKHOLDT: The security initially came up and asked us to stop handing out literature and stop holding signs and to stop the protest and leave the property, and if we did not do that, they would arrest us for trespassing.

BIEWEN: Most of the protesters left, but Eckholdt and three others refused. Bloomington police arrested them and charged them with criminal trespass. If convicted, they face up to 90 days in jail. Their attorney, Larry Leventhal, has asked a county judge to throw out the case, saying police violated the free speech rights of the protesters.

LARRY LEVENTHAL: Malls are largely the area where people congregate. If one says, "you have free speech but you can't do it where most people are," there's a real limitation to free speech.

BIEWEN: Leventhal argues the Mall of America has many of the trappings of a public place. A brochure describes the four-million-square-foot mall as a city within a city. In addition to its 520 stores, the mall contains an amusement park, a chapel, and an entertainment district with restaurants, night clubs, and movie screens. But an attorney for the Mall of America, John Sherrin, says those things don't make the mall a public place.

JOHN SHERRIN: It's true that we, or that the Mall of America, makes its property attractive and invites the public to come there, but for the sole purpose of serving their shopping needs. The true factors that create a municipality are not here at the Mall of America. This is not a city.

BIEWEN: Sherrin says requiring shopping malls to handle public demonstrations would violate the property rights of mall owners and their

tenants. He says that if a public demonstration led to violence, the mall would face unlimited liability for injuries, unlike a city government. Most courts that have looked at such disputes have sided with the owners of shopping malls. The U.S. Supreme Court decided in the 1970s that the Constitution does not protect free speech in shopping malls. Harvard University law professor Laurence Tribe:

LAURENCE TRIBE: They said that the right of free speech is a right that individuals have only as against the government and against the state. It's not a right you have against private property owners. So that if someone wants to speak in your living room, the free speech right doesn't even enter the picture. The state's obligation and certainly its authority to protect you as a property owner includes enforcing the trespass laws against anyone that you find unwelcome for whatever reason.

BIEWEN: The Supreme Court has upheld the right of state constitutions to allow free speech rights in shopping malls. So far only the California and New Jersey constitutions have been found to do so. In about 20 other states courts found their constitutions did not grant such a right. The Minnesota constitution hasn't been tested on the issue. Tribe laments that the courts have, in his view, favored the property rights of shopping mall owners over the First Amendment rights of people wanting to speak directly to their fellow citizens.

TRIBE: We all pay a high price because we are relegated to our own little cubicles and our PC screens, and we can communicate electronically via the Internet, but it really is important as well for the health of a society that there be face-to-face visual contact between real people speaking to one another about issues of mutual concern.

BIEWEN: The vice president of the Mall of America, John Wheeler, says it's fair to be concerned about the decline of the public square as a center of discourse in America, but he says shopping malls are not the main culprit. People have moved from small towns to cities and turned to electronic media, leaving behind town squares and meeting halls.

JOHN WHEELER: The argument that those things have disappeared and therefore what remaining forums there are in which people gather must therefore be made public, then that would include radio stations;

it would include all media; it would include any place where people gather either electronically or virtually or in person.

BIEWEN: A county judge will rule later this summer on whether the trespassing case against the Minneapolis animal rights protesters can go ahead. Both sides say the case is likely to wind up in the Minnesota Supreme Court. Legal experts say there's little chance that the current U.S. Supreme Court would reverse its position that free speech rights do not apply in shopping malls.

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THE COMMUNITY BOOKSHELF

Is Libertarianism the Answer?

Alan Wolfe

David Boaz, *Libertarianism: A Primer* (New York: The Free Press, 1997). 336 pp.

Charles Murray, *What Does It Mean to Be a Libertarian: A Personal Interpretation* (New York: Broadway Books, 1997). 192 pp.

I have always had a soft spot for libertarianism. So long as a group of thinkers argues that government should get out of our lives, a dissenting stance toward received wisdom will not be the exclusive property of the left. But libertarians, like leftists, have paid a price for their marginalization. For the existence of the libertarian tradition demonstrates that the left has no monopoly on dogmatism, romanticism, sectarianism, and ideological thinking so hard-chiseled that it is impervious to the chips and splinters of real life.

In the 1990s libertarianism's marginalization is being challenged. Many of the Republican members of Congress who see their job as keeping the fire under Newt Gingrich lit would identify themselves as libertarians. A rise in the number of Americans who dislike government and are cynical toward politicians is grist for libertarian ideas. People who once might have considered themselves on the left—gays in search of privacy, advocates for the legalization of drugs, and abortion-rights activists opposed to the policing of moral behavior—

are attracted to some parts of the libertarian agenda. And, most important, more and more Americans are beginning to act like libertarians. They use private delivery services rather than the post office, withdraw their children from public schools, hire private police forces, and find ways not to pay their full share in taxes. One of the most important things money can buy in America, Charles Murray argues, is the ability to detach yourself from government. Some day soon, he believes, only the poor will have to stand in lines and deal with insolent bureaucrats; everyone else who can afford to do so will rely on the market for as many services as they can.

Once upon a time, libertarians talked mostly to themselves. They had their classic texts—von Hayek, von Mises, Rand, Nozick—worn from constant rereading and cited like scripture. To discover another libertarian was to find a secret sharer. Because the intellectual air at most American universities was hostile to them, libertarian thinkers found themselves outside the academic mainstream in the South and West or outside academia entirely. Their books were published by their own movement, their journals and magazines read by those who wrote for them. Not even the businessmen for whom they believed themselves speaking were very sympathetic to them. An occasional maverick capitalist, often very rich, might fund their work, but most businessmen, comfortable with the state and dreading even a touch of unorthodoxy, wanted nothing to do with them.

Now libertarians publish their books with mainstream publishers, sit in well-furnished offices in Washington think tanks, invite politicians to their conferences, reach out to nonlibertarians in dialogue, and, if we believe David Boaz, even have their own humorists (P. J. O'Rourke and Dave Barry)—the first step, perhaps, to creating their own culture. This move toward respectability is a mixed blessing for libertarian thinkers. David Boaz and Charles Murray, each in his own way, is responding to it.

For Boaz, the present moment is a good opportunity to defend the faith. One will not find in his “primer” even the faintest expressions of doubt. Government, as Boaz sees it, causes every problem there is, which means that getting government out will solve every problem there is. But the iron-clad certainty of his book does not render it uninteresting. For underlying much of what Boaz writes is a theory

about whom the faith has to be defended *against*. The main enemy of libertarianism, Boaz frequently suggests, is not the left. His book has to be read as a defense of libertarianism against the right, especially those conservatives who believe that the United States has been experiencing a moral decline that requires a re-emphasis on common faith, common values, and a consensus on right and wrong.

The conservative revival that has reshaped American politics over the past decade was fueled by the rise of Christian conservatives. Boaz wants nothing to do with them. Pat Robertson and others who believe that this is a Christian country have their history wrong, Boaz argues, relying for support on *The Godless Constitution*, a book written by liberals Isaac Kramnick and R. Laurence Moore. Nor does the defense of the traditional family play any role in his analysis. "A libertarian must necessarily be a feminist," he writes. Although Boaz has his doubts about marriage—why should the state be in the business of requiring licenses, he asks at one point—if there are going to be marriages, gays have just as much right to them as anyone else. Boaz devotes only one chapter to stating the usual libertarian arguments about government regulation of the economy. He wants to find support for the libertarian agenda among new constituents: Generation X-ers, Yuppies, the secular elite, new immigrants.

Libertarianism: A Primer foreshadows, and urges, a potential new alignment in American politics. Communitarians on both the left and right tend to insist on strong families, moral and religious values, and the need for public order. If Boaz is any indication, libertarians will join forces with liberals in insisting that government be neutral toward visions of the good life, and with postmodernist identity politics enthusiasts in arguing that majority cultures are not necessarily authoritative cultures. Then left and right would someday lose their meaning, to be replaced by liberal and conservative moralists on one side of the divide and cultural and economic libertarians on the other.

A Dose of Realism—Almost

Charles Murray's book is also a reaffirmation of the libertarian faith, but whereas Boaz is convinced that libertarianism has an answer for everything, Murray aspires to realism. Compared to Boaz's effort to align himself with racial minorities, for example, Murray is willing

to accept a certain amount of racial discrimination: “You do not have the option of excising the bad kinds of private discrimination and keeping the good ones,” he writes, “They are of a piece.” In a similar way his argument against speed limits is not that raising the speed limit will have no effect on death rates; some people still will die, but the odds against any particular person dying will be so minuscule as to be meaningless. Nor does Murray believe that getting rid of government will end suffering, which “will remain in all systems.” The hard-nosed, “it’s a tough world out there” sensibility of *The Bell Curve* is very much present in *What It Means to Be a Libertarian*.

I usually like writers who aspire to realism, which means I should prefer Murray’s version of libertarianism to Boaz’s. But not in this case. For all his efforts to insist that life involves trade-offs, Murray fudges the biggest one. Give this much to Boaz: at least he recognizes, as any communitarian would, that choices between order and personal liberty sometimes have to be made. Murray, by contrast, wants to keep ties to his conservative allies—hence his insistence on how tough the real world is—and to adhere to libertarian ideals—hence his insistence on the value of freedom. One does not have to agree with either writer to appreciate Boaz’s willingness to follow his ideas wherever they lead over Murray’s awkward efforts to reconcile the unreconcilable.

Of course, Murray thinks he has a way to combine his love of personal liberty with his inegalitarian conservatism. *What It Means to Be a Libertarian* places as much emphasis on responsibility as it does on liberty. Freedom, for Murray, is not the sunny view of personal liberation found in Boaz, but a Puritanical sense that only free people can really appreciate what it means to be responsible. If you fail to save for your retirement, Murray asks, should you be allowed to starve? While he never explicitly answers yes, Murray does say that unless you take responsibility for your life, your life is not worth living. “Responsibility,” as he puts it, “is what keeps our lives from being trivial.”

One of the most annoying features of a left-wing sensibility—indeed, one strongly criticized by Murray—is the theory of false consciousness originally associated with Karl Marx. Confronted with a public that seems to like few things better than to purchase commodities, critics of capitalism constantly proclaim that they know better

than ordinary people what the latter's "real" needs are. But by insisting that only he knows what prevents life from being trivial, Murray engages in his own version of a theory of false consciousness. "Satisfaction in human life," he writes, "consists of exercising our abilities and thereby realizing our potential." What is most striking about this sentence is what is missing: the idea that what is satisfaction for one person may not be for another. Murray's defense of political freedom hinges on a psychological authoritarianism: it is possible to allow everyone to act freely only because we are not free to pursue satisfaction in ways different from what Murray thinks appropriate. Or, putting the matter another way, freedom need not lead to chaos if everyone acts the same way.

And what if someone does not act the same way? If responsibility is the flip-side of freedom, then anyone who acts irresponsibly has no right to be free. Boaz's pure libertarianism would never put the matter that way. If you want to use your freedom to have kids out of wedlock, smoke pot, or defame the American flag, that, in his view, is your business.

But Murray is too much the libertarian social engineer just to leave things be. His "lower-case libertarianism," as he calls it, would find repellent a world in which pornography was omnipresent, prostitution and drugs were easily purchased in legalized markets, and poor people were free to have children out of wedlock. Facing this huge gap between what freedom might produce and what an ordered society requires, Murray argues that "vices thrive when they are subsidized and protected..."; government, in short, not freedom, causes people to engage in irresponsible behavior. That kind of reasoning will be persuasive only to the truest of true believers, for it requires us to accept the proposition that virtue and vice are totally political concepts, to be turned on and off depending on the size and scope of a governmental budget. I am not a Christian, but I think the great Christian writers like St. Augustine had a more realistic view of vice than the one offered by Charles Murray.

With so weak an effort made to bridge the gap between liberty and order, it is not hard to find in Murray's writings an iron fist under the velvet glove. If you have kids out of wedlock or fail to take charge of your life, getting the state out of your affairs is not an inducement for

your liberty but a punishment for your licentiousness. In Murray's libertarian future, the market will bless those of whose lifestyle and values Murray approves and will discipline those of whose he disapproves. Come to think of it, that's what government is supposed to do. By calling it freedom instead, the only thing Murray would accomplish would be to make it less under popular control, since its authority would be just as strong, but far more diffuse.

Simplistic Rules for a Complex World

Libertarianism was the first political theory to which I subscribed and the first intellectual movement I joined. In 1962, a sophomore in college, I made my first extended trip away from home to attend a meeting of a group called the Intercollegiate Society of Individualists. Libertarianism, because it offers a simple scheme to unlock the complicated codes of reality, is especially appealing to the young; David Boaz also joined up in college, but, unlike me, he has stayed with it all his life. To his surprise, he tells his readers, he now knows that libertarianism need not only appeal to the very young.

If Boaz is correct, will libertarianism continue to lose its marginalized status in the world of ideas? Will it eventually become the philosophy of a major social revolution in America? Hoping that it will, both these authors have avoided nuance in favor of clear writing and simple ideas aimed for a popular audience. Yet in so doing they also reveal why libertarianism is unlikely ever to appeal beyond a relatively narrow group of thinkers and doers. To be a libertarian, you have to believe that, as Richard Epstein has put it, no matter how complex the world, one can always find simple rules by which it works. But simple rules presuppose the existence of simple people. Beneath every vision of libertarianism I have seen is an unwillingness to accept psychological pluralism. Libertarians, whether with a lower or upper case "l," have to reduce the variety of motives by which people live in order to make the world safe for liberty. Call it freedom if you want. I think a more proper term is a world without texture.

David Boaz is correct to emphasize that freedom and order sometimes work at cross purposes. Charles Murray is right to understand that order and discipline sometimes are necessary. The trick is

not to evoke social order as if it will just appear magically, as libertarians insist it will, for even if it does (and I doubt it ever will), it will be at the cost of intentionality—the kind of responsibility that occurs when people decide deliberately among themselves what kind of society they want.

Not all forms of social order are equal. We can do better than resigning ourselves to indirection. Libertarians would say that people get the kind of freedom they deserve. They also get the kind of society they deserve. Fortunately, people throughout modern history have concluded that the kind of social order they want respects not only their liberty, but also their commonality. That is why libertarians can only ask questions, but can never come up with satisfactory answers.

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LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

From the Libertarian Side

Broadcasters Have Rights Too

The Rochester-based cable television show “Life Without Shame” has created quite a stir. The *Plain Dealer* reports that episodes have included a series called “The Bum Olympics,” wherein the show’s producers, Tom Loce and Ed Richter (who also serve as co-hosts), had homeless men compete for a bottle of liquor in “events” such as giving a begging speech, stuffing themselves in a garbage bag, and simulating sex with a blow-up doll. Another series of episodes featured female strippers performing lap dances at Rochester nightclubs.

According to Women Against a Violent Environment (WAVE), the show also contains “nonstop jokes about rape and domestic violence.” In one such example, Loce comments that “Nearly 60 percent of all rapes are committed against girls younger than 17.” Richter responds: “Well, of course. You don’t want to rape someone that’s 35 years old. She’d probably like it. You’ve got to get someone more docile.”

As a result of protests from WAVE, “Life Without Shame” was pulled off the air in March by Time Warner Communications, the cable company that serves the Rochester area. In their decision, Time Warner cited a 1996 ruling by the U.S. Supreme Court that makes it legal for cable operators to ban obscene programs on cable stations that profit from advertising.

Loce and Richter, represented by the New York Civil Liberties Union, then filed suit in Federal District Court against Time Warner for violating their First Amendment Rights. Meanwhile the show still airs on a Rochester public access channel. Since public access channels do not depend on advertising revenue, the Supreme Court has ruled that they cannot be restricted. Loce and Richter, however, can no longer charge \$300 a minute for advertising. "We're losing our shirts, but we're doing it in the name of the First Amendment," Richter proclaimed.

Down with Campaign Finance Reform!

Last November, Maine voters passed the Clean Election Act. The Act declares that candidates who choose to receive state money are not allowed to accept private donations, outside of an eligibility requirement to raise \$5 each from a state-determined number of constituents. (That number is linked to the office sought, and cannot exceed 2500.) If accepting state money, candidates would have to remain within pre-set spending limits for the duration of their campaigns. If a candidate agrees to these restrictions and faces an opponent who accepts private contributions and exceeds the state-determined spending limit, the state will donate money to the candidate participating in the Election Act, so as to level the playing field.

Both the national and Maine chapters of the ACLU have criticized the Act, and have filed a complaint with the Federal District Court in Portland. The ACLU claims that the Act, although voluntary, is "coercive," and "chills" the speech of those candidates who choose to seek private funding for their campaigns. Furthermore, they find the eligibility requirement to be unfair because it "harms low-income voters."

In response, the National Voting Rights Institute and the Maine attorney general argue that the Election Act was passed precisely to address the issue the ACLU now criticizes, but, ironically, has historically defended: "the right of low-income people to participate in the election process on an equal basis with the well-off and well-connected." So wrote John Bonifaz, executive director of the National Voting Rights Institute, in a *New York Times* op-ed. "Unfortunately," he continued, "the ACLU has chosen not to champion their rights."

From the Authoritarian Side

Inseparable Church and State

According to a recent suit against Pike County Schools, the Alabama school district has condoned and promoted antisemitic behavior. Plaintiffs Sue and Wayne Willis claim that the schools have held “Happy Birthday Jesus” parties; allowed Christian proselytizing on school grounds; forbidden the Willis’s children from wearing the Star of David while other children wore crosses, along with forbidding them from wearing their yarmulkes during physical education; and subjected them to Christian prayers in school.

According to the Willises, their three children have also suffered physical assaults and harassment by other students, including having swastikas painted on their lockers and seeing drawings of Nazis killing Jews in their classrooms. Sue Willis reports that both a teacher and a school principal have told her children, “If parents won’t save souls, then we must,” and that a minister came to her daughter’s school and told her that she was going to hell because she was not a Christian. The Willises have filed suit as “a last resort,” Sue Willis told *The Montgomery Adviser*, because their complaints have been ignored for several years.

This will not be the first such suit in the state of Alabama. In March, Federal District Judge Ira DeMent ruled against overt prayer in public schools in DeKalb County. But while attorneys for the Alabama Department of Education claimed that they plan to make all schools follow the ruling, Governor Fob James stated in a public address that, contrary to Supreme Court Rulings, “the Bill of Rights does not apply to the states, only to Congress, in matters of establishing an official religion.”

The Pike County case will be heard by Judge DeMent. But the Willises remain skeptical about the actual impact of a favorable ruling, and about cooperation from Pike County Schools: two months after DeMent’s March ruling, Pike County school officials held prayers at the Awards Day assembly.

From the Community

A Home Away from Home

When a loved one undergoes extensive medical treatment, many families experience both emotional and financial stress. Some families sleep on floors and chairs in hospital lobbies, or even in their cars to avoid paying the high cost of hotel rooms while their loved one is in the hospital. Seeing this inspired Joan Biggers, a former patient representative at Brigham & Women's Hospital in Boston, to start the Hospitality Program in 1983, which arranges housing in private area homes for patients' families at little or no cost.

Hope magazine reports that now more than 150 residents in the Boston area have opened their homes to these families, and the Hospitality Program has provided a total of over 55,000 nights of lodging. Some hosts request up to \$15 per night, and an additional \$5 a night for each additional guest, but according to the program's executive director, Lisa Tener, about half of the hosts provide accommodations without charge.

People who wish to be considered for the Hospitality Program are asked for one character reference, usually from a family physician, and they do not have to be financially strapped to qualify. "There are some family members who may be able to afford lodging, yet the thought of going to an empty hotel room is just too depressing. For them, a home may feel warmer, more supportive," Tener says.

Similar programs have been developed in Orlando, San Antonio, and New York City, and the program has received over 200 calls and letters from people interested in starting programs in other cities.

Teen Violence: What Really Works

When a gang-related attack interrupted another murdered gang member's funeral in 1992, Reverend Eugene Rivers and Reverend Jeffrey Brown knew something had to be done. Accompanied by two other ministers, Rivers and Brown began walking through their Boston neighborhood, talking and, more importantly, listening to youths. The ministers also let the youths know that they were welcome at their churches.

According to an American News Service report, these and other young people soon took interest in the ministers' invitation, and the churches started to develop several service and recreation programs. As more young men and women became interested, more churches joined the effort, and Rivers and Brown founded the Ten Point Coalition—an association of about 12 predominantly black churches in the Boston and Cambridge areas. The Coalition, named for ten goals it hopes to achieve, has already been credited with reducing the violent crime rate. In more than one and one-half years, there have been no juvenile victims of gun homicide in Boston—a sharp contrast to previous years when such incidents were occurring at the rate of one every two days. The Ten Point Coalition also sponsors summer camps, aids in finding summer jobs for students, trains youth counselors and mentors, and operates rape crisis, self-help, and drop-in centers.

“I give them more credit than any other group for the reduction in juvenile crime...it is these grassroots efforts that make the real difference,” said Jack Levin, director of the Program for the Study of Violence at Northeastern University in Boston. And Princeton University professor John DiIulio Jr., a noted criminologist, is “amazed” at the success of the coalition: “It was really just a small cadre of leaders and volunteers.”

The Village People

Five years ago, St. Louis Park school superintendent Carl Holmstrom delivered a speech to the Rotary Club. As the *Los Angeles Times* reported, Holmstrom expressed sadness and distress that teachers and neighbors no longer lent a hand to children—in the form of advice or mild discipline—when their parents could not, or did not, help them. It was this lack of a community upbringing, he thought, that resulted in increased drug use, teen pregnancy, and general apathy that characterized much of the young generation in his district.

Inspired by Holmstrom's speech, civic leaders in this Minneapolis suburb raised money from private donations to sponsor Children First, a research project designed to find ways to involve the whole community in building certain strengths and characteristics in children. The Search Institute, a nonprofit research organization based in Minneapolis, was selected for the project. By reviewing the literature,

it came up with a list of 30 “developmental assets”—such as long-term attention from at least 3 adults and applied structure to free time—that were correlated with healthy behavior in children. The Institute surveyed 250,000 children nationwide, and found that the more “assets” each student possessed, the less likely he or she was to exhibit unhealthy behavior, such as drinking and driving, committing violent acts, and failing in school.

With this information in hand, efforts then turned to publicizing the merits of building these assets in children. As a result, a variety of individual and citywide initiatives were developed: a health-based foundation started a free clinic for children; a businesswoman created a mentoring group for girls and plans to start another for boys this fall; churches have provided space and recruited teenagers to babysit for children of working parents; a convenience store stopped selling cigarettes; and elderly neighbors organized the “Adopt-A-Bus-Stop” program to make sure children were picked up promptly after being dropped off.

Other communities in Minnesota, Maine, Alaska, and some Native American reservations have adopted programs based on Children First. Peter Benson, a social psychologist and president of the Search Institute, stresses that each community needs to develop programs unique to its needs and choose which assets it finds most important for programs to be effective. Gail Miller, a school psychologist in St. Louis Park, nonetheless feels that Children First has given people “the awareness that they could solve a problem together,” and the “permission” to do it.

Nora Pollock

THE COMMUNITY'S PULSE

POLITICS AND MORALITY¹

What is your opinion about a married person having sexual relations with someone other than his or her marriage partner?

	Republicans	Democrats	Independents
Always Wrong	82%	75%	74%
Almost Always Wrong	13%	15%	16%
Sometimes Wrong	3%	4%	8%
Not At All Wrong	1%	3%	1%

Do you think it should be legal or illegal for a doctor to help a terminally ill patient commit suicide?

	Republicans	Democrats	Independents
Illegal	42%	39%	39%
Legal	47%	53%	54%

THE POWER OF EDUCATION²

Percentage of African-Americans without a college degree who make \$25,000 a year or more:

14.3%

Percentage of African-Americans *with* a college degree who make \$25,000 a year or more:

47.4%

PRIORITIES³

Goals of college freshmen as reported at orientation:

	To develop a meaningful philosophy of life	To be very well off financially
1966	82%	42%
1986	39%	70%
1996	42%	74%

1. *The New York Times*, June 15, 1997.

2. Smith and Johns, Eds. *Statistical Record of Black America* (New York: Gale Research, 1991).

3. *Time*, February 24, 1997.

Compiled by Peter Rubin

KALEIDOSCOPE

CHINA: EXIT MAO, ENTER YAHWEH?

For years, the Chinese government opposed religion on the grounds that any moral or ethical system other than socialism was subversive. But now, with the failure and progressive abandonment of socialism, religion is booming as people search for a new moral framework. Indeed, *The Wall Street Journal* reported that some state-sanctioned churches have installed closed-circuit televisions to handle the overwhelming crowds of worshippers. The government estimates that currently about 100 million Chinese citizens are members of one religion or another, including Catholicism, Protestantism, Taoism, and Islam.

Perhaps in response to the renewed strength of religious beliefs among its citizens, the Chinese government has lessened some of the barriers to religious observance. Many Christian missionaries and service groups, such as the YMCA, have found it easier to expand their operations. But although the number of officially-sanctioned religious groups is growing, China still firmly regulates religious practices. As a Western observer stated, "Religious freedoms are expanding, but they are doing so within boundaries set by the government." Specifically, the government still maintains strict prohibitions on any religious group that places the beliefs of its particular church over those of the state. Police recently raided the home of one Catholic priest who refused to recognize the authority of Beijing over that of Rome.

But for many churchgoers, the freedom to worship after decades of government repression is enough. The churches may not be free of

government intervention, but as one Beijing resident put it, they “allow us to believe in God.”

EGYPT: RELIGION, POLITICS, AND ORGAN DONATION

In May, Grand Sheik Mohammed Sayed Tantawi, the highest ranking religious figure in Egypt, announced his willingness to donate his organs upon death. According to *The New York Times*, the sheik’s announcement followed the Egyptian government’s request that its parliament draft a law that, for the first time, would outline specific circumstances in which the government would permit organ transplants. The new proposal responds to concerns expressed by many doctors about the shortage of available organs for transplant operations.

The proposed legislation has sparked much criticism from conservative Islamic religious leaders, who claim that Islamic strictures ban such transplants. One objection, as voiced by Sheik Mohammed Metwali al-Sharawi, is that a human being may not replace or surrender any part of his or her body, as the body is a gift from God.

Sheik Tantawi defends his position on religious grounds, claiming that organ donation is an act of altruism and so would be viewed in a kindly way by God. But many opponents believe his position is largely influenced by politics. Sheik Tantawi is the presidentially-appointed leader of the Al Azhar, one of the most prominent religious institutions in the Muslim world. As Islamic writer Fahmy Howeidy says, “this is a post that has generally been set aside for pro-government scholars, and people look at what Sheik Tantawi says with suspicion.” Though it is common in Islamic states for religion to influence government policies, many religious leaders are concerned that in the debate over organ donation the tables have been turned, with politics now shaping religion.

MEXICO: WHY THE DEAF GO TO THE UNITED STATES

For Imelda Santiago Garcia and her brother Ismael, life has not been easy. Both are deaf and live in a large slum in Mexico City. After enduring constant ridicule and taunts in school, Imelda refused to

return to class. Now she makes dresses in her home, and rarely ventures out. Ismael finished middle school, the most advanced education available for the deaf in Mexico, and took one of the few jobs he could get: sanding tables and chairs in a woodworking shop. To bolster his meager income, Ismael sold small cards saying "I am deaf" for a peso on the subway. Finally, like many of the country's deaf, Ismael decided to leave Mexico in search of a better future in the United States.

Stories such as this are far from rare in Mexico. Under Mexican law, the deaf are viewed as incompetent. *The New York Times* reports that the country provides no teletype telephone services; doorbells and smoke alarms have no lights attached; and televisions are not closed-captioned. The deaf are not allowed to drive and the government operates only six public schools for the deaf, none of which go beyond the sixth grade. Perhaps most importantly, there is no standard sign language, impeding the ability of deaf people to communicate. As a result, according to Jorge Badillo Huerta, director of the National School for the Deaf, 80 percent of Mexico's deaf adults go to the United States.

Tim Bloser

A New Twelve Step Program?

A Washington man has sued the Dairy Farmers Association and Safeway Supermarkets for failing to warn him that whole milk could clog his arteries. The 61-year-old self-described "milkaholic," who suffered a stroke last year, claims that a warning label would have prevented him from "drinking milk like some people drink water."

The Community Interest, Summer 1997

COMMENTARY

Marriage: What the People Know that the Experts Don't

Among professionals who make a living from divorce, there has been little reflection or self-criticism about practices that might contribute to the phenomenon. For that reason, William J. Doherty's critique of marital therapy (Summer 1997) is a welcome departure. He holds his own discipline accountable for adopting an individualistic and "morally neutral" approach in treating couples struggling in a troubled marriage. This clinical disposition has led to a predicament in the profession: marriage therapists who are not committed to marriage.

Moreover, as Doherty points out, psychotherapy has contributed to a cultural climate that encourages divorce as the first, and often only, solution to marital problems. Particularly in the 1970s, psychotherapists helped popularize a new and therapeutic ethic of divorce. This ethic held that divorce, once regarded as a last-resort measure for an irretrievably broken marriage, carried psychological benefits, at least for the adult who initiated the divorce.

According to the new ethic, unhappily married parents had a primary obligation to themselves to pursue their own psychological well-being. This led to optimistic claims about the advantages of divorce to children: if parents pursued their own happiness, then children would be happy too—an unproven assumption Doherty calls "psychological trickle-down." Such reasoning helped lift the tradi-

tional moral barriers to divorce involving children. According to the new ethic, adults were emotionally fragile and needed divorce, while children were resilient and could handle it. This represented a remarkable change in our social philosophy and a dramatic retreat from the ideal and norm of child-centeredness in family life.

Although Doherty limits his discussion to psychotherapy, he touches on a strain of thought that is shared by other secular experts on marriage. In his survey of contemporary college textbooks, for example, sociologist Norval Glenn [see p. 56 of current issue] reports that most of these volumes ignore or minimize evidence of the negative effects of divorce on children. At the same time, the textbooks pay scant attention to evidence of the beneficial effects of marriage on individuals or society. The overall message seems to be that divorce does little harm and marriage does little good. Characterizing the views of one textbook author, Glenn writes: "A main goal of the book seems to be to persuade students not to be too committed, not to love too much, and to be careful not to give more than they get in marriage and other family relationships—a sure recipe, in my opinion, for marital failure."

On some of these issues, expert opinion is now at odds with that of the public. In a recent *Time*/CNN poll, 61 percent of those surveyed think divorce for married couples with young children should be harder to get than it is now, evidence that the public recognizes the hardships and risks to children associated with divorce. Moreover, 54 percent indicate that a lack of personal dedication to marriage is the main reason for the increase in divorce. This suggests that the public regards commitment as a central dimension of marriage.

Doherty's discussion is also valuable because it broadens the debate on divorce beyond its current and excessively narrow focus on the law. Today's debate seems to treat divorce law as if it were the only factor contributing to the high rate of divorce. Missing from the debate is a consideration of the role that extralegal institutions have played in shaping attitudes toward divorce.

Also missing is any kind of moral reflection on the responsibilities of experts who work with divorcing couples and their children. Indeed, many of these experts reject the notion that they have any

moral responsibility at all. Yet since divorce necessarily redistributes hardship from adults to children, it has an inescapably moral dimension. One need only spend time in family court to appreciate this: nearly every visitation, custody, and relocation decision requires sacrifice and “adjustment” from the children.

Communitarians have a stake in fostering such moral reflection, for today’s divorce ethic is antithetical to the interests of children and destructive to family commitments that promote their well-being. Moreover, it undermines the foundation for our public commitment to children. A society cannot sustain a public ethic of obligation to children if it embraces a private ethic that devalues marital commitment and disenfranchises children as stakeholders in marriage.

Barbara Dafoe Whitehead
Author of The Divorce Culture

Free Speech and the Education of Governments

As Aryeh Neier (Summer 1997) points out, Bilahari Kausikan (Summer 1997) is misinformed about the human rights movement he criticizes. It is unclear whether he is better informed about the values of East and Southeast Asian people. Kausikan moves lightly from what “East and Southeast Asian governments” want to what “most people of the region” want. But how can he possibly know what “most people of the region” want? In China, Malaysia, Singapore, and Indonesia, at least, where press freedom is severely curtailed, how can *anyone* know what the people want?

Getting the facts straight is an essential preliminary to any debate about values. No intelligent moral judgment can be made about a set of facts if one has an inadequate grasp of what those facts are. Herein lies the oldest of defenses for free expression, and in particular for the freedom to criticize political leaders. Insofar as governments suppress the free flow of information, their own ability to make intelligent decisions about any issue—including the issue of what “Asian values” might be—is severely threatened.

This argument for the freedom of expression does not depend on a commitment to democracy, or even to a full range of liberal, individualist rights. One can believe in the legitimacy of paternalist (even authoritarian) government, while maintaining that such a government also needs to grant free expression to its critics—to facilitate the gathering of information, as well as to preserve itself from corruption. Kant's defense of free expression, along these lines, was directed to authoritarian leaders. And Confucius similarly taught autocrats that a robust freedom to dissent is essential to good government:

Duke Ting asked,... "Is there such a thing as a saying that can lead the state to ruin?" Confucius answered, "A saying cannot quite do that. There is a saying amongst men: 'I do not at all enjoy being a ruler, except for the fact that no one goes against what I say.' If what he says is good and no one goes against him, good. But if what he says is not good and no one goes against him, then is this not almost a case of a saying leading the state to ruin?" (*Analects*, XIII.15)

So even if one grants Kausikan the legitimacy of an alternative, Asian authoritarian approach to good government, a strong case remains for free speech.

Whether we should cede this much to Kausikan is another question. Confucius himself was far more concerned with individual integrity than are his nominal followers today. More generally, the best arguments for a relativity-of-values-to-culture stance depend on a certain minimal commitment to individual rights. What makes it plausible to say that moral values depend on cultural ones is that individuals tend to prefer the rich, specific way of life embodied in their cultures to the vague abstractions promoted by universalist moral philosophies. Utilitarian and Kantian philosophers have devoted adherents only in universities, while Confucianism, Hinduism, Buddhism, etc. have enriched the lives of millions of people.

But if these kinds of considerations lead us to attribute moral power to cultural traditions, they do so only because individuals *choose* such traditions as a means to enrich their own lives. Only those cultures that honor the conditions making it possible for individuals to choose their cultural allegiances—to reflect on the culture in which they have been raised and either adopt, modify, or reject it—deserve respect. Such opportunity for reflection and choice is obviously un-

available in a society that murders or tortures its members. But it is also unavailable in a society that uses detention without trial and curbs on press freedom to muffle dissent.

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