

# The Responsive Community

---

Volume 9, Issue 2, Spring 1999

## UP FRONT

- 4 **Spineless in Academia** — John Leo  
**Message From Oregon: Choose Death, We'll Pay** —  
Nat Hentoff  
**Helping Teachers Take Root** — Cynthia Parsons

## ESSAYS

- 11 **Bowling with Tocqueville: Civic Engagement  
and Social Capital**  
Everett C. Ladd  
Are we really “bowling alone,” and if so, is that a problem?
- 22 **Inside Japan's Community Controls:  
Lessons for America?**  
John O. Haley  
“The nail that sticks out is hammered down”—a revealing  
metaphor for Japanese society. Can such a stifling community  
have anything good to teach us?
- 35 **Valuing Marital Commitment: The Radical Restructuring  
of our Tax and Transfer Systems**  
C. Eugene Steuerle  
The so-called “marriage penalty” is much larger than you  
think.

*continued . . .*

- 46 **The Driven Society: Why Americans Don't Listen to Car Critics**  
Anne Mackin  
We're always being told to stop driving so much. Why won't we listen?
- 54 **Virtue and the State: A Dialogue Between a Communitarian and a Social Conservative**  
Amitai Etzioni and Robert P. George  
What is the proper role of the state in fostering virtuous behavior? For that matter, which behaviors are virtuous?

## DEPARTMENTS

### The Community Bookshelf

- 67 **The Politics of Race: Justice, Violence, and Misinformation** — Steven M. Teles  
Review essay on John Skrentny's *The Ironies of Affirmative Action*, Randall Kennedy's *Race, Crime and the Law*, and Jim Sleeper's *Liberal Racism*, three recent books that provide lessons for liberals, conservatives, and the New York City police.
- 81 **Liberalism and the Catholic Ethic** — William D'Antonio  
Review of *Catholicism and Liberalism: Contributions to American Public Philosophy*, R. Bruce Douglass and David Hollenbach, eds.
- 86 **Order from Chaos; Public Interest from Greed** — Lawrence E. Mitchell  
Review of Jerry L. Mashaw's *Greed, Chaos, and Governance: Using Public Choice to Improve Public Law*.
- 91 **Libertarians, Authoritarians, Communitarians** — Rachel Mears
- 96 **Contributors**

---

*To receive The Communitarian Network's FREE monthly electronic newsletter, The Communitarian Update, send the message "subscribe comnet," followed by your name, to [listserv@hermes.circ.gwu.edu](mailto:listserv@hermes.circ.gwu.edu).*

# The Responsive Community

## EDITOR

Amitai Etzioni  
The George Washington University

## CO-EDITORS

R. Bruce Douglass  
Georgetown University

William Galston  
University of Maryland

Thomas Spragens, Jr.  
Duke University

## MANAGING EDITOR

Daniel Doherty

## ASSISTANT EDITORS

Andrew Becker  
Naomi Chernick-Berman

Jessica Ginsburg

Natalie Klein

Rachel Mears

## EDITORIAL ASSISTANTS

Jennifer Ambrosino

Jacque Bareford

Adam Brenneman

Adam Wells

## CIRCULATION MANAGER

Becca Merrill

## EDITORIAL BOARD

Benjamin R. Barber  
Rutgers University

Robert N. Bellah  
University of California, Berkeley

John C. Coffee  
Columbia University

Anthony E. Cook  
Georgetown Law Center

Jean Bethke Elshain  
University of Chicago

James Fishkin  
University of Texas, Austin

Nathan Glazer  
Harvard University

Mary Ann Glendon  
Harvard University

Robert Goodin  
Australian National University

Kwame Gyekye  
University of Ghana, Legon

Hans Joas  
Free University, Berlin

Seymour Mandelbaum  
University of Pennsylvania

Martha Minow  
Harvard University

Ilene Nagel  
University of Maryland

Philip Selznick  
University of California, Berkeley

William Sullivan  
LaSalle College

Charles Taylor  
McGill University

Daniel Yankelovich  
DYG, Inc.

---

*The Responsive Community* (ISSN 1053-0754) is published quarterly by the Center for Policy Research, Inc., a nonprofit corporation. The journal is listed in the following indexing/abstracting services: PAIS, IBZ, IBR, and Sociological Abstracts. Microform copies are available through Microfilms, Inc. Distributed by EBSCO: (205) 991-6600; and by Ubiquity Distributors, Inc.: (718) 875-5491. Visit our web site at <http://www.gwu.edu/~ccps>.

Copyright 1998 by *The Responsive Community*. All rights reserved. We request that our readers not make reproductions of it will undermine our ability to continue publication.

**Subscriptions:** Rates for individuals are: \$27 per year; \$48 for two years; \$17 per year for full-time students. Libraries and institutions: \$70 per year. Subscribers outside the U.S. should add \$7 per year for additional mailing costs. Send subscriptions and changes of address to: Circulation Manager, *The Responsive Community*, 2020 Pennsylvania Ave., NW, Suite 282, Washington, DC 20006-1846, Tel: (800) 245-7460. FAX: (202) 994-1606.

**Editorial Information:** Editorial correspondence should be directed to the Editors, *The Responsive Community*, 703 Gelman Library, The George Washington University, Washington, DC 20052, USA. We regret that we cannot be responsible for unsolicited manuscripts. If you would like to write for us, please send a brief manuscript proposal first.

## UP FRONT

---

### Spineless in Academia

Brace yourselves. It is time to announce the winner of the second annual Sheldon award. As the growing legions of Sheldon fans know, this is the trophy that goes to the college president who did the most during 1998 to look the other way while students stole or burned whole stacks of campus newspapers.

The Sheldon is a statuette that looks something like the Oscar, except that the Oscar shows a man with no face looking straight ahead, while the Sheldon shows a man with no spine looking the other way. The award is named for Sheldon Hackney, former president of the University of Pennsylvania, a legend among backbone-free campus officials who strive to look the other way. Nineteen-ninety-seven's winner was Chang-Lin Tien, former chancellor of the University of California, Berkeley. Known to his many admirers as "the Hackney of the West," Chang-Lin Tien effortlessly looked the other way six times in a single academic year—a national record—when thieves stole all or part of the *Daily Californian's* 24,000-copy press run, often on days when someone wrote an article opposing affirmative action.

Two vigorous contenders for the new Sheldon, the presidents of Amherst and Northwestern, faded from competition when events overtook their efforts to look the other way. At Amherst, the conservative paper was defunded and then funded again. At Northwestern, the conservative paper was derecognized, in effect making it almost impossible to publish. "Derecognition" is a familiar worldwide pro-

cess pioneered by Third World juntas, who regard it as the most efficient way of coping with unwanted journalism. Northwestern President Henry Bienen caught the eye of the Sheldon judges last August when he wrote that derecognition of the *Northwestern Chronicle* was “not a matter of free speech.” A nice touch. Alumni (including Charlton Heston) and the campus’s Medill School of Journalism loudly thought otherwise, so Northwestern backed down and Bienen lost the Sheldon award that seemed within his grasp.

Cornell President Hunter Rawlings III, last year’s runner-up, was once more a formidable contender. In 1997, he looked the other way after two seizures and burnings of the *Cornell Review*, including one protesting a parody of Ebonics. Judges were impressed by Rawlings’s commencement speech praising campus reaction to the parody as “rapid and robust,” though that response included a promise by campus groups to keep stealing the *Review* and attempts to ban the *Review* altogether. Some Sheldon judges argued that apparent praise for stealing, burning, and banning papers was too active a stance to qualify as “looking the other way,” but they were overruled. This year Rawlings’s candidacy was harmed somewhat by a brief statement favoring free speech, but Rawlings fans pointed out that it was tepid and somewhat snarly and that the pro-burning atmosphere at Cornell seems to be intact. In his statement, Rawlings implied that the *Cornell Review* was somehow tied to campus racial incidents and “white power” philosophy.

A similar brief and tepid defense of free expression nearly ruined the groundswell for the Reverend Leo O’Donovan, S. J., president of Georgetown University. About 3,000 copies of the abrasively conservative paper, the *Georgetown Academy*, were stolen on October 8. O’Donovan’s response was impressively slow and feeble. A one-paragraph comment, which did not mention the *Academy* or the theft, appeared on October 23, with “background information” saying that the “alleged removal of copies” was being investigated.

After the pressure was turned up (an article in the *Washington Times*; inquiries from alumni and trustees; complaints from the Student Press Law Center, a conservative press monitoring group), O’Donovan put out a stronger one-paragraph defense, saying the newspapers’ removal was “not acceptable.” But this apparently dis-

qualifying act struck the judges as an admirable form of rope-a-dope—doing the least possible until pressure abates. When campus papers failed to print O’Donovan’s free-speech paragraph, no further effort was made to publicize it.

The administration’s attempts to discover who took the 3,000 copies do not seem to have gotten very far. A student who told *Academy* editors that he had seen a Georgetown residential assistant taking bundles of *Academy* issues to his room was not called during the investigation. *Academy* editors said that one residential assistant told them he would no longer allow copies of the publication to be placed in his dorm. Despite the “free-speech” paragraph, pro-O’Donovan judges argued that he hung on in the competition by sheer detachment from what was happening and by the fact that his free-speech paragraph remained unknown to so many on campus. What finally tipped the Sheldon toward O’Donovan was his silence when the main campus paper, the *Hoya*, ran an editorial applauding the theft of the *Academy*’s copies.

The citation reads: “For looking otherward when one campus paper loses most of its copies and another campus paper loses most of its principles, the Sheldon goes to the Rev. Leo O’Donovan.” Congratulations all around.

*John Leo*

## Message from Oregon: Choose Death, We’ll Pay

Having become, in 1997, the first state to legalize physician-assisted suicide, Oregon, out of further compassion, has decided to provide this service to 270,000 low-income residents without charge. Death does not discriminate—why should Oregon? As of December 1998, the Oregon health plan provides state funds for diagnostic and counseling sessions to verify the desire for suicide. And, of course, the lethal drugs to fulfill that desire will be free. (State funds for this act of extreme compassion will be segregated from federal Medicaid money because Congress has not yet permitted death to be subsidized under Medicaid.)

As Richard Doerflinger reported in “Life At Risk” (a newsletter published by the National Conference of Catholic Bishops), there were angry dissenting voices at a November hearing on this dividend for the economically challenged. Ric Burger—a diabetic, a wheelchair user, and a spokesman for disabled citizens in the state—noted: “The fact that the state of Oregon will not properly fund our personal attendant services, yet will pay for us to die, amounts to nothing less than cultural genocide.” Another group, Physicians for Compassionate Care, charged that “bureaucratic barriers have already been placed in the way of providing state funding for state-of-the-art antidepressant medication and even pain medicines, while full funding of assisted suicide for this same vulnerable population is being promoted.”

Last year, the *Economist* praised Oregon’s Democratic Governor John Kitzhaber for rationing health care in the face of limited resources and observed that Oregon no longer pays for treatments such

as “efforts to fight the final stages of AIDS.” But now, AIDS patients can be lawfully assisted to kill themselves—thereby saving the state even more money.

Despite the recent defeat in Michigan of an assisted-suicide proposal, other states are likely to eventually allow doctors to provide patients the means to dispose of themselves. Polls indicate much popular support for state-aided “death with dignity.” Many doctors agree. Some are neutral, like the Oregon Medical Association. Yet in 1994 the New York State Task Force on Life and Law issued a report—“When Death Is Sought: Assisted Suicide and Euthanasia in the Medical Context”—that warned doctors and patients of the dangers in the state’s hastening of death. This group, created by then-Governor Mario Cuomo, consisted of lawyers, physicians, and an ecumenical roster of religious leaders. The task force pointed out that “in light of the pervasive failure of our health care system to treat pain and diagnose and treat depression, legalizing assisted suicide and euthanasia would be profoundly dangerous for many individuals who are ill and vulnerable. The risks would be most severe for those who are elderly, poor, socially disadvantaged, or without access to good medical care.” The task force also noted that “racism, ageism, bigotry against disabled people, and issues of class and economic status would materially affect killing decisions.”

The Supreme Court refused on June 6, 1997, to declare physician-assisted suicide a constitutional right. In the decision for a unanimous court, Chief Justice William Rehnquist encouraged the states to explore ways of dealing with this rising issue. Rehnquist emphasized that “the lives of the terminally ill, disabled and elderly people must be no less valued than the lives of the young and healthy.” Otherwise, he said, they would become victims of “abuse” by compassionate expeditors. And Justice David Souter, in a concurring opinion, stated his concern that assisted suicide could slip into euthanasia: “Whether acting from compassion or under some other influence, a physician who would provide a drug for a patient to administer might well go the further step of administering the drug himself, so the barrier between assisted suicide and euthanasia could become porous as well as the line between voluntary [and involuntary] euthanasia.” Souter also recognized “the financial incentives” in this new era of managed care.

In the sweepingly compassionate new world ahead, I would not be surprised if Oregon became the first state to legalize the right of physicians to directly kill a patient. At no cost to the departed, of course.

*Nat Hentoff*

## Helping Teachers Take Root

First, a description of the problem. It is almost self-evident that educators benefit from having a thorough knowledge of the community in which they are teaching. Knowing the local culture and history that have helped shape the students, knowing what local activities and resources are available to the students, knowing the nature of the world that these kids go home to each evening—all of these better enable teachers (and administrators) to do their jobs.

Unfortunately, most new teachers are strangers in town. It is not exaggerating the circumstance to state that next year more than 100,000 teachers will be working in communities in which they have never lived. Whether coming from a nearby town or another state, these new hires have to learn the school schedule, curriculum, syllabus, report-card system, and how the school system is structured. They must deal with new pupils, new parents, new colleagues, new policymakers, and new materials. Throw in the regular burdens of teaching and time for their own families, and there is little time left to learn about the community.

Second, a solution. Couple each new hire with a “wise elder” from the community, someone who has lived and been active in the community for years. This person need not be involved in education, and in fact probably shouldn’t be. The elder’s purpose is to help the teacher or administrator learn about the community *outside* the school walls. Imagine, for example, the case of community service requirements. About 50 percent of schools have some such requirement. A new teacher who must run a service program is at a significant disadvantage. What local institutions can use volunteers? What are these institutions like? Which ones are age-appropriate? To answer these questions, a longtime resident could serve as the new teacher’s

community mentor. While school manuals and other teachers can provide some assistance, the benefit of advice from someone who has had firsthand experience with many of the potential “employers” cannot be underestimated.

The third and final issue is how to find these wise elders. As in all facets of life, compatibility is an issue. To minimize any compatibility problems the best solution is to let the “stranger” be the chooser. Novice teachers would likely not want a specific mentor forced on them. Perhaps the PTA/O, or the Chamber of Commerce, or some other local organization, could hold a reception at which all new hires were invited and at which long-standing residents willing to mentor would introduce themselves, each telling a little about his or her involvement in the community. The new teachers could talk a little with those they are considering and then make a decision. A slightly awkward situation, but surely worth the trouble.

We know what peer tutoring and mentoring does for students, how both the teacher and the one taught gain in skills and understanding. It is time to apply that lesson to those at the head of the classroom.

*Cynthia Parsons*

### On Triangles and the Color Purple

*According to Jerry Falwell, the Teletubby Tinky Winky, with his fuzzy purple skin and a triangle on his head, is a walking advertisement for homosexuality. But the triangle is also a traditional Christian symbol for the Trinity, and purple, the symbolic color for the Crucifixion, is worn by many clergy during the week leading up to Easter. One wonders why Falwell didn't notice that symbolism.*

## ESSAYS

---

### **Bowling with Tocqueville: Civic Engagement and Social Capital**

Everett C. Ladd

The U.S. economy is hugely successful. Inflation is low, employment rates are high, and there seems to be no end in sight to this good news. But isn't community suffering amidst these burgeoning material resources? As the economy expands, are we not experiencing a decline in citizens' civic engagement? Have we not seen a reduction in the collective activities that address community needs and problems and, in general, enhance our lives?

Such concerns are often expressed in terms of our "social capital" account. The dictionary defines capital as "any form of wealth employed or capable of being employed in the production of more wealth." Drawing on this root, "social capital" encompasses any form of citizens' civic engagement employed or capable of being employed to address community needs and problems and, in general, enhance community life. Thus the all-important question: Are we spending down our supply of social capital?

#### **Figures Don't Lie . . .**

If you want to know a Major League baseball player's batting average against left-handed pitchers in games completed after 11:00 p.m., you can get it in a flash. But if you want to document what's been

happening to associational membership, be prepared to spend a lot of time assembling the material yourself. We know that many Americans give of their time and energy to a variety of organizations, and that many did the same in 1950, 1900, etc. But is the proportion increasing or decreasing? And are we gaining important civic results from these efforts?

Robert Putnam, in the oft-cited essay *Bowling Alone*, has argued that we should be concerned that membership in organizations such as the Jaycees, the Elks, the League of Women Voters, and the PTA has dropped off significantly over the last three decades. His numbers are correct and, thus, at first glance the idea of declining civic engagement seems plausible as many older groups have in fact lost ground. But groups have always come and gone, for many reasons. Membership declines become worrisome only when they are widespread, or if limited, when the groups in retreat are highly important civically and are not being satisfactorily replaced.

So let us look at the PTA. Data provided by the PTA's national headquarters in Chicago show that membership reached a high of 12.1 million parents in 1962 and then began falling off, slowly at first but rapidly in the late 1960s and throughout the 1970s. It reached a modern-day low in 1981 of just 5.3 million. In the mid-1990s less than one-fourth of all public and private K-12 schools had PTA affiliates—ranging from lows of just 4 percent of schools in Massachusetts and 7 percent in Wyoming, to highs of 51 percent in Maryland and 72 percent in Utah. Since most of us would agree with Putnam that “parental involvement in the educational process represents a particularly productive form of social capital,” the PTA's experience deserves examination.

On its face it is unlikely that in education-conscious Massachusetts only one school in 25 has a parent/teacher group. Something else has to be happening. Months after I began puzzling over the PTA story my wife reminded me that when she was an officer of our local Mansfield, Connecticut, PTA in the late sixties, the group voted to become independent—calling itself a Parent-Teacher Organization. The PTA lost out, but parent involvement didn't. Was this a common occurrence?

Unfortunately no one collects data on PTOs or other unaffiliated parent-teacher groups. With the help of my colleagues at the Roper Center for Public Opinion Research, I decided to conduct my own survey. Covering all 50 states was not feasible, but doing a careful study in a couple of states was. I picked Connecticut, the country's most affluent state and one with high education levels and a highly urban population, and Kansas, a state with a demographic profile sharply different from Connecticut's in income, educational background, ethnicity, and occupation.

In both these states we drew a random 10-percent sample of all state-accredited private and public schools and contacted their principal's or superintendent's offices. We then conducted telephone interviews to find out what (if any) parent/teacher organizations operated in these schools. Completing interviews at more than 90 percent of the schools in our original samples, we found that virtually all the schools had parent-teacher associations that school officials said were active. In both states the preponderance of the parent-teacher groups were not affiliated with the PTA, or for that matter, with any outside body, with by far the largest share of unaffiliates calling themselves PTOs. These findings belie any claim that we have entered an era of "schooling alone."

And there are other similar data. In 1969 just 16 percent of parents told Gallup that they had attended a school board meeting; in 1995, 39 percent said they had. Princeton Survey Research Associates in a 1990 poll recorded 30 percent of parents of children aged five through seventeen as not having attended any PTA or special school meeting in the past year; three years later, the proportion not attending was just 19 percent. Some respondents may, of course, gild their answers to questions like these. Still, it's striking that not one set of systematic data shows a decline in parental involvement, while many show increases. The National Opinion Research Center's (NORC) General Social Survey did find a plunge in 1980 in the percentage of parents of school-age children saying they had joined one or another school service group—but if this drop-off was real it was short-term. NORC surveys in the 1990s have found the proportion of parents belonging to such groups at their highest levels. The experience of parents and schools simply does not support the argument that America's social capital is eroding.

## The Civic Side of Religion

Churches and other religious bodies seek to guide their members in the worshipping of God, of course, and in living lives that accord with religious precepts. But churches are also civic associations. Through them tens of millions of Americans meet regularly to participate in an array of social activities. They engage their parishioners to help those who are hurting and to strengthen the larger community.

Many Americans tell pollsters that they believe religion is losing ground in the life of the nation. Do these respondents actually see religious influences in retreat? Or are they mostly just expressing natural anxiety about institutions and values that really matter to them? We do know that the proportion of Americans belonging to a church or other religious organization has been trending upward over much of our history. Roger Finke and Rodney Stark have observed that “this pattern can truly be called the churching of America. On the eve of the Revolution only about 17 percent of Americans were churched. . . . [B]y 1906 slightly more than half of the U.S. population was churched. Adherence rates reached 56 percent by 1926. Since then the rate has been rather stable although inching upwards.” On the eve of the new century, something between four and five in every ten adult Americans say that they attend church “regularly,” meaning almost every week or more often. About two-thirds are members of a church or synagogue. More than a quarter call themselves *very active* participants in their religious bodies, while another 40 percent plus are moderately active. No other organization records anything approaching so high a participation level.

But while overall membership and participation in religious groups remain high and, if anything, have climbed in recent years, individual denominations are going in opposite directions. Some are growing rapidly, others losing ground. In the last quarter century the old mainline Protestant churches have lost members, while a host of pietist and evangelical denominations have expanded strikingly. “Megachurches” have been appearing around the country, offering their parishioners social services—such as well-equipped gymnasiums—never before part of the church scene. “Para-religious” bodies like Promise Keepers are engaging millions outside any denominational structure. The contemporary search for new religious forms is

also seen in the huge growth of “community churches,” that are often intensely participatory but eschew historic denominational associations. All this can be jarring for those more tradition-minded; and some of it is undoubtedly both crass and superficial. But little of it fits a picture of Americans retreating into more solitary pursuits, finding their cultural substance primarily through the tube.

### Competition in the “Group Marketplace”

In case after case where a group that’s been important in the past now finds itself losing ground, or at least struggling to maintain its place, investigation shows that the main cause is simply strong competition. The PTA has been getting beaten by local entrepreneurs who are more concerned with their hometowns than with the Chicago headquarters. The old mainline churches are getting beaten by all sorts of religious newcomers.

Competition usually does not destroy the old front-runner, it just erodes its ascendancy. The experience of the Boy Scouts is a case in point. Total membership—including adults who participate as volunteers—reached its high in 1970; it has since then declined by roughly 15 percent. (The organization’s whopping 1.2 million adult volunteers is still by any standard impressive.)

Scouting is struggling to maintain its position because it has to compete with a multitude of other youth organizations—some of which are growing exponentially. U.S. Youth Soccer now has over 2.5 million players. American youth are certainly not playing alone. What’s more, all this youth activity doesn’t occur without serious adult engagement—in this case over a half-million adult volunteers. Writing in the *Atlantic Monthly* about the growth of US Youth Soccer, Nicholas Lemann observes that “as a long-standing coach in this organization, I can attest that it involves incessant meetings, phone calls, and activities of a kind that create links between people which ramify, in the manner described by [Robert] Putnam, into other areas.”

In addition to a change in focus, association life is also experiencing a change in organizational style. The experience with community churches—growing rapidly, entirely decentralized—follows a pattern now evident in many civic groups. The *Dallas Morning News*

made a major commitment to explore for its readers civic participation around the country. Its extended series reported on “a dizzying array of community revitalization groups and initiatives.” Examples of what was variously described as the “civic revival movement,” the “new citizenship,” “civic democracy,” and “community building” were tracked in roughly 50 metropolitan areas. The work of over 80 nonprofit organizations, foundations, and other community groups was discussed. And all this represented only a drop in an ocean of activity. Many of the groups cited are themselves umbrella organizations (e.g., the Alliance for National Renewal is an umbrella for more than 100 organizations involved in the civic renewal process). Community development corporations numbered only 300 in 1980, but today stand at 3,000. Thus it would seem that the trend is away from centralized national organizations to those decentralized and local. Civic participation evinces a degree of devolution that may even surpass what’s occurring in the governmental sphere.

In sum, while Americans today are joining different *sorts* of groups than in the past, we are not coming together *less* for civic purposes.

#### The Case of the Volunteer

Joining face-to-face groups to express shared interests is a key element of civic life. Such groups help resist pressures toward “mass society.” They teach citizenship skills and extend social life beyond the family. They address common problems. Anyone who has participated much in community associations knows they can be petty and peevish—but they are essential to a healthy civic America. And as we have seen, group participation is not diminishing.

Volunteering is another key aspect of citizen engagement. Here, too, the news is good, contrary to some critics’ laments that these days “everything has a price.” For all the demands on two-wage earner families and the allure of television sitcoms, a huge number of Americans do volunteer work. In a 1997 survey ABC News and the *Washington Post* found 58 percent reporting that in the past year they had volunteered for a church, charity, or other community group—up from 44 percent in 1984. Roughly half who claimed they had volunteered said that they do it regularly. That is about a quarter of the entire adult population!

Other studies show a similar upward progression. Polls done by Gallup and Princeton Survey Research Associates have asked the same question on personal involvement in social service work since 1977; and these data show the percentage of the public thus engaged having roughly doubled over the span. Changes of this magnitude should not be taken seriously when they occur only in single instances. But when study after study show the same pattern, and trend lines are clearly etched, we should take notice.

As with participation in groups, a closer look at where people volunteer is revealing. Early in 1997, prior to the convening of the President's "Summit for America's Future" in Philadelphia, the Pew Research Center commissioned a major survey of volunteer activity. One of the most interesting findings of the Pew survey comes from a comparison of levels of volunteering for religious and other nonpolitical civic organizations on one hand, and for political activity on the other. The latter lags far behind. Church is up; state is down. This is hardly cause for concern, despite the hand wringing of some who see government as the center of public life. For most of us politics is just not as important as other forms of civic engagement.

#### Explaining the Late Sixties and the Seventies

The Girl Scouts have more adult volunteers now than in any preceding period. The national office of Girl Scouts of the USA reported roughly 380,000 adult members in 1950, 535,000 in 1980, and 805,000 in 1996. Volunteering in support of Girl Scout activities is higher now than a half century ago, even when population increases are taken into account.

That said, the Girl Scout's volunteer ranks were reduced sharply between 1960 and 1980, dropping by roughly 240,000 over the span. And the Girl Scout experience is fairly common. Other organizations saw their participation levels drop in the late 1960s and 1970s, only to recover and move ahead during the past 15 years or so. It's striking that only 26 percent of adult Americans interviewed by Gallup in 1977 said they were involved in any charity or social service activity, while the proportion was twice as great (54 percent) when the same question was posed by Princeton Survey Research Associates in 1995.

That these fragmentary findings may point to a real pattern gains credence when one considers the backdrop of the socioeconomic and political experience of the late 1960s and the 1970s. This was a time of growing conflict surrounding the war effort in Vietnam. A president was forced to resign. The seventies saw what was for the United States unprecedentedly high inflation. Motorists found themselves waiting in line for hours to buy gasoline. The seventies closed with the seizure of American embassy personnel in Teheran. It would be surprising if such a string of errors, disappointments, and frustrations had no impact on citizens' confidence. We would expect so many dispiriting events to discourage many regular forms of civic participation. But we would also expect that a fairly rapid return to normalcy would leave civic life largely untouched. And, as the numbers have shown, that is exactly what happened.

There are reasons that the impact caused by temporary citizen alienation is limited. Voluntarism and other facets of civic engagement are shaped by three separate sets of factors: (1) core moral commitments, such as understandings of individual responsibility; (2) stages of socioeconomic development, which determine relevant resources; and (3) short-term forces that variously encourage or dispirit the population. There is no indication that the first of these has moved much from its historic course. The second apparently has—the postindustrial setting provides greater resources for engagement by ordinary citizens. The third factor would be expected to produce ups and downs *within* the structure shaped by the first two. Thus some decline in the 1970s in citizens' confidence and levels of community participation—though hardly a collapse of civic America—was an unsurprising outcome of the decade's many wrong turns.

#### "Biography of a Nation of Joiners"

Arthur M. Schlesinger, in a brilliant 1944 essay, wrote that individualism has meant to Americans "not the individual's independence of other individuals, but his and their freedom from government restraint. Traditionally, the people have tended to minimize collective organization as represented by the state while exercising the largest possible liberty in forming their own voluntary organizations." But voluntary action didn't emerge full-blown at the outset. Despite a modern-day inclination to romanticize the extent of mutual

assistance in the first century or so of the colonial period, the populace showed little understanding of cooperative undertakings, Schlesinger argued. “They had had scant experience in doing things collectively in Europe. Moreover, the population was small, towns were few, and communication was difficult.”

But with time the reach of voluntarism expanded. Schlesinger thought that the “complete divorce” of church and state was a critical element. Without state aid, “voluntarism . . . became the practice of all devotional associations.” Civic participation evolved so rapidly that by the time of Alexis de Tocqueville’s visit to the United States in 1831-1832, he could write that “the power of association has reached its uttermost development in America.”

Technological advances, far from being the enemy of civic engagement, were an essential spur. In 1829, William E. Channing credited the “immense facility given to intercourse by modern improvements, by increased commerce and travelling, by the post-office, by the steam-boat, and especially by the press. . . . Through these means, men of one mind . . . easily understand one another, and easily act together.” Each stage of socioeconomic development in U.S. history extended resources for civic participation, and experience has established such participation more firmly. Schlesinger saw the progress of associationalism prior to the Civil War as but “a prelude to far greater advances in the years to come. All the earlier favoring conditions now operated with magnified force. Cities were bigger, more numerous, and more generally distributed throughout the land. They were also bound together by swifter communications. . . . Newspapers not only grew in number and circulation but, themselves obeying the associative impulse, developed chains, syndicated features, and co-operative news-gathering methods, thereby further increasing the tendency to common thought and action.”

Of course, this is not to deny that “common thought and action” are sometimes centered around the trivial. As Schlesinger noted, “The irrepressible spirit of gregariousness sometimes [breaks] out . . . in unexpected forms. Thus the period since the first World War has seen the rise of the National Horseshoe Pitchers’ Association . . . the Circus Fans’ Association of America, the American Sunbathing Association, and the Association of Department Store Santa Clauses.” Neverthe-

less, the progression of “the associative principle” that Schlesinger chronicled has continued to our own day, as he expected it would. He wrote that “out of the loins of religious voluntarism in colonial times had issued a numerous progeny, each new generation outstripping the old in number and variety of its creations.” As we have seen, much contemporary experience confirms the progression Schlesinger anticipated.

### Permanent Anxiety

Citizenship is one of America’s proudest claims, yet at the same time a most demanding ideal. We inevitably fall short of the ideal, and worry about it precisely because it is so important to us. Each generation has evinced concern about the condition of citizenship and whether certain trends are leaving it diminished.

The American ideology is commonly described in terms of a far-reaching individualism, and while that’s valid, unless carefully qualified it’s also misleading. The drift and consequences of American individualism are collectivist, though certainly not of a state-centered variety. It is a collectivism of citizenship. The value of each individual’s share depends upon the beliefs and behavior of millions of others. We Americans have been less inclined than our counterparts in other democracies to turn to government for answers—in part because we’ve sensed that only the quality of our shared citizenship, expressed through a vast array of self-formed and self-managed groups, can sustain the type of societal life to which we aspire.

In 1922 G. K. Chesterton visited this theme, with characteristic insight, in *What I Saw in America* when he contrasted the United States’s experience to England’s. “The idealism of England, or if you will the romance of England, has not been primarily the romance of the citizen. But the idealism of America . . . still revolves entirely around the citizen and his romance.” Americans individually and collectively often fall short, Chesterton observed, in meeting their ideal of citizen rights and responsibilities. But “citizenship is still the American ideal; there is an army of actualities opposed to that ideal; but there is no ideal opposed to that ideal.” The American creedal nation is permanently anxious about its custody of the ideal.

If the public showed signs of abandoning its historic inclination to join with others to meet common needs; if positive energy applied to social improvement were dissipating, leaving narrowly self-serving impulses (which are always present) ever more ascendant—we would in fact be facing a crisis of American citizenship. That is why it is so important for us to get the facts on social capital. But the record shows clearly that the “nation of joiners” idea is not a myth; the foundation built from past experience is fairly strong. What’s more, present trends are encouraging. Contemporary socioeconomic developments are adding to our supply of civic resources. And when it comes to civic engagement, the public is less likely motivated by alarmist calls that the sky is falling than by the sober assurance that they are doing much that is right.

Social capital is a critically important resource—and contemporary America has not dissipated it. We have a chance to pass on to succeeding generations a supply richer than any predecessor enjoyed. And for all the hand wringing, lots of Americans understand this. The record examined here has not been compiled by a public that has given up on the demands of citizenship.

---

*In an upcoming issue, The Responsive Community is looking to explore the writings and ideas of Sir Isaiah Berlin, specifically their relationship to communitarian thought. If you are interested in contributing, please send an outline or description to Dan Doherty, The Responsive Community, 2130 H St. NW, Suite 703, Washington, DC 20052 (fax: 202-994-1606; e-mail: ddoherty@gwu.edu).*

## Inside Japan's Community Controls: Lessons for America?

John O. Haley

By all accounts, a strong and in some situations restrictive sense of community is a crucial characteristic of Japanese society. But what does community mean in the Japanese context? What are its principal attributes and prerequisites? What are its wellsprings and how does it continue to be shaped? What can we learn from Japan about community and its relation to culture, institutions, law, and the state? The aim of this essay is to briefly explore these questions and suggest some answers.

Several years ago, in a discussion with a diverse group of Japanese university professors, I posed the following hypothetical situation: Suppose, I said, a young member of your faculty was being considered for promotion and tenure. Assume also that he fully satisfies all the stated standards. In other words, he is extraordinarily productive, having achieved international acclaim for his scholarship, and is an effective, highly respected teacher. That said to his credit, however, he is in all other respects a disaster, so difficult to work with that he makes it impossible for those around him to function effectively. In short, he has become a major detriment to the collegiality, cohesion, and productivity of your faculty.

I then asked two questions: Would your faculty deny the difficult scholar tenure? And if yes, what would happen were the intransigent young teacher to appeal to the university, charging that such denial violated the official standards for tenure and promotion?

The Japanese scholars reacted immediately with a shared protest. They were unanimous in rejecting the hypothetical situation as an unrealistic depiction of what could occur in Japan. Yes, they agreed,

such a person could exist. However improbable, a young scholar with all of the described attributes was possible. Nonetheless, they continued, no one like that would be able to disrupt the faculty for long. “We would be able to control him,” one member of the group stated emphatically. The others nodded in agreement. After a moment, looking to his colleagues around him, another hesitantly added, “If we had to, we could bully him into submission.”

I interrupted. “No,” I insisted, “you must accept the hypothetical situation as given, even though you disagree strongly that such a situation would ever actually occur.” I repeated my two questions.

“Well,” replied one. “In that case, I suppose promotion and tenure would be denied.” All agreed.

I then continued. “What about the appeal?” To this question the reaction was swift, unanimous, and even more emphatic. They almost shouted. “He would not appeal!” “And, if he did, the University would not listen!” That the University president “would respect the autonomy of the faculty” was their final verdict.

This example is but one of many that could be drawn from the various sectors of Japanese society. From family to the firm, from government ministries to reform movements, cohesive groups—characterized by a remarkable degree of community control and immobility, and sustained by mutual dependence as well as a sense of shared identity and belonging—are distinctive features of Japan’s social landscape.

#### Historical Sources of Communal Influence

Much of this social milieu was shaped by the village model of what is known as the Tokugawa or Edo period (1603-1867). In the rural Tokugawa village—where over 80 percent of all Japanese lived—the cultivation of rice provided the primary impetus for interdependency. To establish and maintain a complex system of irrigation, as well as to plant and harvest, required extensive cooperation. And in a land subject to the constant threat of earthquakes, typhoons, and related natural catastrophes, mutual assistance was a necessity.

Interdependency was also the only available antidote to complete subjugation. A warrior class defined and regulated the Tokugawa

village. Subject to an increasing number of edicts, the status of the Japanese peasantry was never in doubt. The enforcement of these administrative controls, however, was indirect. The warrior overlords and their officials ruled from a distance. The village was treated as a collective unity. Village leaders were themselves responsible for any violations. Even taxes were assessed on the village as a whole. The portions to be paid by individual households was left to collective, village decision. But such self-governance went only so far. The village was denied control of its internal police. Policing was officially delegated to hereditary outcasts (*kawata* or, in contemporary terminology, *burakumin*), who were themselves organized into segregated hamlet communities.

Collective and individual subjection within this hierarchy reinforced the communal orientation of the village. Whatever measure of individual or collective autonomy the community could achieve required both outward submission to authority and a significant degree of internal cooperation. Taxes had to be paid and order maintained. Denied control over most formal means of coercive control, Japan's peasant communities were forced to rely upon informal mechanisms for maintaining order and community cooperation. Their autonomy and well-being depended, to use the language of contemporary academia, upon developing and honing noncoercive inducements for collaboration in order to escape the classic prisoner's dilemma.

The need for village cohesion also precluded individualistic religious beliefs or practices. Religion was a collective matter. The compulsory registration with a Buddhist temple, instituted in connection with the ban on Christianity, reinforced collective religious adherence. Indeed, even the experience of Japan's secret Christians—entire villages secretly practicing forbidden rites for two and a half centuries—exemplifies the pattern of collective religious practice, as these villages hid behind a facade of compliance with the commands of the ruling warriors.

The mechanisms used to maintain internal village cohesion and order were also applied to resolve conflicts and enhance cooperation between villages. Layer by layer, from individual to household, household to hamlet, hamlet to town, a pattern evolved of cooperation

based upon mutual benefit, induced consent, and reciprocity. Behind the veil of consensus and harmony, however, there was often intense disagreement and rivalry. To the extent that the village paradigm continues to prevail in contemporary Japan, outward signs of cohesion and solidarity often hide a less apparent reality of conflict and competition.

There were additional exceptions to the principal story of interdependence and stability. Artisans, for example, were able to achieve a relatively high degree of autonomy, and thus many sought such positions; artisans moved from master to master and, once fully skilled, established their own independent business. In addition, within the village, new branch households were repeatedly established by second or adopted sons. This pattern contributed to a system of continuously fracturing, decentralized rule. Thus, despite the hierarchical and authoritarian cast of Japanese society, the vast majority of Japanese lived in continuously restructuring, highly interdependent concentric communities, an existence located somewhere between the extremes of both complete individual autonomy and total subjection. Nonetheless, within the village the benefits of cooperation nearly always outweighed the gains of individual autonomy. Like medieval travelers left outside the city walls after dark, those in Japan without membership were subject to great risks because of the isolation closed communities created. Communities thus reinforced the conditions that sustained them. This historical legacy lives on.

#### New Institutions, Old Patterns

What of contemporary Japan? A century of industrial and commercial change may have torn at the fabric of village community, but the patterns of traditional village life reappear in the most modern of Japan's private and public institutions. The most frequently noted example is the Japanese firm. Japanese managerial practices and structures parallel village life. For over a half-century, lifetime employment, reinforced by entry-level hiring and the consequent dearth of lateral employment opportunities, has provided the defining constraints. The barriers to both entry and exit create the conditions for mutual dependency. With little or no prospect of exit, the present and future livelihood of each employee depends upon the continued success of the firm. The collective interest thus subsumes all indi-

vidual interests. Since the active participation of all is essential, consensus, rather than direction from above or majoritarian rule, tends to be the norm. A hierarchical structure is not precluded if hierarchy is viewed as the most effective means to maximize the collective employee interest. Employee consensus can even support a highly regimented and closely monitored work environment, and in fact frequently does. The skeptic may wonder if workers would really ever consent to restrictive workplaces with strong hierarchies, or if instead such outcomes in fact reflect the goals and relative power of those in charge. If the best test of who is truly governing is who benefits, then the answer is clear. As wages attest, Japan's industrial workers have reaped the rewards of their collective efforts. (As in the Tokugawa village model, external regulators and shareholder "principals" may exist, but to the extent that they too benefit from the productive capacity of the firm, they will tend to allow—if not actively encourage—the communally based self-governance that characterizes the Japanese firm.)

The story of government employees is little different. As with Japan's large business enterprises, the critical feature is a lack of mobility. With a few exceptions, Japanese government agencies hire from the pool of recent university graduates who have taken the national public service examination. Newly appointed civil servants can then look forward to a career within a single agency until retirement. To be sure, transfers between ministries take place, but are almost always temporary.

Large-scale enterprises and government organizations offer security and membership for a price—independence and freedom from control are sacrificed in the exchange. Nearly all large organizations in Japan, public and private, have a central personnel office. Staffed by career employees and in charge of employee selection, promotion, and assignment, it is the most influential administrative unit. Tellingly, in the United States, to my knowledge, only the military has a similar organization.

The economy as a whole has also paid a price. A decade of economic stagnation following the burst of the "bubble" economy has not altered fundamental patterns. Large-scale enterprises may drastically reduce entry-level hiring, arrange for senior employees to retire

early, and attempt to transform some permanent staff positions (particularly for women) into part-time jobs. However, they resist terminating career employees and any thought of going out of business.

High bankruptcy rates continue to be indicative of the insecurity of small and medium enterprises. The prevalence of community itself contributes to this insecurity. As auto parts manufacturers have long complained, enduring long-term business ties leave little room for independent suppliers and new entrants. Access to goods and services, even information, tends to depend upon carefully fostered relationships. Introductions and personal guarantees continue to be required for many of the most basic transactions. Yet, the relationship itself does not provide the glue. Unless founded upon reciprocal advantage or mutual dependency, even long-term business contracts can abruptly end by unilateral action. Those not established in relationships of reciprocal advantage find themselves in a very insecure position.

Not surprisingly, the value placed on the autonomy of the artisan, a legacy of the Edo period, remains quite strong, with the medical and legal professions being the modern day equivalent. Those fortunate enough to gain entry into these highly restricted professions do not have to choose between security and autonomy. In fact, unlike in the United States, most lawyers are either sole practitioners or engage in some office-sharing arrangement. Also telling is that Japanese attorneys, when asked what factors motivated them to become a lawyer, invariably list “freedom from control by others” among the top factors. Of all the Japanese lawyers I have personally asked this question—now numbering into the hundreds—only two, both women, failed to mention this desire for independence. I can only speculate that either they as women may have felt that they could not escape some degree of control or, for whatever reason, did not feel the need for autonomy as acutely as their male cohorts.

### The Role of the State

The modern Japanese state is not a passive recipient of the communal culture of the Edo period. Through both deliberate and inadvertent actions the state has helped foster the current orientation. To a significant extent this is due to the overall weakness of the modern

Japanese state. A general weakness of state power, and the failure to provide adequately for the protective security of its citizens and the economic welfare of vulnerable individuals, have left needs that only collective action and community are able to satisfy. As a result the state in Japan, unlike other industrial states, has not functioned as a substitute for community but has instead necessitated it.

To be sure, the architects of the modern Japanese state sought to establish a strong state. During the Meiji period (1868-1912), officials attempted to create an institutional structure that would allow for effective governance of a unified nation from Tokyo. But because of fractured governance, quasi-autonomous organs, and unresolvable conflicts from within, the Meiji state failed to fully achieve its founders' wishes. Readers accustomed to descriptions of prewar Japanese authoritarianism may be surprised to learn that even in wartime, at the peak of military control, the Japanese state could not fully direct and control those subject to its authority. Like their warrior predecessors, even Japan's military rulers could command but could not fully control or coerce.

Not until defeat and occupation did Japan establish an institutional structure fully capable of centralized governance and effective state control. Douglas MacArthur exercised more authority and power than any shogun. The constitution he initiated and guided to completion set out all of the essential conditions, including institutional structures for parliamentary government (accountable to the people through the electoral process), as well as guarantees against abusive state power and positive mandates for the promotion of a protective welfare state. Despite this grand attempt, however, the forces for continuity overwhelmed the forces for change. As before, governance at all levels continued to be dominated by reciprocal bargains, negotiated policies, indirection, and collective evasion. Of course, relying on various covert negotiations is not unique to Japan. However their predominance—along with regulatory statutes without meaningful sanctions and policies lacking the most elemental means for direct implementation—is less pervasive and apparent in other industrial democracies.

The Japanese state's contribution to community is not limited, however, to what it failed to achieve. The producer-welfare policies of

postwar Japan inexorably linked the state to collective industrial and commercial interests. Large-scale enterprises, industry associations, cooperatives—the economic communities of postwar Japan—were the beneficiaries of policies designed (with their assistance) to achieve economies of scale, international competitive advantage, and the creation and reinvestment of wealth. The interests of the producing communities, whether agricultural or industrial, came first. Those of the *individual*, as either consumer or worker, were secondary to the extent they counted at all. In turn, producer-communities (which included the workers of a firm as a collective) in all sectors responded to these policies like villages and their leaders under the Tokugawa system. They sought whatever protection, largesse, and special benefits they could gain while all the time jealously guarding their autonomy and resisting any efforts that would have enabled direct official intervention and control.

Judges have played a mixed role in the fostering of strong communal ties. As Japanese courts have interpreted and applied the legal rules of the constitution, codes, and statutes, they have reinforced and confirmed community by restricting the dissolution of relationships except by mutual consent, while also refraining from intervening to protect individual rights. Japan's judges have consistently disallowed the unilateral termination of marriages, employment relations, leaseholds, and long-term business relationships. This has often meant protection for wives, workers, and tenants. But judges have also rejected attempts to intervene against the community to protect its members. As critics of the courts complain, society, not the state, is the "tyrant." In the words of law professor Tatsuo Inoue, "The dark side of Japan's land of community is at least as dark as the dark side of America's land of rights. As for Japan, there is now an urgent need to heed the voice that calls for increased respect for individual rights."

### Controlling Crime

Alone among all industrial democracies, over the past half century Japan has managed to reduce all incidents of violent crime by remarkably wide margins. Between 1955 and 1992, Japan experienced a 62 percent decrease in the number of homicides, a 67 percent reduction in the number of rapes, a 71 percent reduction in assault, and a 42 percent reduction in the number of robberies. No single

factor accounts for this success: steady economic growth ensured employment opportunities; low rates of crime enabled an effective concentration of police resources; official encouragement of apology and reparation fostered accountability; limited resort to incarceration reduced alienation and improved the odds for correction; and so on.

None of these factors, however, can be separated from Japan's communal orientation. Of primary importance is the role of peers. Criminologist John Braithwaite has convincingly argued that Japan's success is based primarily on a process of "reintegrative shaming." Basically, his contention is that disapproval by one's peers—those whose opinions count—is the principal deterrent to crime and other deviant conduct. Of course, community acceptance of "shaming" itself is a prerequisite. In societies in which community action is suspect or legally proscribed, the means of community control will be severely constrained. As indicated in the opening anecdote of the untenured professor, however, the Japanese tend to take for granted the availability and effectiveness of a wide variety of means to express community disapproval. The Japanese do not object to "taking the law" into the community's collective hands. Community controls are acknowledged as the principal means for maintaining order. Even if rarely exercised, their availability and potential use makes them effective as an ever present threat.

As Braithwaite emphasizes, Japan's experience also shows that community disapproval and the repentance it induces requires a forgiving or "reintegrative" response. (Negative "stigmatizing shaming" is strongly rejected as counterproductive.) If possible, the offender should be restored back into the community. Thus the offender's family and friends participate, leading the offender through the process of confession and reparation, and helping ensure future correction and control. Victims also participate in this system of restorative justice. Victim reparation and pardon are essential elements in Japan's approach to criminal justice. With official encouragement, and with the aid of family members and friends, offenders are expected to negotiate with any victims of their crime to demonstrate remorse and redress the injury. Pardon from the victim, however, is expected in return.

Once these steps are taken, law enforcement authorities consider themselves enabled to respond to the offender with greater leniency.

The process of correction is begun and relationships are restored. The community is willing to exercise control, making punitive measures unnecessary or even counterproductive, with the result being that the state's resources can then be devoted to those for whom community correction and control are less certain or effective. In sum, by viewing offenders in their social contexts rather than in isolation as individuals, Japanese law enforcement takes advantage of a wide array of tools—the disapproval of peers, the social accountability of the group for the wrongs of its members, the capacity of the group to police and discipline its members—that facilitate effective crime prevention and control.

Japan's criminal justice system does more than merely rely upon community: the process strengthens community. The contacts between offenders and victims reduce the alienation between them. Relationships may not be created or fully restored, but the sense of estrangement is at least reduced to some degree. As argued by some, the Japanese may respond to wrongs committed by strangers with as strong a preference for retribution as Americans. But if in this process of interaction between victims and offenders the perception of the other as a stranger is diminished, the demand for a punitive response will also likely subside. Ultimately, even between the offenders and the victims of crime the Japanese seek to reduce social estrangement and alienation.

### The Secret Behind Trust

Trust appears to be a significant thread in the Japanese social fabric. Prosecutors and judges appreciate that their authority rests essentially on the trust and confidence of the public; long-term business arrangements are held together more by trust than by law; and a law-abiding public places significant trust in their law-abiding neighbors. These examples of trust, however, serve more to demonstrate the importance of community. Community is not a product of trust; rather, trust stems from community.

Another anecdote will help illustrate this point. Several years ago a visiting professor from Japan was trying to sell a car before returning to Tokyo after two years in Seattle. I knew of a possible buyer. My Japanese friend, however, declined my invitation to make an intro-

duction. "To tell you the truth," he said, "we have decided to sell the car to a Japanese businessman who is coming to Seattle next month a few days after we leave. We will leave the car with someone from his firm and he will send the money to me in Japan." In response to my look of mixed concern and skepticism, he added. "Oh, we are aren't worried. You see, his company is very large and reputable. They would see to it that he paid." Trust depended not on the honesty of the individual who had promised to buy the car, but on the word of the relevant community and its ability to control its members. In turn, the company trusted my friend less because of his personal reputation than because of his community and its ability to control the conduct of its members. Both parties thus trusted the other because each perceived that the other would not risk causing any damage to their respective communities. Trust in this case and most others in Japan is founded upon community reputation, social responsibility, and the effectiveness of community controls.

### Lessons

What can be learned from this examination of community and community controls in Japan? First and foremost, the Japanese experience helps us to define more accurately what community means. As used in this essay, community should be distinguished from "association." Community involves commitment to others, not to a single cause or even cluster of goals. It requires personal contact and interrelationship, not just a membership list and a donation. It is also grounded upon responsibility and a potential sacrifice of individual interest. Perhaps the best analogy is marriage—including the ceremony, which instills a sense of the seriousness of the bonds that are being created.

Community is also grounded and sustained by dependence. Easy exit is possible only for those who are not dependent. The ability of any member to enter and leave at will is therefore corrosive and always threatening to community. As in a marriage, this mutual state of dependency helps hold the community together. Both entry and exit have costs.

Of additional importance are attitudes and values. This is not to question the rationality of the individual actors. As demonstrated

throughout this essay, in Japan the benefits of cooperation in most instances outweigh the gains of individual action. But while attitudes and values need not be seen as in opposition to rationality, they are still capable of playing an independent role. Thus patterns of thought that make cooperation (rather than individual action) a habitual response help further solidify community.

The case of Japan also teaches us that community controls and accountability matter as well. Without the leverage to influence and discipline members, communities cannot be expected to maintain order and control. Communities help to reduce crime and corruption only when the community refuses to condone such conduct and has the ability to sanction those who violate community norms. If truly effective, such measures are rarely used. The ever present threat should be sufficient. But community control alone is not enough; the community itself must be held accountable for the conduct of each member. Unaccountable communities are above the law and the general standards established for the society at large. Without accountability, the community becomes an independent actor that, like organized crime, is free to prey on all.

Finally, we learn from the Japanese experience something about the state's effect in engendering community as a result of its *lack* of action. As exemplified by the former socialist states of eastern Europe, the state almost always poses at least a potential threat to both individual and collective autonomy. Inherent in the authority and power of the state and its capacity to protect citizens and mobilize resources is the capacity to subject those under its dominion to total (or near total) dependency. Even the most benign extension of protection by the state to those in need may in effect represent merely the substitution of the state and its bureaucracies in the place of a communal relationship. Only by limiting itself to assisting in the creation of the conditions for individual autonomy (by helping to alleviate the causes of insecurity) can the state avoid such substitutions.

Expansive states necessarily contribute to weak societies. But, as the Japanese example shows, a limited state need not mean limited restrictions on the individual. Japanese society imposes internal restrictions on itself through historically embedded cultural forces, negating the need for excessive governance. In fact, as we have seen,

some of the most positive aspects of the state lie in its synthesis with communal factors, such as the reliance on community in law enforcement, partnerships between the state and community in the provision of social welfare, and the encouragement of collective action. Few doubt the need in Japan to broaden individual rights and freedoms. A critical look at the excesses of community in Japan is a worthy topic in and of itself. But, as I hope this essay has made apparent, Japanese society also offers us many informative lessons on the positive effects of a strong societal sense of community.

© The New Yorker Collection 1999 William Hamilton from cartoonbank.com. All rights reserved.

## Valuing Marital Commitment: The Radical Restructuring of our Tax and Transfer Systems

C. Eugene Steuerle

In principle, both American voters and their elected officials want to support marriage and the family. One would expect, then, that our tax code and expenditure programs would reflect this desire. Unfortunately this is not always the case. Instead of a consistent policy, we have a crazy quilt of tax and expenditure policies that directly affect the family, some for the better, some for the worse. It is a quilt weaved with no overall pattern or shape. If the reasons for these developments were pernicious, they would probably be easier to deal with. But they are primarily the unintended consequences of what at first appear to be reasonable goals.

In this brief essay, I am going to narrow my focus primarily to the government's treatment of marriage—in particular, the creation of marriage penalties. The Congressional Budget Office estimates that 26.8 million couples pay additional income tax simply because of marriage (while 21.5 million receive marriage bonuses). But this is only the tip of the iceberg. An extraordinary array of marriage penalties also arises from the high rate at which welfare and other expenditure programs reduce benefits in the presence of a spouse with earnings. Because such penalties are built into so many tax and transfer programs, almost every couple is faced with potential rewards from divorce or nonmarriage at some point or another, and many partners with marriage bonuses will one day pay penalties if their incomes become more equal.

Warnings are in order: this is not a simple tour. The area is fraught with technical complexity, which is one reason few elected officials understand when or how they are creating marriage penalties. It is not enough simply to be against marriage penalties if one does not

understand what causes them. Also, because of conflict among legitimate principles, this “family” issue breaks down conventional wisdom of what it means to be liberal or conservative. Both Democrats and Republicans, right and left, share responsibility for the large historical increase in the size of these penalties.

My own view is that we should make substantial efforts to reduce marriage penalties because they violate traditional notions of fairness, and they weaken the natural tendency to rely upon marriage as an institution for mutual support. Further, they tend to subvert citizens’ allegiance to a government of laws: those who manipulate taxes and transfers through marriage decisions come to view the law as expressing few values or norms; those who value the law but pay penalties as a consequence come to view the law as unfair. (I consider this to be a special problem in poorer communities where government subsidies for not marrying have become a major source of financial support.) To remove most marriage penalties, as I will demonstrate, requires reconsideration of practically the entire shape of our transfer and tax systems. Independently from my own views, this essay will pull together, for I believe the first time, a fairly comprehensive analysis of what causes marriage penalties throughout the expenditure and tax systems, and the pros and cons of alternative methods to remove or reduce them.

#### Required Conditions for Creating Marriage Penalties

Let us turn more precisely to the conditions under which marriage penalties arise. Marriage penalties or bonuses will arise in almost any tax or expenditure system meeting the following two conditions: (1) A tax (or subsidy), explicit or implicit, assessed on the basis of household or family resources; and (2) Different marginal or incremental tax (or subsidy) rates at different levels of resources.

**Taxing by Households: Penalizing Committed Sharing.** Some believe that we should impose higher taxes (or fewer benefits) on a married couple than on two single individuals with the same combined income as the couple. The argument is that there are economies of scale in households because of shared facilities and goods. One TV may be enough for two people, one person may be able to prepare a meal for two just as easily as for one, and so on. Thus, sharing is a process that adds economic benefit over and above household income.

If our sole goal was to treat all households equally on their ability to pay, then it is correct that households sharing goods and services would have greater ability than an equal size, equal income grouping of people not sharing. The problem with using this argument to justify marriage penalties is not that there are no economies of scale from sharing. There are, and, indeed, these gains reinforce other natural instincts to engage in mutual support. Economies of scale, however, apply to almost all sharing arrangements—dormitories, old age homes, cohabitation, and so on. Yet marital vows are the *only* type of arrangement that is taxed.

In those communities where marriage is no longer the norm—and these communities are growing—this natural social incentive to achieve economies of scale in living arrangements does not disappear, but merely is converted into forms that avoid the marriage contract. For example, adult males in marriage-discouraged communities often still live with someone, only now they are more likely than before to stay with their mothers, with other relatives or friends, or in serial relationships, rather than with a spouse or with their own children. The tax and transfer systems say that these males deserve significantly lower levels of taxation and higher levels of support than males with equal incomes who marry. If they are fathers, it tells them that they can support their children better by remaining unmarried.

**Marriage Penalties: A Liberal-Conservative Compromise.** Marriage penalties are a classic example of the type of liberal-conservative compromise that has dominated policy-making for several decades. Liberals, wanting social programs to be as progressive as possible, often try to concentrate whatever benefits are available at the bottom of the income distribution. Conservatives, wanting to limit the cost to government, also want to limit the benefits. Both motives—progressivity and budget containment—are honorable. The compromise usually used to achieve these goals, however, is to phase out benefits quickly as income (or wealth) increases in the household. To tax experts, these phaseouts are equivalent to additional layers of income tax systems. As income rises, a household is implicitly “taxed” in the form of a reduction in benefits.

Since each expenditure and tax subsidy program tends to have its own unique, built-in phaseout, households in America (and in most developed countries) literally face dozens of tax systems. The Joint

Committee on Taxation recently identified 22 provisions in the income tax alone that resulted in a taxpayer's marginal tax rate differing from the statutory tax rate. For example, if I lose 50 cents of a benefit when my income goes up by \$1, the effective tax rate from that benefit program alone is 50 percent. Now start to think about all of the programs that are phased out—welfare, food stamps, earned income tax credits, Medicaid, child credits, educational assistance, personal exemptions, eligibility for participation in individual retirement accounts, and so on. The 1997 tax legislation, small by historic standards, added several new phaseouts. It is not hard to see why so many households in all income ranges, but especially those in welfare programs, face tax rates of 50 percent, 70 percent, or even 100 percent for some of their income.

These high tax rates affect not only extra income earned through work. They also affect any income introduced into a benefit-receiving household through marriage. Consider a single head of household moving off of welfare to a job earning about \$10,000 a year—just as recent welfare reform encourages. Such an individual does succeed in moving out of traditional welfare (defined as Aid to Families with Dependent Children or its replacement, Temporary Assistance to Needy Families), but still receives a variety of other supplements, such as food stamps and earned income tax credits. The problem is that if this benefit recipient now marries a single person earning \$20,000 a year, their combined income would fall by almost 30 percent, or close to \$9,000, because of the marriage alone! And this is not an isolated instance. Using a sample of representative taxpayers, economists Stacey Dickert-Conlin and Scott Houser found that the net gain to separating for the median married poor family was 16 percent of income. Similarly, they found that the median loss in income from marriage is equal to 12 percent of unmarried income for all poor single women with children. And while their estimates include most taxes and transfers, the marriage penalties would be even larger if programs like Medicaid and housing assistance were included.

This reality may explain in part why in many low-income families fathers feel little sense of accomplishment in staying around to marry and raise children. Government in effect has declared that working fathers in low-income, two-parent families are a liability. Whatever the changes in cultural standards or mores that may have led to this

situation, the government has created enormous barriers to responsible fatherhood. The total income of those communities dominated by income assistance, children born out of wedlock, and the absence of married couples would fall significantly if individuals in these communities married in patterns closer to national averages. In these communities, government has effectively pronounced that marriage is a foolish exercise—even though marriage is a principal route out of poverty.

In recent years, Congress has turned its attention to a moderate subset of all the marriage penalties it has created: those associated with the progressive rate schedule in the individual income tax and with its requirement for joint filing in the case of married couples. It is true that there was a brief period of time when most marriage penalties did arise out of the progressive income tax rate schedule. But as should be clear by now, with the myriad of expenditure and tax subsidy programs that have developed over the years, the sources of marriage penalties extend far beyond those imposed by the individual income tax.

#### Options for Removing or Reducing Marriage Penalties

To reduce or eliminate marriage penalties essentially involves addressing *either* of the two conditions—household filing or multiple rates—that create the penalties. There are several approaches or options, and sometimes they can be combined. The most feasible options, and some of their related difficulties, are outlined below.

**Flattening of the combined tax rate schedule.** Complete elimination of variable rates would mean that income would face the same tax rate whether the income was combined in marriage or not. No, this is not a pitch for supply-side economics. But the consequences of a variable rate schedule must be recognized. Tax reform in 1986 attempted to get at the problem of marriage penalties partly by flattening the income tax rate schedule in a way that did not reduce overall progressivity. By evenly taxing all sources of income and removing deductions and tax shelter opportunities, this reform was able to maintain progressivity while reducing and flattening statutory rates. Unfortunately, Congress has since been moving in the opposite direction with the budget agreements in 1990, 1993, and 1997. Still, as noted above, the income tax is not the main problem when it comes to marriage penalties.

The principal concern is transfer programs. As a practical step, one could try to limit the combined marginal tax rate for low- and moderate- income individuals moving out of welfare programs to around 30 percent or 40 percent, rather than the 70 percent (sometimes 100 percent or more) rate they now often face. Then, when they moved into the income or Social Security tax systems, they would again face a similar combined rate (in general, the 15.3 percent Social Security tax plus a 15 percent bottom rate bracket in the income tax). The marriage would be penalized much less and it would matter less how the income was split as long as each person faced the same tax rate inside or outside of marriage. And, as explained below, it is possible to use this method to flatten only the rates in the lower and middle classes, and use some other method to deal with higher income individuals. This would allow the tax system to retain a fair amount of progressivity.

Note that a true flattening of tax rates at low-income levels would require a reconsideration of almost every income-conditioned tax and expenditure program on the books. Today, however, these programs often do not even share administrative records, and their administrators have little idea how the programs overlap. It would also require abandonment of the liberal-conservative compromise placing so much stress on progressivity and budget savings within *every* income-related program. Given changes that could simultaneously be made in other features, such as the level of minimum benefit and the income tax rates at higher income levels, *overall* progressivity need not be reduced by this type of effort. Nonetheless, phaseouts cannot be sought by Congress every time it deals with an expenditure or tax subsidy program without playing havoc with marriage penalties.

**Income Splitting.** Rather than trying to reform the system by flattening tax rates, one could try to work on the conditions under which family or household filing is required. One option is income splitting, which effectively taxes married couples as if each was an individual filing a single return and having exactly the right share (one-half) of the couple's total income so as to minimize tax liability. Unfortunately, income splitting eliminates only those marriage penalties arising from a rate schedule where rates are always successively as high or higher at higher levels of income, a situation that is the norm in the middle- and upper-income classes from the income tax alone.

But our two conditions demonstrate that marriage penalties can also occur when rates fall as income increases. Because of all the phaseouts and implicit tax schemes, the real tax system now imposes such a rate structure on a large portion of the population. Thus, when one moves through the phaseout ranges of the earned income tax credit, food stamps, Medicaid, the itemized deduction limitation, the IRA contribution limit, and so forth, marginal tax rates fall rather than rise.

Take the simple case of the welfare recipient who considers marriage. Assume a welfare/tax structure that provides to unmarried adults \$5,000 of benefits at zero income, no tax and no benefits at \$10,000 of income, and a tax of \$1,000 at \$20,000 of income. Before marriage, a couple with \$0 income for one partner and \$20,000 for the other would get benefits of \$5,000 and taxes of \$1,000 for a net benefit of \$4,000. If they marry and split their income, then each is treated as having \$10,000 of income. They then get no benefits and pay no taxes for a net benefit of \$0. The net income of the couple would fall \$4,000.

Still another issue is that income splitting in the income tax would increase marriage bonuses for wealthier households where income is not split very evenly. This raises the cost of action. A compromise here is to use income splitting only for the income tax and confine it to, say, the first \$50,000 of income.

**Mandatory Individual Filing.** For income tax purposes Congress could return to the days of mandatory individual filing. Pure individual filing could mean, however, that the nonworking spouse of a millionaire might be entitled to welfare benefits. An intriguing possibility here, and one that I increasingly favor, is that wage subsidies like the earned income tax credit accompany the worker and not the family, and that child credits or subsidies accompany the child. Canada is currently experimenting with such an approach. I recognize that some high-income families would then get a credit or subsidy. But worrying about whether someone earning millions gets a small subsidy here or there is simply not worth the trouble. On average, higher income families can be made to pay for these changes through an explicit tax rate structure. (We allow high-income individuals to benefit from the Social Security and Medicare programs and from public school education, yet progressivity is not removed—the rich simply pay more than their share of taxes to support these systems.)

My main concern here is with trying to address issues related to parenthood, marriage, and work among low- and moderate-income individuals. If subsidies were applied at low wage levels on an individual basis, they would not create the current strong incentives against marriage in low-income communities. This would also address the concerns of researchers like Ron Mincy, who worry about the negative impact of the welfare system, as currently structured, on the forgotten low-income male. The trick again is that once a program is aimed at the individual, marriage can have no effect on benefits or taxes paid. This type of reform could significantly change the environment of those communities. Take an example: if a single mother earning \$10,000 a year received a wage rate subsidy like the earned income tax credit on an *individual* basis, she would not lose it if she married someone with income of his own. Similarly, if a low-earning male married into a family, he would still be eligible for any wage rate subsidy that was available for low-income workers living with dependent children. With individually based programs, his earnings would not affect her credit, and her earnings would not affect his.

**Optional Individual Filing.** Mandatory individual filing would partially “pay” for the removal of income tax marriage penalties by removing marriage bonuses as well. An alternative is optional individual filing, a procedure that allows married couples either to garner marriage bonuses, or when there are penalties for joint filing, to avoid them by filing as separate individuals. Admittedly, optional filing increases administrative costs in deciding how to file, as the taxpayer often must calculate taxes two different ways to see which is cheaper.

Unfortunately, many taxpayers are *already* in a world of optional individual filing. The main difference is that the benefit now is granted only to those who are able or willing to treat the actual act of marriage as the option. Putting optional individual filing into the statutes would simply extend those benefits from unmarried couples to married couples. Then in order to maintain a lower tax burden one would not have to decide whether or not to marry, but simply what type of return to file.

### A Comprehensive Approach

In my view, taxing a large share of marital commitments makes little sense in any society, much less one searching for ways to revive

or foster community (or “communitarian”) spirit among its members. After all, the primary feature of community is to share, and the most basic form of sharing is between two people or within a family. Admittedly, the research in this field does not *prove* that removal of marriage penalties would have a significant effect on behavior. It would not, for instance, by itself reverse the sexual revolution. But empirical research is not good at detecting the influences of policy on long-term social norms.

Moreover, although the marriage penalties within the income tax have been around since 1969, we have only recently become a society where the very large marriage penalties from income assistance and wage subsidy programs have been extended well into the middle class and beyond the stereotypical poor, nonworking welfare recipient. It is doubtful that the long-run influences of any of these conditions have yet to be fully experienced by society. (As an aside, it is interesting that policymakers seem willing to accept evidence that high marginal rates influence behavior negatively at the top of the income distribution, but not at the bottom.)

Independently from whether marriage penalties will significantly affect behavior in a narrow sense, I believe they have a corrosive effect on society and especially on those low-income communities most affected by marriage penalties. Marriage penalties violate almost everyone’s sense of fairness because they penalize only that type of sharing done through moral and legal promises. These penalties further discourage responsible fatherhood and motherhood. Finally, where there are economies of scale, one can turn the reasoning mentioned at the beginning of this paper on its head. That is, since sharing can increase the effective well-being of individuals with no increase in their nominal income, society might want to subsidize such economies of scale rather than tax them. A similar efficiency argument lies behind some of the subsidies offered for education and other income-improving activities.

What all this implies in practical terms is that to deal with marriage penalties in a thorough manner, Congress almost inevitably has to reconsider the entire range of explicit and implicit taxes it has imposed on income. Most of the hidden taxes it has adopted over the years would need to be reconsidered, pulled into an integrated whole, and, where appropriate, replaced by direct, explicit taxes.

Pulling together the options above, here is a comprehensive package that literally would change the face of our transfer and tax system:

- *Reduce combined marginal tax rates on low- and moderate-income individuals so that they did not rise much above the rate that applies to middle- and higher-income individuals* (in this latter case, ranging today from about 30 percent to 45 percent). Movement to this type of rate, however, would entail more universal benefits than under current law and less concentration of benefits at the very bottom. One could achieve this end without reducing real benefits for low-income individuals if a portion of the revenues that derive from economic growth would be used to reduce the tax rates applying mainly to these low- and moderate-income families.
- *Use the direct tax rate schedule as the primary means to establish overall progressivity and abandon the complicated effort to put “progressivity” into everything government does.* This requires recognition that each new phaseout introduced is simply another tax rate schedule added onto the existing system.
- *Within the income tax, apply income splitting to lower- and some middle-income ranges.* For example, if a single individual got a standard deduction of \$3,000, a couple would receive a standard deduction of \$6,000. If the single individual faced a tax rate of 15 percent for the first \$30,000 of income, a couple would face a tax rate of 15 percent for the first \$60,000 of income.
- *For income over and above the levels to which income splitting would apply, use mandatory or optional individual filing.* For a given rate structure, this would be both less expensive and retain a higher degree of progressivity than income splitting at all levels.
- *If income splitting is unacceptable at any income level, enact mandatory or optional individual filing at lower- and middle-income levels.* While more complex than needed at those income levels, it would still be preferable to current law.

Let me be clear that the issue of how to make adjustments for children for the most part is a separable issue. Where adjustments are desired because of the cost of raising children, they can be achieved through child credits and dependent exemptions without giving additional bonuses to all married couples. Put another way, if the goal is to assist parents because of the presence of children, spousal benefits and bonuses are a poorly targeted device.

As I have indicated, it is not clear to me that policymakers fully comprehend how to achieve changes of this scale and magnitude. Incremental changes here and there may reduce marriage penalties a little, but they may be more than offset by new marriage penalties introduced every time there is some new phaseout or implicit income tax introduced. The momentum for change may have to come from acceptance of a broader principle. For example, a law might limit the combined marginal tax rate facing low- or moderate-income workers to no more than the tax rate applying to the highest income individuals. To implement that goal, however, would also require years of effort to coordinate administrative structures in all the government's many programs, converting the crazy quilt of family policy into a more consistently designed overall pattern.

As long as policymakers are not able to deal with the issue in any comprehensive way, perhaps some private consideration ought to be given to the possibility of allowing marriage for religious or moral purposes without legal marriage being an automatic consequence. This is a matter that needs to be considered carefully and wisely, for there are a variety of issues—especially those dealing with spousal rights—that must be given substantial consideration. Nor, given the conflict of legitimate principles, is it a matter on which anyone can be righteous. Still, consideration of an option on this level might highlight the nature of the problem that current law has established. The primary goal in all the alternatives I have suggested is to find a pragmatic way to remove from families—particularly low-income families—the moral quandary of having to reduce the family support they can give each other and their children if they marry.

---

*To subscribe or re-subscribe call 1-800-245-7460, send an e-mail to [comnet@gwu.edu](mailto:comnet@gwu.edu), visit our website at [www.gwu.edu/~ccps/rcq/index.html](http://www.gwu.edu/~ccps/rcq/index.html), or contact us at 2020 Pennsylvania Ave. NW, Suite 282, Washington, DC 20006-1846.*

## The Driven Society: Why Americans Don't Listen to Car Critics

Anne Mackin

In her book, *Asphalt Nation*, Jane Holtz Kay blames almost every unattractive aspect of American culture on the car. And she is not alone. James Howard Kunstler (*The Geography of Nowhere, Home From Nowhere*) has become a popular herald of the destructiveness of the auto-addicted lifestyle of Americans, joining his voice with those of other writers and journalists of the last few decades, as well as many planners and urban designers.

Lewis Mumford and other prescient observers of the American landscape lamented its transformation into an Auto-Park almost 40 years ago. “We have sold our urban birthright for a sorry mess of motor cars,” declared Mumford in 1961 in *The City in History*. Mumford predicted the great creeping tide of the “anti-city” that would eviscerate cities and eradicate countryside in America—knitting urb and suburb into one great blanket of low-density development. He also predicted the six-mile-an-hour expressway speeds that would become common in large cities. No doubt Mumford saw the trend of exponential suburban growth around thinning American cities, the expanding suburban strips, and the manicured green buffer zones that shelter much of suburbia from its own auto-related blemishes. Green buffers hide the vast acres of mall parking from drivers on the roads; and buffer zones hide roads and cheap commercial developments from the homes in subdivisions.

Yet the popularity of criticizing the car can't compare with the popularity of driving one. Since Mumford's declarations against the car, motor vehicle registration in the United States has nearly tripled, from almost 74 million in 1960 to over 206 million currently. And every year, we Americans reach into our pockets to send a whopping

valentine to the car. In 1992 (the most recent year available) we spent over *\$600 billion* for cars, parts, gas, insurance, licenses, and tolls, compared to \$5.7 billion spent to ride public transit. Our combined grocery bill that year was \$369 billion.

The automobile is indeed a powerful tool for shaping the landscape, but it is only a tool—wielded by the greater force of the American personality. Recent car critics generally choose not to blame the public (although Mumford called us lazy and many planners concede that Americans don't want to walk more than 75 feet from their car to their front door). Instead of blaming the public, current critics turn to an assortment of scapegoats. The federal government is guilty of funding the interstate highway system while neglecting mass transit. The Federal Home Loan Association is guilty of making home loans easily available after World War II, thereby financing the home-building boom that created a suburban world navigable only by car. And General Motors is guilty of buying up street car companies only to put them out of business. (And the feds are guilty again of not bringing justice to bear on General Motors in a timely, meaningful way.) Even Mumford blamed transportation planners for doing the jobs they were hired to do.

While General Motors was clearly guilty of unethical conduct, it is hard to draw the line between public behavior and government policy in promoting the popularity of the car. Although the federal government has historically had an interest in knitting the country together through transportation systems—for political cohesion, commercial vigor, and industrial and military strength—the government has also arguably acted at the behest of the public in dealing with the car. Seeing the car as a sacred cow in America, the federal government responded to the gas shortage of the mid-1970s not with a significant effort to promote public transportation, but rather by the modest acts of reducing speed limits and promoting high-occupancy vehicle lanes—both of which go largely unheeded. So scapegoating the government for promoting an automobile-reliant lifestyle to the public paints only part of the picture. The public has also consistently made clear that it desires that lifestyle, and a responsive democratic government will inevitably respond to such a strong public desire.

But while the government, partly responding to public demand, has promoted the automobile, at the same time it has expressed

concern about the threat our oil consumption poses to national security. A 1994 Department of Energy report to Congress cautioned, “The transportation sector is the single largest user of petroleum in the United States; not only did it account for 66 percent of all petroleum used last year, but more significantly, it accounted for 53 percent more than the country produced.” In other words, the United States is dangerously dependent on the fuel resources of foreign nations—as the Gulf War demonstrated. And there’s the rub. The arguments that move the government *and* the public are those related to self-interest. Pollution offends us because it threatens our health. Fuel shortages do the same.

Hoping to enlist public self-interest on their side, planners and car critics have long hoped that congestion and aesthetic distress would arouse American disgust. (Who wants to sit in a traffic jam or look at endless one-story fast-food and merchandise emporiums?) But this has not occurred. Although local opposition to development projects is sometimes related to precluding further automobile congestion in a given neighborhood, these ad-hoc skirmishes do not amount to any kind of general acceptance of or interest in planning policies to reduce car use—and they generally pit residents more against real estate development than against the automobile. Apparently the benefits the car brings are even more directly tied to the individual citizen’s interest.

A small segment of our population has demonstrated interest in more compact and *theoretically* less auto-dependent suburban forms, such as the New Urbanist communities; but this group has not given up their cars in order to live there. And another minority lobbies for improved public transportation. There is little evidence, however, that a majority of Americans are ready to revolt against automobile congestion, no matter how much they may complain about it—except, of course, by building another highway. In fact, Providence, Rhode Island, and Washington, D.C., among other American cities, have had to reopen to cars those portions of their downtown shopping districts which had been optimistically prohibited in the downtown renovation projects of 20 years ago.

Americans’ surprising tolerance for congestion is well demonstrated by the California legislation requiring car manufacturers to

introduce zero-emissions vehicles by 2003. Despite the notorious congestion of the Los Angeles freeways, the new legislation does not attack or prohibit the car. It improves it. The electric or hybrid car will save gas and reduce pollution but will remain stuck in traffic. The related construction of new subway systems in San Diego and Los Angeles seems to provide a corollary lesson. That is, you can build them a subway, but you can't make them ride it. The low ridership figures for the Los Angeles subway are sometimes used to ridicule the expense of construction, approaching a billion dollars per mile. It should be noted, though, that this is also the price of a much-maligned highway project: burying Boston's Central Artery.

### An Addiction Waiting to Happen

Why don't the majority of Americans respond to the arguments of car critics? Historians are more helpful than planners or designers in answering this question. To understand our love of the car, we must acknowledge a few aspects of our national character. Simply put, many Americans do not really want to live close together. There is liberty in privacy, and a reduction of the friction that inevitably results from people living too close together, as our bad-tempered Puritan forebears, who were constantly suing and punishing each other, could attest. Telling is the historical account of a 17th-century Massachusetts sea captain who returned from a long voyage to kiss his wife on their front stairs on the Sabbath. The captain was publicly whipped.

The Puritans, of course, legislated proximity. In 17th-century Massachusetts local statutes in most settlements required homes to be built near the meeting house, and not on the resident's outlying lands. But people quickly defied these statutes. In the typical town of Andover, founded in 1650, half the population lived in violation of the local ordinance by 1680, sheltered from their neighbors by a new buffer of privacy and space.

Not far away in Plymouth, Governor William Bradford lamented the movement of so many members of the Old Colony away from the main village—including American legends Miles Standish and John Alden.

Some were still for staying together in this place, alleging men might here live if they would be content with their condition,

and that it was not for want or necessity so much that they removed as for the enriching of themselves.

Whether these early settlers moved to enrich themselves or to escape what historian John Demos calls the “petty, litigious” atmosphere of the first New England colonies with their autocratic family structure and dictatorial church elders, the American exodus has continued into the modern day. Americans still move away from cities and towns—the towns that now seem to us to embody the virtues of neighborliness and civic responsibility so sorely missed in much of our modern culture—as they have done from the beginning. The automobile landscape is just one expression of our desire for looser social bonds.

The love of privacy is not the only feature of the American personality to which the car caters. While Jane Holtz Kay blames our frenetic lifestyles on the car, Alexis de Tocqueville watched the busyness of Americans 100 years before the car gained wide use and explained “Why Americans are often so Restless in the Midst of their Prosperity.”

[Americans] never stop thinking of the good things they have not got. It is odd to watch with what feverish ardor the Americans pursue prosperity and how they are ever tormented by the shadowy suspicion that they may not have chosen the shortest route to get it. . . . They clutch everything but hold nothing fast, and so lose grip as they hurry after some new delight.

An American will build a house in which to pass his old age and sell it before the roof is on; he will plant a garden and rent it just as the trees are coming into bearing; he will clear a field and leave others to reap the harvest; he will take up a profession and leave it, settle in one place and soon go off elsewhere with his changing desires. . . . Then, if at the end of a year crammed with work he has a little spare leisure, his restless curiosity goes with him traveling up and down the vast territories of the United States. Thus he will travel five hundred miles in a few days as a distraction from his happiness.

. . . [A]s [the Americans’] ultimate object is enjoyment, the means to it must be prompt and easy, for otherwise the trouble of getting the pleasure would be greater than the pleasure when won.

So not only is our love of mobility historic, but we have historically confused fulfillment and prosperity. Fulfillment and prosperity are

closely related, and the search for money and the search for happiness can take on a similar appearance. The car, which can take us to a better job or a better CD-player, is the perfect vehicle with which to express and compound our confusion.

### More Keys to the Car

There is, of course, a great deal of superficial attractiveness about the car. An aura of affluent, wind-in-the-hair immortality surrounds it. In addition, the car is the marvelous child of technology—and technology is, we believe, our ticket to a prosperous future and a safely dominant place in the world. A car is also a toy of youth, and embodies the qualities of motion, speed, leisure, and carefreeness that we associate with youth. And, like so many of our material comforts, the car confers upon its user a feeling of prosperity that is a good substitute for more profound forms of happiness. The car owner is the one wearing sunglasses, enjoying the luxuries due an American—including sunny weather, Coke, and access to the beach.

Not only in our imaginations but in reality the car allows us to defeat time and weather and other temporal annoyances. Although shoveling and brushing of snow is sometimes necessary to use a car, such efforts do not compare with waiting 20 to 40 minutes at the transit stop in freezing weather or lugging groceries in the rain. Or worse, doing either with a cranky child in tow. In fact, the car is practically an American cradle, lulling children to sleep. And even during half an hour in a six-mile-an-hour traffic jam, the car offers us privacy, relative comfort, a radio, tape, or compact disc playing the music we choose, and a cellular phone on which to do business.

But there is a much more serious element to our national car addiction that planners and car critics need to face more squarely. Americans know that the good life they have come to expect *cannot* really be built in one community. But it *can* be assembled. The car allows middle-class and affluent Americans to assemble our own communities—communities of lifestyle. The borders of our individual lifestyle-communities gerrymander around friends in one town, relatives in another state, school for the children in this city, work in that city, movies everywhere, museums downtown, malls and superstores in the suburbs, and religious services in the neighboring town. The car expands the boundaries of our communities, aided by

the telephone and modem. Americans know that after political freedom, freedom of movement is the liberty most critical to assembling the life that is uniquely fulfilling to each of us. The automobile landscape of America, like so much of our popular culture, testifies to the American belief in progress for the individual over progress for the community.

Finally, the car not only helps to keep us busy and physically comfortable, it literally keeps us at a distance from many troubling aspects of our culture. The car carries us to havens safe from the carless poor. The majority of Americans now live in the suburbs which, because of their low densities, are largely immune to penetration by either mass transit or the poorer clientele that it serves. (And as minorities find their way to the inner ring of suburbs, development leapfrogs to the more remote exurbs.)

Has the car, then, created our landscape, or is this landscape the result of our desire for privacy, our desire for convenience, and our desire to keep society's less fortunate out of sight, and thus out of mind? Which came first, the car or the consumerism it facilitates, a consumerism that reveals our confusion concerning material satisfaction and more meaningful fulfillment? It would seem clear that the car is, at once, both effect and cause.

### The Car Conundrum

David O'Connor, Commissioner of the Massachusetts Division of Energy Resources, commutes in an electric car provided through a demonstration program of the federal Electric and Hybrid Vehicle Program. "An economist," he says, "might look at the extravagant sums that Americans spend on cars and say, 'The benefits that we derive from the car are worth at least what we pay.' But if you include the *hidden* costs of automobiles, such as pollution and increased health care costs—which are inflicted on non-car-owners, too—then the car-owner is getting a huge bargain—almost a free ride."

The car's cost is a question the car critics must keep putting before us, along with the social inequities of car-ownership, and the vision of more compact, walkable communities. But by ignoring the genuine benefits of the car, and its close alliance to our economic, political, and social systems—not to mention our national character—the critics miss an opportunity to examine the full human picture that has led to

our national addiction. For example, if the car helps in our search for a fulfilling life by allowing us to locate better jobs, compromise with a spouse about where to live, find better schools, visit family, or enjoy recreation—at what point does our search become a journey of narcissism? At what point does the luxurious freedom of privacy to which the car transports us become an insular apathy that weakens our society? And, are we capable of weighing the environmentally destructive aspects of the car, and its socially-inequitable distribution, against so many immediate and addictive benefits?

My father liked to say that technologies are devoid of good or evil, that only human use can endow them with those attributes. A car, then, is not just a form of transportation but a reflection of the society that uses it. A close look into the car's shiny chrome and glass is practically as good as a look in the mirror. And the landscape we have created with the car is as close to a national portrait as we are likely to get. It should reveal to car critics and fans alike the most interesting feature of the car: its driver. And in the case of the driver, the shrill anger of critics is no substitute for an inner life that might help us to withstand the constant temptations of consumerism and competitiveness long enough to get out of our cars.

#### Just What We Need

*Advice from the book, Divorce Dirty Tricks: "Dollars alone do not win divorces; the economic upper hand cripples in the face of psychological superiority. This book affords you the psychological and tactical upper hand."*

## Virtue and the State: A Dialogue Between a Communitarian and a Social Conservative

Amitai Etzioni and Robert P. George

ROBERT GEORGE: In your article, “The Good Society” [published in the *Journal of Political Philosophy*], and in your book *The New Golden Rule*, you argue that both communitarians and social conservatives recognize the need for and the legitimacy of social formulations of the good—unlike liberals—and appreciate the cardinal role of the substantive values a society seeks to uphold. You then point to two major differences between communitarians and social conservatives and conclude that communitarian thinking is a third way of thinking. I suspect that you are right that communitarianism is a distinct approach, but the ways you characterize communitarianism actually define to a significant extent the social conservative position. Let’s explore some points of similarity and difference.

Perhaps I could begin by clarifying one point. As part of your argument that social conservatives favor a strong government, you quote George Will in favor of a strong national government. It is important not to misunderstand what Will and other social conservatives mean here. We favor government that is strong, but small. We are particularly skeptical of large government bureaucracies that are charged to provide domestic social services. This is especially true when it comes to the central (or national) government in a federal system. Even at the state and local levels, however, social conservatives are concerned about the encroachment of government on the functions and prerogatives of families, churches, and other institutions of civil society. Now, critics of social conservatism from the libertarian side deny that we can have government at any level that is strong, yet willing to remain small. Strong government, they say, inevitably means big government. However that may be, I suspect

that communitarians would line up with social conservatives on this point against the libertarians.

AMITAI ETZIONI: We seem to agree about my main observation that social conservatives favor strong government. While it is true that many social conservatives favor states' rights, William Kristol and David Brooks also have written about the glory of the nation, as a kind of antidote to the lack of concern with virtue. The British Tories have strenuously opposed devolution to Scotland, Wales, and the City of London, and have argued for a strong unitary government, speaking about the glory of Britain. Indeed, many continental social conservatives throughout recent history have been "Lincolnian," calling for sacrifices for national unity. They have been the champions of nationalism, union, fatherland (and mother church). All this is not to deny that the American social conservatives have been strong and consistent champions of states' rights, but often they have been nationalist at the same time.

RG: The point is that there is no incompatibility between nationalism (and national patriotism) and federalism for people who believe it possible to have government that is both strong and small. Of course, social conservatives disagree among themselves when it comes to a host of issues that are implicated here, at least at the margins. So, for example, those on the side of William Kristol sharply oppose those on the side of Patrick Buchanan regarding questions of isolationism as opposed to engagement in foreign policy. These sides divided bitterly over the Gulf War. They divide over free trade and protectionism. And if you really want to get a ferocious debate going among social conservatives, just mention Lincoln and his legacy—Lincoln's strongest supporters (e.g., Harry Jaffa) and his most uncompromising critics (e.g., M.E. Bradford) are social conservatives.

Turning now to the main point, you write that communitarians "advocate state restraint because they believe that society should be the agent responsible for promoting moral behavior." And you suggest that this distinguishes them from social conservatives who would rely on the coercive power of the state. Here, I think, you exaggerate the differences between communitarians and social conservatives. It is true that social conservatives allow a role—sometimes an important one—for law in upholding public morality, but the primary responsi-

bility for the inculcation and promotion of virtue, as social conservatives see it, lies with families, religious communities, and other institutions of civil society. My own work makes this clear, I think, as does the work of Hadley Arkes, Gerard Bradley, John Finnis, and other leading social conservative intellectuals. My book [*Making Men Moral: Civil Liberties and Public Morality*] opens with the following sentences: “Laws cannot make men moral. Only men can do that; and they can do it only by freely choosing to do the morally right thing for the right reason. Laws can command outward conformity to moral rules, but cannot compel the internal acts of reason and will which make an act of conformity to the requirements of morality a moral act.”

What, then, you may ask, is the role of law, as social conservatives see it? Its role, as I say in my book, is “subsidiary” (i.e., helpful). Law is to help people make themselves moral by, among other things, helping to secure or maintain a moral ecology that is conducive to virtue and more or less inhospitable to certain potentially powerfully corrupting and socially damaging forms of vice. In this way, law and the state support families, churches and synagogues, and the other institutions that have the primary role in transmitting virtue. And, indeed, according to the social conservative tradition, it is important that law and the state restrain themselves lest they usurp the authority of these critically important institutions. (We call this the principle of “subsidiarity.”) An important part of the social conservative critique of socialist and other “big government” approaches flows from this concern.

Let us take a look at some of the specific examples you have mentioned as areas where social conservatives would rely on state power, while communitarians would look to society. You write that social conservatives would ban abortion, divorce, pornography, and homosexual activities, and would mandate prayers in public schools. Actually, social conservatives would ban outright only abortion (in most cases) and certain kinds of pornography; we would make divorce more difficult to obtain, discourage homosexual acts and heterosexual adultery and fornication, and permit, rather than mandate, prayers in public schools.

AE: Additional examination of the list is a good way to test my thesis that social conservatives are systematically more inclined than com-

munitarians to rely on the state to promote virtue. You agree that social conservatives would ban most abortions and much pornography. You say that they would not ban divorce, but only make it more difficult to obtain. I would accept the use of this language if the state were to rely on its moral voice, exhort people to stay married, send them information about the harm of divorce, and public leaders would remain married. However, the policy proposals that are actively being considered by 20 states and promoted by social conservatives would ban divorces under many conditions, including when the state believes the causes are inappropriate; if the waiting period has not been long enough (draft legislation calls for waiting periods of from two to upwards of five years); and if no counseling has taken place. (And of course in other countries, Italy for instance, divorce is still banned and the ban is hailed by social conservatives.)

Communitarians have a different approach, one relying mainly on voluntary means, e.g., voluntary premarital counseling, marriage counseling, “encounter” retreats (all provided by the various religious organizations, especially the Catholic Church, and to some extent by therapists), and a culture that appreciates marriages. Social conservatives are more willing to use the power of the state and the law to limit divorce, albeit not to ban it under all conditions.

Regarding prayers in schools, I suggest that the phrase “permitting” prayers in schools does not fully capture what many social conservatives are fighting for. Voluntary prayer in public schools is now permitted, indeed there is no way of stopping it. (Wits point out that there is a rush of prayers before math exams.) What social conservatives often fight for is institutionalized prayers, conducted by the staff of public schools in their official capacity as teachers, principals, or officially imported ministers, and in the classroom or assembly framework. While children may be allowed to opt out, prayers conducted as part of the institutional framework give them the imprimatur of the state.

You suggest that social conservatives would “discourage” rather than ban homosexual activities, but you seem to favor closing “bath houses” and “sexual establishments.”

Most important is the public policy debate about how to deal with criminals, including people who abuse controlled substances. Wel-

fare liberals tend to blame society for these offenses and suggest that if people were given jobs (better yet, well-paying, meaningful jobs), education, and rehabilitation, and if racism were overcome—then criminal behavior would be minimized. The same liberals tend to oppose increases in punishment dished out by law. Social conservatives take the opposite position. They have favored longer punishment, less parole, more death sentences, etc. As millions of people are involved, this is a major case in point of a social conservative tendency to rely on the state to keep society good.

The communitarian position on these issues is not fully developed. However, it seems to point to a greater reliance on the involvement of the community in fostering social norms (“it takes a village to prevent a crime”); on crime watches; on restorative justice; and on graduated responses that start with strong elements of rehabilitation and minimal penalties (for, say, first-time drug abusers), and change the mix of rehabilitation and punishment for repeat offenders.

RG: Let’s go back through the issues. First, I’m sure that not all communitarians favor “no-fault” divorce. It was an idea that swept through the states a generation ago, but the evidence that it was a bad idea is mounting. Many people who initially favored it now view it as a mistake. It has, they believe, undermined the institution of marriage in a variety of ways, above all by teaching people that the true purpose of marriage is the promotion of individual satisfaction. This, in the end, has many bad consequences, including, ironically, the tendency to impede spousal satisfaction in marriage. And its consequences for children have been truly tragic. In any event, you are right to say that social conservatives (and others!) are looking for alternatives to the “no-fault” policy. One idea is a “covenant marriage” option that would enable people to choose to enter marriages that could not be dissolved according to “no-fault” procedures. ACLU liberals who like to present themselves as proponents of “choice” typically oppose providing this option, but there is no reason in principle why communitarians cannot join social conservatives in supporting it.

As for prayer in school, I do not doubt that some social conservatives would like to return to official, state-composed and staff-led prayers as part of the regular class day. I assure you, however, that this is a distinct minority position within the social conservative

camp. Social conservatives are well aware that they would not approve of the prayers that would be chosen in many places in the country. Indeed, the largest social conservative religious denomination, the Southern Baptists, is strictly opposed to such prayers. They favor, as do most social conservatives, opportunities for student initiated school prayer for those who wish to participate. At the same time, social conservatives do believe that schools and other public institutions should be able to acknowledge God as the ultimate source of basic rights and duties (in line with the Declaration of Independence) and that the philosophy of ethical monotheism should be preferred to that of atheistic materialism.

Social conservatives are vehemently opposed, as well they should be, to the imposition of secularist liberalism in the name of religious neutrality. There is now ample evidence that religiously observant students frequently are denied their right to the free exercise of religion in public schools. Religious beliefs and their expression often suffer discrimination. Sometimes this is the result of ignorance on the part of school teachers or administrators; other times it is the fruit of animus. Either way, it is wrong, and social conservatives (joined by old-fashioned liberals such as Nat Hentoff) oppose it. Again, there is no reason why communitarians cannot join them. The key thing here is to accommodate the free exercise of religion in ways that are compatible with the religious freedom of others and respectful of the religious pluralism that exists in many communities.

I do indeed support closing commercial establishments whose purpose is to facilitate illicit sex. This includes legislating against houses of prostitution, "bath houses," and the like. Most social conservatives agree. I also think, as do most social conservatives, that the astonishing spread (and increasingly very public display) of pornography over the past two decades has badly damaged public morality. It encourages men, in particular, to think of women as sexual objects and themselves as "consumers" of the objects of desire. This undermines the capacity of men to love women (and the children they bear) in a mature and unselfish way, thus damaging marriages, families, and society as a whole. To be sure, it is important to avoid fanaticism in regulating material pertaining to sexuality, lest we restrict work of important aesthetic, scientific, or other value; but we are certainly at no risk of doing that at the moment. An eight billion dollar pornogra-

phy industry loudly testifies to the fact that we are massively erring in the opposite direction.

It is true that social conservatives favor tough policies against crime and criminals. As an antidote to the liberal criminology of the 1950s and 1960s, this is a good thing. Perhaps we have moved too quickly, however, to embrace inflexible procedures such as mandatory minimum sentences, “three strikes you’re out,” etc. Here, subject to the proviso that punishment must be truly retributive, there is no reason in principle for social conservatives not to consider some of the ideas that communitarians are trying to develop. By the same token, communitarians should warmly approve of the efforts of evangelical social conservatives—led by Chuck Colson, Pat Nolan, and others who have themselves served time in prison—to secure basic justice and humane treatment for prisoners. Unlike secular “prison reform advocates,” the evangelicals make moral demands on the prisoners as well as on prison officials and guards. They are also proving that the rehabilitation of criminals is possible after all, especially where prison administrators are willing to cooperate with those who are prepared to meet the spiritual needs of inmates. When liberal rehabilitation policies failed to work, many social conservatives gave up on the idea of rehabilitation. Colson and others are showing that “where there is faith, there is hope.”

On the death penalty, there is a division in the social conservative camp that is often overlooked: many social conservatives, especially though not exclusively Catholics, oppose the death penalty. (Pope John Paul II, a figure revered by Protestant and Catholic social conservatives alike, has personally spoken out strongly against the death penalty.) And, of course, many liberals strongly favor the death penalty—start the list with President Clinton, who ostentatiously returned to Arkansas during his first presidential campaign to sign an order for the execution of a young (and allegedly mentally impaired) man who had been sentenced to death.

A final point on criminal justice: while social conservatives favor strong laws, they also support constitutional guarantees of procedural fairness. Of course, they do not accept the ACLU liberal reading of these guarantees, but that does not mean that they countenance abusive actions by police, prison guards, or other officials.

AE: Responding to your first point, not only do communitarians support the “covenant marriage” option, we seem to have originated the idea. Back in 1993 we called them “supervows.” Different name, same concept. But note the nature of covenant marriage: it allows for choice. This is not a case of a strong (but small) government seeking to promote a virtuous citizenry by use of the strong arm of the law; nor is it a case of government neutrality in the face of any question concerning virtue. Rather, covenant marriage involves the government helping to create the conditions for people to choose an option it considers virtuous. I call this “opportuning virtue” and it would seem to entail a new approach to government action in the moral realm: neither coercive nor neutral.

As for the social conservative support for constitutional guarantees of procedural fairness, I very much agree, and this is one of the major differences between social conservatives, who are constitutionalists, and authoritarians, whose use of coercion is often discrimina-

tory by ethnic origin, class, or other irrelevant, if not outright arbitrary, criteria. But I also note that social conservatives—I refer here not necessarily to scholars like yourself but to more public intellectuals and politically active champions (John DiIulio and Richard Neuhaus, for example), and think tanks such as the Heritage Foundation—have strongly favored not violating procedures but changing them in ways that make the state more powerful. This can be seen in friend-of-the-court briefs that have argued for reversing the Miranda decision or watering it down, for repealing the exclusionary rule, for sharply curtailing appeals of death sentences, and other such changes.

I am not suggesting that reformulating some of these procedures is not called for. Indeed, I have argued for some of them myself. However, it seems that most who engage in a systematic and extensive revision of procedures to increase the power of the state are social conservatives.

RG: On the matter of covenant marriage (or “supervows”), I congratulate communitarians for coming up with the idea. (I first encountered it in 1994 in an article by the social conservative writer Christopher Wolfe.) You are correct to note that covenant marriage has been introduced to provide an alternative to marriages that can legally be dissolved by no-fault divorces. In this sense, as you say, it allows for choice. And I sense from your comment that communitarians perceive some value precisely in people’s having a choice between covenant and non-covenant marriages. We may have here a case in which communitarianism truly differs, at the level of moral and political principle, from social conservatism and liberalism. Social conservatives, though supporters of covenant marriage, accept the policy of two tracts of marriage as a compromise, not an ideal. Individuals, couples, and the common good of society as a whole would, we believe, be best served by the simple abolition of no-fault divorce. Social conservatives perceive no value in the availability of a choice of types of marriage as such. So while we have common ground with communitarians in supporting covenant marriage, our reasons for supporting it may differ in an important respect. The orthodox liberal position, on the other hand, is simply to oppose covenant marriage.

Turning now to criminal law enforcement, there is certainly a legitimate debate about the balance between procedural protections

and police power. Often trade-offs have to be made, and there is no single uniquely just answer as to how the balance should be struck. Different jurisdictions reasonably and justly strike the balance differently. Britain, for example, has no equivalent of our exclusionary rule, yet freedom survives.

The key thing, I think, is to be as fair as possible in allocating the benefits and burdens of striking the balance one way rather than another. Do social conservatives consistently wish to strike the balance in a way that increases state power? It is no doubt true that social conservatives are leading critics of major Warren Court criminal procedure decisions, including *Miranda*. At the same time, social conservatives have been outspoken critics of law enforcement officials' misbehavior at Waco, Ruby Ridge, and elsewhere. (Richard Neuhaus published in his magazine *First Things* the single most important critique of federal law enforcement abuses at Waco.) Moreover, social conservative journalists—not liberals—have courageously exposed prosecutorial misconduct in connection with a series of apparently false child-sex-abuse allegations. And John DiIulio's writings on law enforcement and prison policy are arguably the most rigorous and nuanced in the vast literatures of these subjects. In some areas his prescriptions would increase state power, in others they would reduce it. In any event, even if it is true that social conservatives tend, overall, to favor an increase in state power when it comes to law enforcement, I doubt that this is a difference of principle with communitarians. Indeed, I suspect that most communitarians would share the view that Warren Court criminal procedure strikes the balance too far in the direction of hampering ordinary law enforcement powers.

AE: Perhaps the key difference between social conservatives and communitarians lies in judgments of what behaviors are considered morally bad, and how bad these behaviors are deemed to be. Of course, social conservatives and communitarians would agree on the immorality of many things, and would further agree that they cause grave social harm. Drug abuse is certainly one example. But perhaps when it comes to issues such as abortion, pornography, adultery, prostitution, etc., there is only limited consensus among communitarians that all of these things are bad, and even less of a consensus that they are socially harmful enough to warrant the policies of legal restriction that social conservatives favor.

RG: I am inclined to agree. Social conservatives are united on the proposition that these are morally bad (and, in the case of abortion, gravely unjust) behaviors that require action on the legal as well as cultural front. My impression is that communitarians tend to be more ambivalent. In any event, there is nothing like a consensus among them. To be sure, communitarians generally do not view these matters as morally innocent, nor do they suggest that they are not worth worrying about. Many doubt, however, that their social effects are damaging enough to warrant the limitations on personal freedom that social conservatives are prepared to countenance. Moreover, many worry that a preoccupation with these subjects creates a tone of prudishness or even intolerance that is itself damaging to the moral health of society. They buy at least this much of the liberal argument.

AE: It seems to me that the moral agenda of social conservatives (especially the religious ones) is more encompassing while the communitarian one is more focused on a limited set of core values. Focusing the discussion on the substance of the virtues involved is particularly helpful as neither social conservatives nor communitarians consider it appropriate to limit oneself only to procedural considerations. In this context, I would suggest that social conservatives have accorded sex much too much corrosive power and greatly underestimate, for example, the role of impersonal and intergroup violence, especially guns.

I realize that you hold that a society that is decomposing, due to a loss of integrity, driven by sexual promiscuity, is one that is predisposed to violence, i.e., that violence is a derivative rather than a primary cause of social disorder. In part this is an empirical matter. For instance, Scandinavia, which has long been sexually permissive, is much less violent than the United States. And over the last years, as sexual self-indulgence was modeled in the highest office of the land, violent crime has significantly dropped. I am sure you can produce some other examples that lend support to your thesis. But would you submit here to social science evidence? Would a social conservative agree to ban guns if they turn out to be a primary cause of violence? And even if violence is found to be a mere derivative cause, a symptom of another malaise, does this mean it should therefore not be treated in its own right?

RG: I deplore the increasingly common glorification of violence in films, music, and other aspects of contemporary popular culture. It should be clear that most social conservatives share my view. William Bennett, for example, has repeatedly called on the companies who profit from this shameful business to cease and desist. I am not very interested in the question of whether the glorification of illicit sex is worse than the glorification of violence. They are both morally iniquitous and socially damaging. And, as many others have noted, they are connected in various ways: it is no accident, as the Communists used to say, that the purveyors of violence and pornography are very often the same people and companies; nor is it surprising that so much pornography today is violent pornography.

As for whether social conservatives are too concerned about sexual immorality, you are right to suspect that I can produce plenty of social science evidence to support my view that we ought to be very concerned about the social consequences of anarchic sexuality. It is probably enough, however, to rely on common sense and personal observation. Maintaining the integrity of families is crucial to the well-being of children. Yet family integrity is jeopardized by an ideology of “recreational” sexuality that divorces sex from marital unity and treats marital infidelity as a relatively unimportant matter. The spread of such an ideology plainly plays a major role in the family breakdown we have experienced in the United States and which is common in Scandinavian and other European nations as well. It is true that these nations are less violent than the United States (though no one, I hope, is foolish enough to think that sexual permissiveness has the effect of decreasing violence); but it remains to be seen whether they will be resistant to violence and other social pathologies if challenged by stresses from economic or other forms of adversity. If I and other social conservatives are right to believe that irresponsibility and self-indulgence in the area of sexuality, as in other areas, weakens character generally, then that will manifest itself in the life of any sexually permissive people when the strains of adversity come—as surely they will.

I would certainly submit to social science evidence on the question of guns. So far, though, that evidence, as I understand it, shows that gun control, even where it can be rendered workable, is of little effect. Indeed, some social scientists have concluded that gun owner-

ship, and even the right to carry concealed weapons, decreases crime. In any case, it seems to me that this is an area where the law may quite legitimately differ from state to state and even within states. Where I grew up in West Virginia gun ownership is prevalent, people use their weapons responsibly for hunting and target shooting, and there is little gun crime. The same is true in nearby rural counties of western Maryland and southwestern Pennsylvania. I can see little justification for taking weapons away from these people, even if it turns out to be a good idea to prohibit gun ownership (or some forms of gun ownership) in large cities such as Baltimore, Washington, D.C., Pittsburgh, and Philadelphia.

AE: All said and done the discussion seems to suggest that moderate social conservatives and strong communitarians are relatively close to one another. But I continue to believe, though subject to some of the caveats you have presented, that strong social conservatives seem to rely more on the state than do communitarians, and that their moral agenda is more encompassing, and thus more restrictive—it provides do's and don'ts about more aspects of human life.

RG: I am grateful for this opportunity to explore the points of commonality and divergence between social conservatives and communitarians. I, too, believe that we have much in common and a great deal to learn from each other. There is obviously much more to say, and many other topics to address, so I hope that we can keep the conversation going and that other social conservatives and communitarians will join us.

**If True, We Feel Sorry for his Family, Friends, and Community**

*"I'm an economist. I don't do things that don't pay off financially."—Timothy Taylor, managing editor of The Journal of Economic Perspectives.*

## THE COMMUNITY BOOKSHELF

---

### The Politics of Race: Justice, Violence, and Misinformation

Steven M. Teles

Books discussed: John Skrentny's *The Ironies of Affirmative Action*, Randall Kennedy's *Race, Crime and the Law*, and Jim Sleeper's *Liberal Racism*

It is hard, in any field of knowledge, to say something both true and significant. In no field is this challenge so daunting as in the study of race. This is the case because the truth is often inconvenient. We want so badly for the past to conform not just to our notions of what did or should have gone before, but also to a story of the present and the future. And yet it is rarely the case that facts fit so neatly into the tales we would like to tell. As a result, often with the best of intentions, we hedge, seeing only what we would like to see.

Attempting to forcefully open our eyes, three recent books take on the problem of race in America—two successfully, one unsuccessfully. The failure, Jim Sleeper's *Liberal Racism*, is useful mainly to demonstrate the virtues of the two successes: John Skrentny's *Ironies of Affirmative Action* and Randall Kennedy's *Race, Crime and the Law*. Where the former rests on speculation, opinion, and a foundation of very thin research, both Kennedy and Skrentny ground their work on an impressive foundation of deep research, theoretical sophistication, and an admirable distance from their material. These two books remind us of the virtues of reasonableness, and also the truth that reason is something attained through work, not something asserted on the basis of superior motives.

## Liberal Racism

*Liberal Racism* is especially disappointing given that Sleeper's previous book, *The Closest of Strangers*, was a deep and sensitive work. But while *Strangers* was the culmination of years of involvement with an issue at the ground level—that is what gave the book such moral heft—this new book shows all the signs of someone who has become too successful for his own good, to the point of becoming lazy. In *Liberal Racism*, Sleeper has simply stapled together a bunch of previously published articles, purporting to make a general argument about American society. The result is an argument that has a very tacked-on, post-facto quality to it.

A second difference with his last book has to do with scope. *Strangers* was clearly and openly about New York. *Liberal Racism*, however, presumes to be about something larger—about contemporary liberalism's approach to race. But Sleeper's insular New York background makes him a very poor guide to what is going on in the rest of the country. Much of what he says about New York liberal politics is true (he dismantles targets such as William Kunstler and Al Sharpton), but as the story of liberalism nationally, it is highly misleading. Black officials almost everywhere else share more in common with Rudy Giuliani than with the New York City Democratic party.

This suggests the book Sleeper should have written: a study of how liberalism has, for the most part, remade itself. The race-hustlers and lawsuit hurlers are still around, of course, but they are a dying breed. Liberal racism exists as Sleeper describes it, but those kinds of liberals are an increasingly marginal fringe. Virtually no one wants to openly defend racial quotas anymore, with the exception of a few lawyers, academics, and personnel officers—and even they seem reluctant. This suggests that quotas are dying a natural death. And while it is true that there is a lot of multicultural bunkum in the academy, it is equally true that those who reject it are as vocal as they have been since the fifties, and even many liberals dissent from the stupidity now. While some disciplines still encourage the old victim line, the legitimate investigation of race, class, gender, etc., is going on among a lot of academics in a manner very different from that of the liberals Sleeper lampoons. And to call these people liberal racists is a grave mistake.

Five years ago, a book like this would have been welcome, even a little brave. Now it is unclear why it needed to be written. To the attentive observer it is obvious that the old affirmative action/racial redistricting/victim-mongering camp has been intellectually routed. Thus the real question, for those of us in the broad area from center-left to center-right, is how should we think about race? Is it a meaningless category? Redundant to culture or ethnicity? Should there be any official recognition of it in policy or government statistics? Should we do more than eradicate government policy that recognizes race and also go out of our way to eradicate it from businesses and universities?

Against these questions, which require hard thinking and clear distinctions, Sleeper offers only clichés. “Our strength resides not in more racial monitoring and tinny celebrations of ‘diversity’ but in the gossamer threads and raceless glue of an endless American belonging which new leaders and artists among us will have to evoke.” But can such an evocation be made?—*that* would be a proper subject for a book. Attacking others for not developing such a vision, however, while not offering anything but a weightless alternative, is a dubious enterprise. It leads Sleeper into brainless cheap shots, as when he responds to Cornel West’s wholly reasonable answering machine message (it notes that Professor West has many demands on his time) by observing, “Such are the wages of oppression.” Such, I might add, are the wages of thin research.

Because he only deals with the most preposterous representatives of the “multiculturalist” position, Sleeper fails to seriously confront the most substantial arguments for conserving the idea of race. Within the (always contested) notion of blackness are a number of cultural meanings, experiences, and memories—ties that bind. These kinds of ties have their good and bad sides, but they are the raw stuff upon which community is made, and at least up until now, a large number of black people have built community upon these common experiences. If we are going to ask that the idea of race be eradicated, from whence does community get remade? All communities need boundaries, and authorities to police them. If we get rid of organizing on the basis of race, and get rid of “blackness” as an official category, will we ultimately lose a binding force in a world that has fewer and fewer such forces? Is Sleeper’s universalism too thin a gruel for most people most of the time? If not, he needs to go much further into the notion of

“civil society,” which he only briefly discusses. As it is, he treats civil society as a magic wand, the waving of which dispels all of the complexity of life.

### Race, Crime, and the Law

An example of how to seriously address the subject of race is Randall Kennedy's *Race, Crime and the Law*, which for at least three reasons stands out among the recent outpouring of books on the issue. First, it is a rarity: a book on race suffused with a spirit of reason uninfected—but not undirected—by passion. Second, Kennedy roots our understanding of the role of race in practice, and in so doing reminds us both how difficult, and how pressing, is the continuing need to root out the influence of racism in ongoing social practices. Finally, Kennedy suggests (but in the manner of a law professor does not push too hard) an understanding of how to think about race in public life.

The first thing that must be said about *Race, Crime and the Law* concerns what might be called its normative method. This is a book that embodies a particular way of thinking about moral questions, one which assumes that order, equality, and liberty are complementary and equivalent goals. The essence of moral thinking is the way these goals are woven together, rather than presented as if in opposition. In another context, I referred to this method as one of “cultural integration.” Typically, intellectual elites are hostile to this method, since what qualifies as sophistication in modern academia is taking a single principle to its logical extreme. This sometimes succeeds in creating interestingly counterintuitive arguments, but it rarely produces ones which are morally compelling to persons of ordinary intuitions and intelligence, such as lawmakers. The result, of course, is that academic studies occupy an alienated moral world, across the disciplines. (If you think this argument only applies to the left, talk with your average economist.)

It is this method that Kennedy rejects. He combines a respect for evidence and argument with the ability to hold two ideas at once. This is evident in what I take to be the central claim of the book: “[T]he principal injury suffered by African-Americans in relation to criminal matters is not overenforcement but underenforcement of the laws.

Whereas mistreatment of suspects, defendants, and criminals has often been used as an instrument of racial oppression, more burdensome now in the day-to-day lives of African-Americans are private, violent criminals (typically black) who attack those most vulnerable without regard to racial identity.” What is unusual about *Race, Crime and the Law* is not this argument concerning so-called “black-on-black crime,” an argument that has been a conservative canard for years. What sets Kennedy’s book apart is that this observation prefaces a book that explores in great and often painful detail how black citizens continue to be mistreated by the legal system on account of their race.

The discussions of racial mistreatment are especially disturbing: an off-duty black police officer thrown through a plate-glass window after being pulled over while driving through a white neighborhood; a racially prejudiced judge allowed to continue on the bench even after his racism was publicly acknowledged and (weakly) punished; blacks systematically kept off juries by race-based preemptory challenges; the use of race as a badge of criminal suspicion, not covertly but admittedly and with the blessing of the judicial system. These continuing abuses bring into question the argument that blacks are “paranoid” and cannot get over the past. Just the abuses of today are bad enough.

The abuses of today, however, are not the whole of Kennedy’s point. He admits that these abuses have declined substantially. But the continuing abuse acts as a reminder of even greater historical mistreatments, the kinds that are hard to forget. As Kennedy points out, “It would be difficult to exaggerate the importance of lynching in the development of African-American political consciousness.” Whatever else lynching was, it was first and foremost a case of what Kennedy calls the “unequal protection of the laws.” When blacks most needed the protection of the laws, the legal system was unwilling to give it to them.

Seared into the historical memory of many black Americans is the role of the police and prosecutors as the instruments of oppression, rather than as a bulwark against it. It was Southern policemen who acted as the brute enforcers of segregation, and cops in the North who enforced the less formal racial hierarchy of cities like Chicago and New York. Behind black Americans’ sense of aggrievement, accord-

ing to Kennedy, is “the perception, substantially supported in fact, that at least in part for racial reasons police tended to behave in a distinctively rude, overbearing, contemptuous fashion in predominantly black neighborhoods, a manner that gave credence to the notion that, in black communities, police constituted an occupying force rather than a cadre of useful civil servants.” Police frequently used their position to act out their own sadistic impulses, and were protected by all-white juries which, at the very least, were untroubled by such abuse.

This background is important for Kennedy because it has “helped make many blacks intensely skeptical of police officials, profoundly fearful of the judicial system, and keenly insistent that in the absence of militant, collective demands for justice, white decisionmakers are apt to deal with black defendants with less care than white ones.” At the same time that blacks hold this profound suspicion of the legal system, there is no group more in need of the protection of the police and courts, no group that pays for the lawlessness of America more in lives and social opportunity.

Again, Kennedy has little time for those who deny *any* of these facts. “It does no good to pretend that blacks and whites are similarly situated with respect to either rates of perpetration or rates of victimization. They are not. . . . The familiar dismal statistics and the countless tragedies behind them are not figments of some Negrophobe’s imagination.” Young black men commit large numbers of violent crimes. This is a fact. But what one does about it is not. “This sociological fact does not mean that the legal system ought to permit police to engage routinely in racial discrimination. No sociological fact dictates the proper response to it.” Modern racism draws as much on fact as it does on fiction. The white person who avoids young black men on the street does so as much out of a lively sense of self-interest as out of unfounded assumptions about racial inferiority. In fact, that there is some basis for racial distinctions only makes it more necessary that the law lean against them.

But there is a larger reason why the legal system must purge itself of racial abuse: the protection that black Americans so sorely need from the legal system is stunted by blacks’ suspicion of that system. The memory of a legal system that needed to be resisted and con-

fronted in order to attain justice translates into modern day attitudes that withhold respect for the current legal system, and which refuse to fully and unambiguously condemn black criminals. Only when black Americans are convinced that the legal system is a truly neutral arm of justice will these attitudes change.

And these attitudes *do* matter. In one of the most illuminating chapters in the book, Kennedy discusses the increasing (although no one knows to what degree) phenomenon of jury nullification by blacks. Of course jury nullification is nothing new. Much of Kennedy's book testifies to the frequency with which white juries were willing to ignore the demands of the law where white defendants were concerned. What *is* new, and ironic, is that the victories that blacks have achieved in reaching the jury box now permit them, if they choose, to use that position to nullify the law in favor of black defendants. Thus arises a dilemma: Faced with the reality of continuing (if increasingly isolated) police racism, is nullification an option black jurors should seriously consider? If yes, how should the larger society react?

#### Behind the Institutional Problems

As Kennedy repeatedly points out, racially motivated abuse arises more often from the illegitimate and unsanctioned use of discretion than it does from implicit or explicit policy. Discretion is an inherent part of any system of organization. No task can be specified in exact detail in advance; no agent of government can be supervised at every moment. But it is largely through discretion that racism enters the administration of justice. The death penalty would be more evenly applied to blacks and whites, for example, if juries were required to give the death penalty in carefully specified cases. The Supreme Court has declared, however, that mandatory death penalties violate the constitution, and as Kennedy argues, quoting Kenneth Culp Davis, "The discretionary power to be lenient has a deceptive quality that is dangerous to justice. . . . The power to be lenient is the power to discriminate."

An interesting result of this power of discretion is that, while the death penalty is administered in a racially disparate manner, the discrimination is on the basis of the race of the *victim*. It is white America's unwillingness to fully empathize with the suffering of

blacks, to see their murders as equally serious as those of whites, which explains much of the root of the problem. Kennedy points out that “[a]long many dimensions, we all engage in differential valuations of human life according to clannish criteria—family, locality, nationality. Recognizing the extent to which . . . [this] problem is related to a universal dilemma in human relations might help to facilitate a more candid discussion of this problem, a discussion in which judges, legislators, and other influential policymakers might more easily acknowledge, reflect upon, and change the realities of racial sentiment in American life.”

Thus arises my only complaint with *Race, Crime and the Law*. Kennedy claims that, while the “war on drugs” may be bad policy, it is a mistake to claim that it is “racist” in origin or effect. And yet, Kennedy’s profound recognition of the “differential valuations of human life” that we apply on the basis of (among other things) racial identification surely has some relevance to our current drug policies. Imagine that, tomorrow, we declared all drugs legal. What would change? Would the access of poor, black Americans to drugs change? This seems unlikely. Access to hard drugs is already fairly wide open in the neighborhoods where many black Americans live. The main effect would be the abolition of black markets and a diminishment of the crime and violence associated with them. On the other hand, the reduction in social stigma that legalization would surely usher in would have substantial effects in middle-class, predominantly white neighborhoods. It is not preposterous to claim, therefore, that the war on drugs has distributional effects, reducing access to drugs in white neighborhoods at the price of violence, and lives, in black neighborhoods.

This is not to say that we should decriminalize drugs, or that our current policies are “racist.” But it does raise a significant question: If the costs and benefits of the war on drugs were reversed, would we have the same policies we have today? Might it be that white Americans’ “different valuations of human life” have something to do with the price we have seen fit to pay for the benefits our drug policies reap? If we do choose to keep the basic structure of our current drug policies, this imbalance of costs and benefits suggests, at the least, the obligation of the larger society to remedying, to the degree that it is possible, the costs those policies impose on black Americans.

That said, Kennedy's book remains a triumph. Those who are especially committed to ensuring public safety and punishing those who violate the law typically line up in opposition to those who want to root out the racial use of discretion in the judicial process. The larger purpose of *Race, Crime and the Law* is to convince people that efforts to pacify the streets go hand in hand with measures to eradicate racial maladministration of the law. And he succeeds. Making America a color-blind society is not simply a matter of racial minorities' willingness to give up racial identification, but also of affirmative measures to drive out racial coding where it has been entrenched in institutions, or where it hides unexamined in the details of administration.

### The Ironies of Affirmative Action

Everyone knows that the shift from the case-by-case discrimination approach of the Civil Rights Act to the preferential policies that followed was driven by ideological changes in liberalism, as it became radicalized in the late 1960s and 1970s. Thomas Sowell has argued that “[b]arely had the spirit of the civil rights movement triumphed and its triumph been celebrated than it began to be reversed—by the leaders and organizations that had spearheaded the struggle.” That, at least, is the story we have been used to hearing. But the argument of *The Ironies of Affirmative Action* is that this history is seriously flawed. For those of a reformist liberal temper, Skrentny's attempt at a reconstruction of the past is highly suggestive of paths for the future; for if affirmative action is an unfortunate mutation, rather than a logical playing out of liberal principles, it is possible to move away from preferential treatment without betraying our history.

Skrentny scours away years of ideological story-telling about affirmative action, demonstrating that the truth is much more complicated—much more, well, ironic—than most have been willing to accept. The first irony of affirmative action is that it was not demanded, and in critical places was actively resisted, by the black civil rights leadership. With the exception of Whitney Young, no civil rights leader prior to the creation of affirmative action openly supported preferential treatment, and Young himself quickly retreated, turning his initial proposal for “a decade of discrimination in favor of Negro youth” into a “domestic Marshall Plan” for America's cities. That is, the hegemony of the principle of race-neutrality forced him to restructure his program to comport with that ideal.

The second irony of affirmative action is that Americans have never distributed jobs or other social positions purely on the basis of “merit.” There have always been exceptions, in particular the widely understood and accepted employment preference for veterans, which continues to be used by the national government and all but three states. This preference was resisted by presidents and other politicians up to and including FDR, whose Secretary of the Treasury Henry Morgenthau argued that “veterans had no special claim on the government.” But the pressures of war ate away at the resistance, and even before WWII was complete Congress had passed the Veterans Preference Act of 1944. Disabled veterans were given a ten-point bonus on the civil service exam, and able-bodied veterans five points. Furthermore, “the positions of guards, elevator operators, messengers, and custodians were restricted to veterans for as long as they were available.” Special preferences for veterans were justified by the argument that they had suffered from an interruption in their careers, which seems like quite a slight basis for deviating from meritocracy when compared with segregation, which was nothing if not a (lifetime) interruption in the careers of black men and women. Skrentny thus concludes that resistance to affirmative action is primarily about the status of race, rather than the primacy of merit.

It was the rhetoric of the civil rights movement, a rhetoric which emphasized a transcendent, color-blind vision of justice, that limited the movement’s ability to push for racial preference in the early sixties. It is also true that the civil rights movement was driven by an essentially optimistic vision, that in the absence of racial discrimination equality between blacks and whites would soon result. The riots that began in Watts and soon spread to the rest of the country made this vision politically untenable, as the critical question became one of results (how can we get these urban blacks jobs so that they won’t burn down the city?) rather than individualized justice (how can we find, investigate, and prosecute discrete cases of discrimination?). The administration responded with a targeting-within-universalism strategy (to use Theda Skocpol’s term) of developing programs for “disadvantaged” persons, with the understanding that those programs could be administratively steered toward black neighborhoods. Even the Kerner commission report attempted to describe the beneficiaries of its desired policies as “ghetto residents” and the “underemployed,”

rather than blacks per se. Race blindness was cracking, but had not yet publicly come undone.

While the politicians at least had to rhetorically defend the race-blind consensus, it was being decisively undone at the administrative level. While President Johnson was defending “affirmative” measures such as outreach and training, the new administration of the Equal Employment Opportunity Commission (EEOC) was investigating entire industries rather than just individuals, focusing on their overall racial balance. Essentially, what officials wanted were approaches that resulted in a demonstrable outcome, given the resources available to the agency. The individualized justice that the Civil Rights Act (CRA) emphasized was both expensive to pursue (having to plow through all those investigations) and difficult to prove successful (were more cases a sign of success or failure?). Thus, driven by what Skrentny calls “administrative pragmatism,” the EEOC transformed the CRA into a tool for the more results-conscious approach that has come to dominate civil rights policy.

If the opening wedge for transforming the CRA into a tool for affirmative action was administrative, “[p]erhaps the greatest irony of all in the story of affirmative action is that this controversial model of justice owes its most advanced and explicit race-based formulation to a Republican president who based much of his campaign on appealing to the racially conservative South.” Nixon had called into question the wisdom of the Great Society and the enforcement of school desegregation, and was as a result concerned with his image on racial and poverty issues. To partially compensate for the impression these actions created, the Nixon administration broke through two political taboos that had constrained the Johnson administration. The first taboo was the idea of welfare “entitlement,” which Nixon violated by proposing a negative income tax in his Family Assistance Plan. The second taboo was racial preference, which Nixon broke through by proposing what came to be known as the Philadelphia Plan, which imposed racial quotas on the construction industry. Nixon’s strategy was brilliant, magnifying the divide between blue collar workers and blacks, since the Philadelphia Plan’s quotas created a direct redistribution of resources between them.

In both cases, Nixon set what turned out to be a trap: violating a taboo that had previously kept liberalism within certain limits, and

encouraging liberals to follow him. Republicans would subsequently make great sport out of flailing liberals for supporting “welfare rights” and “racial quotas,” without admitting that the greatest steps in these directions were made during a Republican administration.

### Race, Community, and Public Policy

Matters of race and public policy are so contentious, and so irresolvable, because of the centrality of the status of blacks to the legitimacy of the American regime. The high stakes and the high profile of the issue make it difficult to discuss in ways that point toward agreement even on the facts, if not their meaning.

This suggests part of the problem of having anything like a “National Conversation on Race.” True conversation requires that each side could, at least potentially, adjust their position as a consequence of talking. But there are important reasons why such adjustment is unlikely. The first is that information in the area is typically unclear or insufficient. There are huge gaps in the literature on affirmative action, for example, which makes most of the key assertions on the issue untestable. Conservatives claim that affirmative action causes feelings of inferiority among blacks. How do they know? How would anyone on the other side demonstrate that they are wrong? There simply is not the evidence to narrow the factual foundation upon which the debate is made. But do those who participate in debates on race even care about the facts? For example, what if it turned out that we had substantial evidence that showed that affirmative action in university hiring unambiguously raised the lifetime earnings of blacks? Would opponents of affirmative action change their position? Unlikely.

Why are positions on racial issues so firmly dug in that they seem impervious to evidence? The first and foremost answer is that only a particular sort of way of seeing the world is capable of absorbing evidence. That view of the world is one characterized by surprisability, the capacity to accept information that one did not expect and that runs against the grain of one’s existing commitments. This is the characteristic that both Kennedy and Skrentny share, but which is lacking from most racial discourse.

Second, any true conversation requires some overlap between the moral claims that those involved will consider legitimate. It is difficult

to come to any agreement unless there is some shared foundation of principle. This, unfortunately, is what is most sorely missing among the intellectual elites who do most of our talking on these issues. Most Americans view the principles of equality, liberty, and order as simultaneously, if not equally, legitimate. Most intellectuals do not. Their either/or approach to competing values means that there is very little room for finding areas of agreement, since racial issues easily become mechanisms for fighting out larger cultural conflicts that have nothing to do with race.

Exacerbating these problems are matters of history. Simply put, most policies have developed justificatory narratives. In the case of affirmative action, for example, liberals have typically understood it to be a policy that flowed easily from the civil rights movement, a progressive adaptation to the intractability of racial discrimination. Conversely, conservatives have developed their own narrative of affirmative action, which presents an early, “pure” period of the civil rights movement that was color-blind, but that was hijacked by black nationalism and the radicalization of the idea of civil rights that accompanied it. These old narratives had chains of meaning and taken-for-granted policy consequences embedded in them. But those meanings no longer resonate, and many of the policies have grown stale. What is more, many of the non-racial ideologies—from libertarianism through to social democracy—seem impotent in the face of the collapse of social order and the shrinking of social mobility that characterizes the poorest parts of our society.

Perhaps out of the rubble of these lost faiths and these old racial narratives will emerge a new creed that absorbs and transcends them all. That new creed would break away from most of the sterile dichotomies that currently characterize the way we talk about race. Consider the “race neutrality” versus “affirmative action” debate. In many cases, such as the treatment of black Americans by the legal system, what is required is a much more aggressive effort to be race neutral, even where that requires taking race into account. For all the reasons Kennedy identifies, there are reasons to be more watchful of courts and police where the treatment of blacks are concerned, not so that they might be treated differently, but to ensure that they are treated the same as whites. In other cases, such as hiring, the adherence to race neutrality creates an obligation on the part of society to

ensure that, to the degree possible, blacks and whites have equal access to the resources necessary for fair competition. In the most general sense, this translates into a more generous (or at any rate more successful) welfare state where access to human capital is concerned. But more specifically, it might mean targeting training and outreach on racial minorities to a much greater degree than we do now. Again, true race neutrality is an objective that requires affirmative measures (although not necessarily preferential treatment as currently practiced) if it is to be truly fair. The “race neutrality” versus “affirmative action” debate turns out to be more complex than most are willing to admit.

Finally, a more reasonable approach to racial inequality might begin by examining racial diversity not as a source of “cultural differences” that require “recognition” for reasons of justice, but as a resource upon which many groups draw for practical assistance in their effort to move up in American society. Group identification should be judged on the basis of a broader, non-racial standard: do the values, traditions, and practices that racial and ethnic groups carry advance or detract from their efforts to move up in American society? There are numerous cases where members of ethnic and racial groups are not neutral to those who share a similar identification, and this differential valuation, which (as Kennedy points out) may have negative ramifications in some areas, may also serve important, society-wide functions. Identity, when understood in this way, could make claims on the larger society, but would also be answerable to it.

Ultimately, what the discussion of race needs most urgently is a reassessment of all of our mutual obligations. The first step in such a reassessment must surely be a full reconciliation with a past that provides no easy or tidy answers. Kennedy and Skrentny’s books provide such a first step, if we are willing to take it.

## Liberalism and the Catholic Ethic

William D'Antonio

R. Bruce Douglass and David Hollenbach, eds., *Catholicism and Liberalism: Contributions to American Public Philosophy* (New York and Cambridge, England: Cambridge University Press). 352 pp.

As coeditor R. Bruce Douglass notes in the introduction to this volume, our nation is currently witnessing a significant social struggle. It is a struggle between the ideas that ground American democracy (personal autonomy, equal opportunity) and the social and cultural changes that are transforming American life (growing income inequality, the deterioration of the commons, the ever increasing influence of the market)—changes that challenge the viability and relevance of the liberal ideas out of which this society grew. This book, first published in 1994 and reprinted in 1996 and 1997, makes a strong case for the relevance of a Catholic communitarian ethic that could inform and revitalize American political structures and ideals. The twelve essays—revised versions of papers originally presented at an interfaith dialogue at Georgetown University—look to the possible contribution that Catholic thinking can make to liberalism in light of the changes that have taken place in both during the past century. Ultimately the authors argue that the Catholic ethic, itself revitalized by Vatican II, may provide a counter to the marketplace individualism that has dominated so much of American public life.

The book is divided into three parts with four chapters each, followed by an Afterword by coeditor David Hollenbach. Part I covers the historical conflicts and developments between Catholic thought and emergent liberalism. As Peter Steinfels writes, the political events of the 19th century set the Catholic Church firmly against enlightenment liberalism. Historical events, beginning with the French Revolution and including especially the Vatican's loss of the papal states, increasingly set the papacy against liberal leaders and principles, despite efforts by Catholic liberals like Lord Acton and the theologian Lamennais. This adversarial stance led the Vatican to fail to appreciate the value of freedom of conscience and discussion, and the search for truth through science.

Of more immediate relevance to the United States was the experience of American Catholics as they grew in numbers, influence, and power from 1789 to 1960. Philip Gleason writes of the entrenched Protestantism they confronted—a Protestantism that claimed for itself the glories of American liberal democracy and came to fear Roman Catholicism as the devil's threat. American Catholics were thus caught in a bind, trying simultaneously to convince Protestants that they were 100 percent Americans, and the Vatican that they were loyal Roman Catholics.

The way out of this bind was largely provided by the American Jesuit John Courtney Murray, a theologian once silenced by the Vatican old guard. Murray provided the theoretical grounding that made acceptance of liberal democracy possible in the documents of Vatican II. As Joseph Komonchak describes, the Vatican slowly moved from seeing liberalism as the work of the devil to ultimately embracing it. But was the Church, as conservatives charge, simply capitulating to liberalism? According to Komonchak the answer is no, as Murray was able to distinguish between liberal political structures (the essence of Western democracy), and liberalism as an ideology that saw no role for religion in public life and relegated religion to the sphere of private belief. (Three decades later Stephen Carter, in his 1994 book *The Culture of Disbelief*, made this same distinction a central part of his critique of secular liberalism.) This difference between what the authors call ecumenical or political liberalism (embraced by Vatican II) and sectarian or secular liberalism (rejected by Vatican II) is central to understanding the Catholic acceptance of liberalism.

In his essay, Douglass reflects on the question of whether liberalism may have run its course and achieved its goal of a world full of liberal democracies and countries striving to become liberal democracies. In the Western world there is no threat to liberal hegemony; but it is precisely this hegemony that has Douglass and the other authors worried. The liberal tide seems less and less able to support a concern for the common good, as personal autonomy has become the be-all and end-all of our search for meaning in life. Young people especially seem vulnerable to this quest, led by a marketplace that increasingly dominates the center stage. Douglass wonders if the principles that enliven Catholic social teachings can be brought to bear in Western society at this time, and thus help mend the badly frayed social fabric.

Which brings the reader to the second set of essays, which deal with new encounters and theoretical reconstructions.

### The Human as Individual versus the Human as Social

Hollenbach opens with the thesis that Catholic teachings on human rights are grounded in the natural law conviction that the human person is essentially social. This foundation leads Catholicism to a communitarian ethic that stands in contrast to the more individualistic ethic of classic liberal thought. The essentially social nature of humans makes it clear that an individualistic ethic is inadequate. For Hollenbach, personal autonomy and social responsibility are inevitably linked. For example, central to the right of free speech is that “it enables citizens to try to convince others of ideas that they think make a difference to the way they live together in society.” It is thus only through free speech in the public domain that we have any chance to more adequately understand the nature of the common good and how we might pursue it. “Rights” language and “common good” language, Hollenbach concludes, must be blended if we are ever to have a clear-eyed view of the human person whose dignity is social through and through.

Jean Bethke Elshtain echoes Hollenbach’s argument that rights are essentially social in nature and that Catholic teachings can help overcome the contemporary perversion of individualism. She proceeds to explain how the Catholic principle of subsidiarity fosters community and enables us to see more clearly the interdependence of rights and responsibilities. Subsidiarity means that people should not encourage organizations, public or private, to do at a higher level that which can be done as well or better at a lower level. For example, we should not look to the state or federal governments to do what families, neighborhoods, and small units of association can do for themselves. Our task as a society, then, is to find ways to help these groups fulfill their potential. Using the city to explicate her argument, Elshtain concludes that we need a new vision of subsidiarity that will help us rebuild our cities and small towns, recognizing the new forms of interdependence that modernization has brought forth.

Louis Dupré follows the same general theme, arguing for a restoration of the idea of the common good that incorporates individual rights without separating them from their social context. He

shows how the idea of the common good was developed by Augustine and Aquinas and realized, for example, in 14th-century Florence. It was then gradually weakened, through the historical development of liberalism, into nothing more than the collective well-being of the members of a democratic society.

David Tracy takes a different tack, as he raises and then answers affirmatively the question of whether there is a place for religious expression in the public discourse of a pluralistic democracy. He argues that we should evaluate the potential role of religion not based on its origins but on its effects upon society. Tracy's model of pluralistic democracy is one built on consensus emerging out of inquiry (argument) and interpretation (conversation). The American democratic tradition was built on the religious classics derived from Jonathan Edwards and the Puritan Covenantal tradition, and developed and enlarged by such enlightenment figures as Jefferson, Madison, and Franklin, down to Emerson, Dewey, and Royce. Thus, claims Tracy, since Catholic social teachings are increasingly within this frame of discourse, there is much to be gained by a serious conversation between liberalism and Catholic teachings as both rethink their epistemological-ethical grounds.

### Struggling to Confront the Modern World

In Part III, "Practices and Institutions," Paul Sigmund discusses tensions, both internal and external, that the Church faces. There are the strains, now all too evident, between the autocratic, hierarchic papacy, and the growing numbers of Catholics throughout the world hoping for a more democratic church. Externally, Sigmund points to the tensions in American society over church teachings on sexual issues: homosexuality, abortion, and pornography, to list a few. The Church views these practices as fundamental violations of natural law. While no one should quarrel with the Church's right to converse in the public domain, there is concern that on such moral issues the Church's absolutist stance is not conducive to the kind of dialogue that must characterize a pluralist democracy. Despite this concern, Sigmund ultimately concludes that, on balance, the church provides an important communitarian leavening that helps counter the individualistic liberalism that has gained such hegemony in American society over the past 30 years.

Chapters 10 and 11 take a distinct turn as Mary Segers examines feminism, liberalism, and Catholicism, and Laura Gellot focuses on the family, liberalism, and Catholicism. Both adopt feminist critiques of traditional Catholic teachings about the family and the role of women in society, while distancing themselves from a feminist critique that sees no hope for change in the autocratic, patriarchal teachings of the Catholic Church. And while they worry about the stifling and limiting communal norms that manifest themselves in Catholic teachings on the family and women (their critiques include the writings of John Paul II), they continue to look to the writings of religious feminists to help prod the Church to action.

So, even as liberalism provides women with surer signs and symbols of respect, individual dignity, and equal opportunity, Segers and Gellot recognize that family life and the entire social fabric suffer when individualism becomes an end in itself. On the other side, even as they find in Catholic teachings the surer signs of the recognition of our necessary interdependence, so also do they fret that family and society suffer from the Church's restrictive teachings on human sexuality, and its view of women as somehow biologically limited by their nurturing nature.

The concluding chapter by James Provost reviews the history and present state of canon law on the rights of persons in the Church. While the social nature and communitarian orientation of Catholic teachings are once again reaffirmed, the author questions whether the rights of persons listed in the code are rights in any meaningful way. That is, the code is set up to protect the hierarchy and the institution, rather than the individual Catholic or even the faithful taken as a whole. Due process procedures are lacking, and Provost concludes that there is much to be done before these rights become part of the lived experience of Catholics.

As an American Catholic who grew up committed to the tenets of liberal democracy, and who felt vindicated and liberated by the documents of Vatican II, I approached this book a bit skeptical about what there might be to learn from it. I am happy to report that I found the book a rich reward for my efforts, and recommend it to a wide spectrum of audiences. For many Catholics this book can provide a more systematic understanding of the events that have shaped their

lives as Catholics and liberals. To scholars who have only a general idea about the struggle between the papacy and liberalism, this book is an excellent source that relates more than two centuries of liberal thought, theory, and ideology to the evolution of Catholic social teachings on some of our most pressing contemporary issues (individualism and the marketplace, abortion, feminism, and religion, to list just a few). The book would also be of value to conservatives who are open to the possibility that conversation about liberalism in its several manifestations, and Catholic social teachings as they have been evolving, might be of benefit to them as individuals as well as to the larger society.

Much of the story of Catholicism and liberalism is yet to come. In his Afterword, Hollenbach reminds us again how much the latter has transformed the former. It remains to be seen whether Catholicism can now help transform the excesses of liberalism into a more socially responsive philosophy.

## Order from Chaos; Public Interest from Greed

Lawrence E. Mitchell

Jerry L. Mashaw, *Greed, Chaos, and Governance: Using Public Choice to Improve Public Law* (New Haven and London: Yale University Press). 256 pp.

How can we assure that our government is both responsible and responsive? How can we hold onto our ideals of democratic government while accepting the realities of factionalism and self-interest? This is the interesting and difficult (and of course perennial) question that Jerry Mashaw tackles in his book, *Greed, Chaos, and Governance: Using Public Choice to Improve Public Law*. Mashaw's particular focus is the legislature, since the legislature is the primary focus of the public choice school about which he writes. After all, the judiciary is not necessarily meant to be responsive. And (an important point for Mashaw's argument which I will later discuss), the president stands more or less alone and transparent in his actions, and therefore has

every incentive, at least in a first term, to perform as “the people” would like.

Mashaw’s particular concern is the widespread dominance in academic discourse of the public choice school of analysis, and the relative despair in which it leaves us regarding the current state of legislative and administrative affairs. To grossly oversimplify, public choice theory sees participants in all aspects of the legislative process as rational economic actors, each of whom—from fund-raising congressperson to protection-oriented lobbyist—is out to get all that he or she can, the public be damned. Legislation thus becomes another form of dealmaking, and the legislative process a market in which the spoils go to the highest bidder. As the argument goes, the further from the legislative process these bargains occur—the deeper and more opaquely into our complex and often Byzantine administrative process—the less well the public is served.

Also of concern to Mashaw is the possibility that wholesale acceptance of public choice theory, and its underlying assumptions about human nature and the political process, will have the undesirable effect of leading us to conclusions about ourselves that we might otherwise not have reached. In particular, it may lead us to believe that we truly are nothing more than grasping, rent-seeking maximizers. Mashaw fears that this ultimately will generate cynicism and despair about the possibility of achieving real public gains through governmental action. At the same time, he is equally concerned that we not overreact in accepting the leading opposing vision of government, the civic republican ideal, which idealizes the public-spirited and altruistic individual working to achieve the common good. As Mashaw sees it, we cannot reject wholesale the descriptive power of public choice theory, for it does tell us something of who we are and, as a result, of what it is possible to achieve through government. At the same time, he is careful not to abandon our ideals.

This is a dense and rich examination of the contributions and failures of public choice theory in explaining a variety of political phenomena, ranging from the lowest level of Supreme Court scrutiny of legislation to the question of whether the current administrative state is truly responsive to democratic concerns. In a review of this nature, I will surely not be able to explore all of these complex and

subtle arguments. Thus I will look, as an example, at the last-mentioned issue: the responsiveness of the administrative state.

#### Self-interest in Politics: New Discovery or Old News?

So, can public choice theory be combined with a faith in government such that we can see government as serving truly public ends, or is government doomed always to be beholden to narrow interest groups? Mashaw sets out to explore whether our current administrative arrangements are, on the whole, public-regarding and legally defensible, and concludes—rather convincingly I think—that they can be. He starts by trivializing one of the central public choice assumptions—that all politics is interest group politics. Of course it is, says Mashaw, and thus has it always been. Mashaw sees most of the issues on which public choice theorists have commented as necessarily divisive. That is simply an inevitable consequence of politics in a pluralistic society. But this does not mean that the political process cannot be public-regarding.

Mashaw also makes an important and useful distinction between broad philosophical and policy issues of national scope (over which people disagree in broad brush and express their preferences in presidential elections), and more local politics (in which preferences may be—although are not necessarily—more narrowed and refined and show themselves in congressional elections). The degree of divisiveness is a matter of the scope of the issue. This is a distinction that public choice theory does not give adequate attention to, as its primary focus is on issues that are national in scale.

I have long been skeptical of the claims of the public choice school (and, in its private law iteration, Chicago-style law and economics), particularly with respect to its modeling of human nature and the inevitable normativity underlying its claims. Mashaw's achievement is a careful and balanced look at what there is to learn from this methodology, while retaining a healthy skepticism and—more importantly—clearly separating the normative from the descriptive. He is surely right that public choice analysis can help us to systematically think “about how to restructure a political process that cannot eliminate the pursuit of self-interest, and that also has complex and nonobvious interactions.” This provides a detached counterbalance

for those of us who believe that governmental solutions are the first choice line of attack on social problems, highlighting where our reform ideas may be misguided, not work, or have unintended consequences.

### Don't Forget the President

Now to Mashaw's principal professional concern, the administrative process. As he points out, "[m]ost law is legislative in origin but administrative in content." The vital question then becomes the extent to which administrative officials ought to be permitted to make political decisions. He rehearses the constitutional arguments for and against the current reality that they do, and begins to develop the public choice critique. Most interestingly—and counterintuitively—he makes the argument that public choice theory is wrong to believe that administrative decision making is opaque and unresponsive, and is simply a means to permit legislators to duck accountability for their actions, reducing public welfare at the same time. Part of his answer relies on the internal illogic of the public choice argument. The problem cannot be (as public choice theorists would have it) that vague delegations of legislation are welfare reducing because they permit political logrolling—because vagueness necessarily leaves allocative decisions to administrators and not politicians. By delegating decision-making authority, legislators actually lose out on the chance to make deals.

In addition to suggesting the weak foundation of the public choice school, Mashaw makes an argument in favor of broad delegation. The linchpin is the government official who tends to be overlooked in the public choice focus on legislative and judicial decisions—the president. A major reason why we care who serves as president, says Mashaw, is that presidents are heads of administrations, appoint administrators, and oversee (and influence) administrative agencies. To the extent that legislation provides vague delegation to administrators, the relative transparency of presidential policy and the influence (at least for first-term presidents) of fairly imminent reelection contests suggest that administrative responsiveness to democratic concerns can be achieved through the political process quite nicely.

Another interesting point in this argument draws from the voting theory branch of rational choice. This branch tells us that in order to avoid endless vote cycling where multiple policy choices exist, decision making must be placed somewhere. The advantage of placing it in administrative agencies is that unlike other possible delegates—“rules committees, random selection, and providing vetoes to particular parties”—administrative agencies operate within legal constraints. Thus they may be the best alternative. In fact, Mashaw argues that delegation to administrative agencies “may indeed promote the rule of law” precisely because of those legal constraints.

Mashaw shows how this argument in favor of a delegation to administrative agencies illustrates the dangers and benefits of using public choice theory. He argues that the delegation example cannot predict the welfare effects of strategic behavior by politicians precisely because of their relative independence and the legal controls imposed upon them. In addition, this example shows the incompleteness of public choice analysis, which ignores the president as a major (and responsive) political actor. It also ignores the ways in which public choice theory’s attempts to deal with apparent irrationality (by trying to squeeze apparently irrational behavior into a rationality framework) doom its axiomatic concept of rationality to a level of indeterminacy that destroys the model’s predictive powers.

What ultimately makes this book such a pleasure is that it is in the finest tradition of academic inquiry. Mashaw clearly has his biases, but he is able to put them to the side as he explores the ways in which public choice analysis can and cannot explain political phenomena. In the end, he provides hope for a vision of government that is truly responsive to the concerns of Americans in a way that public choice proclaims impossible.

## LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

---

### From the Libertarian Side

#### Pornography Rights for Pedophiles

In 1995, members of a New Jersey state task force on child molestation visited Avenel, the state facility for repetitive and compulsive sex offenders, to study the re-offense rate among sex offenders and Avenel's effectiveness in treating them. (Avenel is the institution where Jesse Timmendequas—the man whose murder of Megan Kanka prompted “Megan’s Laws” throughout the country—was treated.) During the tour, members of the task force were surprised to see centerfolds and pornographic magazines in many of the prisoners' cells. This observation prompted the lawmakers in the task force to write a bill banning “sexually explicit material” from Avenel, which the state legislature unanimously passed and Governor Christine Todd Whitman signed into law.

In reaction to the ban, two inmates filed a lawsuit stating that it violated their First Amendment rights. In 1998 a Federal District Court judge ruled in their favor. According to a *New York Times* editorial by Dennis Saffran, Judge Alfred Wolin agreed with the plaintiffs' contention that reading adult magazines was beneficial because it “refocuses their sexual desires.” But, Saffran notes, the “refocusing desires” logic is rebutted elsewhere in our legal system. In several sexual-harassment cases the displaying of soft-core pornography has been found to “create a hostile work environment.” The sum result is that an employee could be found culpable of sexual-harassment for hanging a picture of a suggestively dressed pinup in his

office, while a convicted pedophile has a right (and a duty?) to place something even more egregious in his cell.

### Didn't See This Coming?

California prisoners are usually granted parole after having served a part of their sentence. However, according to the *Los Angeles Times*, general policy has been for officials to revoke a mentally ill prisoner's parole under the argument that the inmate still needs "continued treatment." This is not only for the benefit of the community, but, ostensibly, for the equally compelling reason of preventing people from being released when they obviously do not possess the needed skills for living in the mainstream.

In July 1998, an appellate court rejected that practice and ruled that while the parole board can revoke a mentally ill prisoner's parole, it can only do so *after* the inmate has been released. In order to have parole revoked, a prisoner has to be "in the community" and suffer from the mental illness without getting necessary treatment. In line with this ruling, California state penitentiaries paroled 93 mentally ill convicts in September, including James Edward Porter. Parole officials took Porter to a Fresno motel and equipped him with an electronic monitoring device to alert them if he tried to leave. However, Porter was content to stay at the motel; twelve hours after his release, he broke into a motel room and raped a 63-year-old woman.

## From the Authoritarian Side

### The Goal Is Balance, Not Big Brother

According to the *New York Times*, Patrick Knowles was driving 43 miles per hour in a 25 mph zone in Iowa when he was pulled over by a police officer. Going through the normal procedure, the officer determined that Knowles's license was valid and that he had no outstanding warrants for his arrest. The officer then issued a speeding violation. However, a simple speeding ticket opened the door to a complicated mess. After issuing the ticket the officer then searched the car, found marijuana and a pipe, and placed Knowles under arrest.

The officer's search and consequent arrest were legal under a 1983 Iowa law that essentially authorized police to search a car after giving a citation for speeding or any other common traffic transgression. The implications of this law meant that the smallest of infractions would remove the driver's Fourth Amendment protections. Mr. Knowles appealed the case up to the Iowa Supreme Court, which upheld the law.

The case was eventually heard in the U.S. Supreme Court, which ruled in December 1998 that the Iowa law violated citizens' rights. Noting that searching after the fact was trying to kill two birds with one stone, Chief Justice William Rehnquist stated that "The offense is complete when the car is brought to a stop. . . . [T]here is no more evidence to look for." In other words, rights cannot be curbed under such slight pretexts.

#### A Jolt of Justice?

In Montgomery County, Maryland, 1 to 2 percent of the inmates brought to court attack officers and threaten judges. With this in mind, authorities have added a new weapon to their efforts to prevent such outbursts from occurring: stun belts. Operated by remote control, the stun belts are capable of delivering 50,000 volts of electricity for an 8-second dose. Inmates are given a form explaining that a deputy with a remote control can shock them if they tinker with the belt, hide their hands, disobey orders, or make quick and aggressive movements.

The belt is powerful enough to cause a 250-pound man to collapse and scream in pain, says the *Washington Post*. A videotape provided by the manufacturer shows several police officers who agreed to test the belt. The participants are seen falling to the ground, where they "flopped around like fish." An officer who had to endure a jolt for part of his training said the pain felt like "you had nine-inch nails and you tried to rip my sides out, and then you put a heat lamp on me." In California, a jury will soon hear a case involving a judge who allegedly had a deputy give a jolt to an inmate who was representing himself, in order to stop the inmate from talking.

## From the Community

### We're Better than We Think We Are

Ask most Americans about the moral temperature of the country and the answer will probably be that it is well below 98.6 degrees. President Clinton's latest scandal and the shrapnel associated with it would probably plunge the answer even lower. Politicians and social commentators have all been heard discussing America's steady moral decline. According to *The American Enterprise*, Americans cite such decline as the main problem the United States needs to address, rating it over any economic, foreign, or security issue. It would be easy for the average person to conclude that we must live in a morally dark and corrupt era.

Not so, says David Whitman in the February 22 issue of the *New Republic*. "If one looks beyond the anecdotes, the picture of how people behave is unexpectedly encouraging." Today's Americans are less inclined to imbibe excessively, drive while intoxicated, or depend on welfare than Americans 25 years ago. We tend to do more volunteer work for the needy; we are more charitable and spend the equivalent, if not more, time in church. Interestingly, especially in light of the cynicism many Americans have about the state of politics, political corruption cases have decreased. On other significant social issues, statistics show that juvenile crime, teen suicide, and national homicide rates have lowered.

But Whitman is quick to point out that not everything comes up roses—child abuse and the number of deadbeat parents are both on the rise. Nonetheless, while one could look at certain moral indices of today and show that even if improved they are still worse than in the 1950s, Whitman hastens to remind us how substantially better our country is on a significant number of social issues. Thanks to civil rights activists, race discrimination has significantly decreased, women have considerably more autonomy, elderly living conditions have improved, and the blatant discrimination endured by the disabled and homosexuals has been drastically reduced. So, while it seems that the country sees itself as severely lacking in virtue, our behavior would seem to indicate otherwise.

## A New (albeit 'Eccentric') Twist on an Old Theme

With the millennium rapidly approaching, nervous talk about the Y2K bug has become a dominant topic of conversation. We have all heard about people who are building backyard bunkers and hoarding food and other resources, all in preparation for the devastation they predict the bug will bring. Not so on the island of Kauai, Hawaii, where residents have taken a more cooperative approach.

According to the American News Service, the Community Self-Reliance Cooperative in Lihue, a village on the island, sought to establish neighborhood first aid stations, food storage facilities, and community gardens in case the worst predictions of Y2K come true. But when they approached others with their ideas people were either apathetic about the bug or fed up with all the doomsday predictions. Undaunted, the group came up with another approach and decided to appeal to their community on a note everyone was more familiar with: hurricanes. Having suffered from two damaging hurricanes in the last decade, this latter approach carried more resonance.

The group posted correspondence with the mayor, local businesses, hospitals, and others on a website; one hundred representatives from various sectors of the community came to the first public meeting. A member of the Cooperative agreed to serve as a liaison for the community on a mayor-assigned task force. The task force will send out a questionnaire to all island residents inquiring as to whether they would be willing to help in a disaster; whether they have any specific needs; whether they would be willing to accommodate a neighbor in difficult times; how much available space they have for food storage; and whether or not they have any skills that would be helpful during a disaster. A local corrections center with inmate-run gardens has offered to help with the planting of community gardens. Says Karlos deTreaux, founder of the Cooperative, "the grassroots is running the show. I have no question in my mind that it [the community plan] is going to happen and the act will heal the community." And even if the scare never materializes, residents say they are a better community for having prepared for it together.

*Rachel Mears*

## CONTRIBUTORS

---

WILLIAM D'ANTONIO is a professor of sociology at The Catholic University of America. He is currently examining the religious factor in the U.S. Congress.

AMITAI ETZIONI is the author most recently of *The Limits of Privacy*.

ROBERT P. GEORGE is a professor of politics at Princeton University and a former member of the U.S. Commission on Civil Rights. His most recent book is *In Defense of Natural Law*.

JOHN O. HALEY is a professor of law and international studies at the University of Washington. He has authored and edited several books on Japanese law, including *The Spirit of Japanese Law*.

NAT HENTOFF is a syndicated columnist with the *Washington Post*, where his article originally appeared.

EVERETT C. LADD is the executive director of the Roper Center for Public Opinion Research at the University of Connecticut and author of *The Ladd Report on Civic America*.

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

ANNE MACKIN is a planner and writer based in Boston and a contributor to *Mapping Boston*, forthcoming (M.I.T. Press).

LAWRENCE E. MITCHELL is a professor of law at The George Washington University Law School and author of *Stacked Deck: A Story of Selfishness in America*.

CYNTHIA PARSONS is a former education editor of the *Christian Science Monitor* and coordinator of SerVermont, a nonprofit agency dedicated to community service learning.

C. EUGENE STEUERLE is a senior fellow at the Urban Institute and coauthor of *The Government We Deserve*. The full version of his essay has been published as a position paper by The Communitarian Network and is available at their website ([www.gwu.edu/~ccps](http://www.gwu.edu/~ccps)) or by calling 1-800-245-7460.

STEVEN M. TELES is a professor at the Institute on Race and Social Division at Boston University and author of *Whose Welfare? AFDC and Elite Politics*.