

# The Responsive Community

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## UP FRONT

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### The Dialogue between Cultures

Johannes Rau

*The following is excerpted from the text of a speech given by Mr. Rau, president of the Federal Republic of Germany, on April 11, 2002, at the conference "Religion, Culture, Nation, Constitution: Multiple Identities in Modern Societies."*

**T**he cultures of the world are coming closer together and must try to live with each other and to talk with each other. For some time now this has been called the "dialogue between cultures."

Strictly speaking, however, cultures cannot hold dialogues. Only people can do that. The better people are able not only to provide information about their own culture but also to think themselves into other cultures, the more effectively they will be able to conduct such a dialogue. . . .

The term "dialogue between cultures" has now established itself, and not only that: it appears as something of a categorical imperative. Wherever disasters and terrible events take place in the world, wherever hatred, war, and terrorism rear their ugly heads, that is where the "dialogue between cultures" is needed. The demand for such a dialogue has become a natural one.

Firstly, it must be said that many events like the one beginning here today show that the dialogue between cultures has already progressed beyond the initial stages.

It is no longer merely a matter of getting to know other cultures; already it is a matter of identifying what cultures have in common, or of creating new things in common, of agreeing on a canon of values, of seeking ways to resolve conflicts and developing models for harmonious coexistence.

The dialogue between cultures has become a natural demand. But particularly where things are taken for granted, where something seems plausible to all, it is often important to keep on asking questions.

What can we actually understand by the term “dialogue between cultures”?

Firstly: one can only hold a genuine dialogue if all partners really do take each other seriously. A real dialogue can only begin once there is a mutual awareness and sense of equal value and equal dignity.

Generally, the strong do not hold a dialogue with the weak, but rather try to suppress them or to impose their own views.

In turn, the weak do not hold a dialogue with the strong, but go on the defensive and try to cling to everything they possibly can.

These are psychological and sociological givens which cannot be set aside by an appeal to goodwill. And that also means, putting it crudely, that rich and poor do not hold a dialogue between cultures, but have to fight for a real political and economic balance. A dialogue between cultures presupposes justice or just conditions, or at the very least the desire and ability to create these.

A second thought: anyone embarking on a dialogue—and not only the dialogue between cultures—has already taken a fundamental decision, that much is certain. By the mere fact of holding a dialogue, he has recognized that he alone is not in exclusive possession of the whole truth. Anyone in possession of the whole truth is doing missionary work, not conducting a dialogue deserving of that name.

As the late Hans-Georg Gadamer put it: anyone embarking on a dialogue is leaving himself open to the discovery that others may perhaps be right.

To put it another way: it is impossible to hold a dialogue with fundamentalists. Even to start a dialogue is to end fundamentalism.

A third point: dialogue presupposes peaceful intentions and motives. Anyone entering into dialogue is signaling, if he is taking it seriously, that he does not intend to kill his fellow participants at the next opportunity. So a dialogue between cultures basically presupposes peace, or at least peaceful intentions and the willingness to live in peace. It is not a substitute for peace negotiations, peace agreements, or political compromises aimed at establishing peace.

In my view, this also means that the dialogue between cultures is not primarily a matter for politicians and diplomats. They may perhaps initiate it, and they will also benefit from it. But we must not mix the two spheres, for all our good intentions. Not least so that the dialogue between cultures cannot become a mere label used to piously cloak or hide interest-led foreign policy.

In a dialogue, after all, every participant must know who he is, for whom he speaks, on whose behalf and with which history. He has to know who he himself is—and how others see him.

It seems to me that there are some difficulties in this regard with certain projects, and perhaps we will talk about them during this meeting.

Let me give you an example. We talk, for instance, about the “dialogue between the West and Islam.” This is an initiative by various heads of state which my predecessor launched and which I have continued. But everyone knows that this is in fact an incorrect, or at least inexact, description of the partners involved.

Who is “the West”? Does it mean “the Christian world”? But that would make it a dialogue between religions, and heads of state would do well to leave it alone.

Or does it mean “the Occident including the Americas”? But that is a pluralist entity of which no one body would be representative.

Or does “the West” mean enlightenment, reason, rational discourse? But do we want to suggest that these qualities are absent from other cultures? And have there not been, are there not still, irrationality, barbarism, and genocide in “the West”?

I don't even want to try to describe what can be understood on the other side by "Islam." Here, too, there is considerable scope for interpretation.

The fact is that the attempt, the project, or indeed the imperative of a dialogue between cultures is not an obvious one, but that it even questions things which seem obvious.

First of all, every participant in the dialogue is himself questioned. He has, for himself, to define who he actually is. His identity is up for debate. In this context we notice how much of a mixture we all are, as Ernst Meister once said.

Kofi Annan, the secretary-general of the United Nations, commissioned a work which was published in book form a few months ago with the title *Crossing the Divide*. In his foreword, the secretary-general emphasizes this: "More than ever before, people understand that they are being shaped by many cultures and influences, and that combining the familiar with the foreign can be a source of powerful knowledge and insight."

He goes on to say: "People can and should take pride in their particular faith or heritage. But we can cherish what we are, without hating what we are not."

Take pride in our faith or heritage? Cherish what we are?

This idea still provokes mixed feelings in many Germans, particularly among the older generation. Can we be proud of our German heritage, of our German identity, given our history—in brief, "after Auschwitz"?

On the other hand, we expect migrants to be willing to integrate, and we have promised migrants to help with integration. Can we provide such help if we are not sure of our identity, if we cannot define what migrants are to integrate into?

The Potsdam-based political scientist Jürgen Dittberner has referred to the banal fact that taking account of the dominant culture simplifies orientation.

Wolf Biermann once put it like this: anyone who is not at ease with himself cannot be at ease with others.

Identity has something to do with conviction, with authenticity, with credibility. Identity means having a feeling of belonging to a group, a nation, a country, while at the same time retaining an awareness of one's own individuality. Identity is not a straightforward, unalterable concept, but a fragile composition which must be maintained and cherished, but also repeatedly reviewed. If one is not aware of one's own identity—and here Wolf Biermann is probably right—then one cannot be aware of and therefore one cannot accept the identity of others.

Today and tomorrow we will be talking about “religion,” “culture,” “nation,” and “constitution,” in other words the complex spheres of life which together build up identities, both individual and collective.

One indispensable term which to a certain extent stands above all else is not expressly included in the title of our meeting: tolerance.

If we can agree that “identity” and “identification” also mean recognizing and accepting the identity of others, then we cannot make progress in the discussion without the term “tolerance.”

In our modern society, in a global community, in which people of very different ethnic, cultural, religious, and political backgrounds must and want to meet and live together, “tolerance” cannot simply be interpreted as “ignoring” or just “putting up with” others, or even simply “live and let live.”

If I am indifferent about something, if it does not affect me, if it does not touch on my personal sphere, I am not required to display tolerance. Tolerance is called for when something foreign or unfamiliar affects my thinking and my feelings, when my own traditions and orientations encounter unfamiliar traditions and orientations. In other words, tolerance is something active. Tolerance presupposes knowledge and understanding, but also—and here we come full circle—an awareness of one's own identity.

Tolerance cannot be achieved once and for all; again and again it will reach its limits, will be faced with new questions and new tasks: How much of the foreign or unfamiliar can we absorb into our personal life, into the life of our society, without endangering our own identity? How much adaptation can we demand of those for-



eigners who come to us without endangering their identity? These are questions which arise and must be answered every day.

Tolerance is acceptance on the basis of different identities—but it probably cannot exist if the two sides do not have at least something in common. It can only fulfill its conflict-solving and peacemaking potential if all involved can agree on certain fundamental values.

Back in 1948 the countries joined in the United Nations pledged to observe human rights. Article 1 of the Universal Declaration of Human Rights states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” I should like to point out that people from various cultural backgrounds and adherents of various religions were involved in drawing up this Declaration.

Do these words from 1948 still hold true today? Can it be enough? Can values, and especially shared values, be established at roundtables or conferences, or even in a “parliament of the world religions”?

Here, too, the questions arise: Who is speaking? Who is speaking for whom? Who is authorized to make binding statements? And who feels represented?

## The Benefits of Surveillance

Eugene Volokh

**A**utomated cameras are the hot new law enforcement tool. Cities use them to catch red light runners and speeders (I was caught by one myself earlier this year). Washington is setting up hundreds of cameras to monitor streets, federal buildings, subway stations, and other locations. Police used cameras with face recognition technology at last year’s Super Bowl to catch known fugitives.

Many of my libertarian friends are outraged by these cameras—creeping Big Brotherism, they say. But the analysis can't be as simple as "surveillance bad, privacy good"; and at least in some situations, camera systems can promote both security and liberty.

To start, the problem with cameras can't be privacy. These cameras are in public places, where people's faces and cars are visible to everyone. They catch only what any passerby, and any police officer who might be present, can lawfully see. For the same reason, cameras don't involve "unreasonable searches and seizures," in the words of the Fourth Amendment. The Supreme Court has recognized that observing things in plain public view isn't a "search" at all, much less an unreasonable one.

In fact, while we should be concerned with protecting our liberty and dignity from intrusive government actions, the red light cameras are actually less intrusive than traditional traffic policing. The law recognizes that even a brief police stop is a "seizure," a temporary deprivation of liberty. When I was caught on a red light camera, I avoided that.

I avoided coming even briefly within a police officer's physical power, a power that unfortunately is sometimes abused. I avoided the usual demeaning pressure to be especially submissive to the police officer in the hope that he might let me off the hook. I avoided any possibility of being pulled out and frisked, or of my car being searched. I didn't have to wonder if I had been stopped because of my sex, race, or age.

And while cameras aren't perfectly reliable, I suspect that they can be made more reliable than fallibly human officers—so I may even have avoided a higher risk of being wrongly ticketed. (It helps that the photos mailed with the ticket showed me in the driver's seat, my car's license plate, and the precise place my car supposedly was when the light turned red.)

The question shouldn't be "Is the camera perfectly reliable?" but "Which is more reliable—the camera, with no observation by the police and little recollection by the motorist, or the observation and memory of the police officer and the motorist, without the camera?" People are notoriously bad at observing and remembering exactly

what happened. Just how fast was I driving? Exactly where was I the moment the light turned red? Few motorists can know this with any accuracy even a minute or two after the fact. Even police officers are probably not very good at observing this. So I think the camera evidence is generally more reliable than the police officer's and the motorist's observations—assuming, of course, that the camera is properly calibrated, but it's easier to verify the camera's calibration than the police officer's observational acuity.

Some people object that such automatically gathered evidence violates traditional fair trial guarantees, such as the right to confront witnesses, the freedom from self-incrimination, and the presumption of innocence. These objections are, I think, unsound. The law has long recognized that people's guilt can be proven using physical evidence, whether it's fingerprints, DNA, or a traffic photograph. The burden of proof in such cases remains on the government, and the defendant remains free to cross-examine the human witnesses against him and to introduce testimony about the supposed unreliability of the physical evidence against him. True, the physical evidence can be powerful, and, like other powerful evidence, it can put the defendant in a position where he faces conviction unless he comes up with some persuasive explanation for his actions. That, however, simply shows that the government has *met* its burden of proof, not that the burden has somehow been improperly shifted.

Automated traffic cameras can indeed change traditional legal rules in one important way. A camera can't always identify the driver, and drivers can exploit this by wearing sunglasses, caps, and other relatively unobtrusive disguises. The public will be understandably reluctant to let these drivers get off scot-free just because the camera didn't get a positive identification—and there will therefore be pressure simply to impose liability on the registered owner, regardless of who was driving.

But this is precisely what is done for parking tickets, where law enforcement likewise can't identify who the driver is. We generally accept this sort of owner liability, partly because the penalty is only money, not jail time, and partly because we recognize that owners can rightly be held responsible for the actions of those to whom they entrust their cars. We might conclude that such owner-liability tickets

shouldn't count towards the loss of a driver's license, but imposing a fine on the owner shouldn't be a problem.

### Expanding Government Power

Cameras are not cause for concern, then, when it comes to individual privacy, fairness, or accuracy; the real issue is government power. Cameras are a tool that can be used for good—to enforce good laws—or for ill: to enforce bad laws, to track the government's political enemies, to gather ammunition for blackmail, and so on.

In this respect, cameras are like other policing tools, such as the guns that police officers carry, wiretaps, the ability of police departments throughout the nation to share data, and even police forces themselves. Each of these tools can be abused and has been abused. We accept this risk because the tools are valuable, and because we've set up control systems that can help diminish the risk.

So we have to consider each camera proposal on its own terms and ask what I call the Five Surveillance Questions:

1. What concrete security benefits will the proposal likely provide?
2. Exactly how might it be abused?
3. Might it decrease the risk of police abuse rather than increase it?
4. What robust control mechanisms can realistically be set up and maintained to help diminish the risk of abuse?
5. And, most difficult, what other surveillance proposals is this proposal likely to lead to?

Answering these questions for traffic cameras suggests that they are a good idea, at least as an experiment. They seem likely to help deter traffic violations. They can't easily be misused for gathering other sorts of information or for suppressing dissent. They decrease the discretionary and sometimes oppressive power of police over motorists.

There is a danger that local governments, which make money from traffic tickets, will use this cheap law enforcement device primarily to raise revenue without regard to whether it improves safety. Governments could, for instance, be tempted to make yellow lights shorter (perhaps unsafely short) or to set speed limits too low. This

sort of moral hazard is always present whenever the government can financially profit from law enforcement.

But the solution to this, I think, is not to reject the useful technology, but to set up administrative control mechanisms to prevent its misuse; and precisely because cameras are evenhanded and catch the rich and powerful alongside everyone else, there are bound to be strong political forces pushing for such control mechanisms. Yes, bureaucrats do like getting the money from the traffic fines, but their bosses like to get reelected. When enforcement is widely spread and not focused on just a few people, the political reaction to any possible abuses is likely to be quite strong.

One friend of mine suggested that traffic tickets are a form of tax and that making the tax easier to collect will mean that this tax rate will effectively become too high. That might initially be true, but which sort of tax is fairer and likelier to be set at the proper level, a tax that is applied indiscriminately to thousands of people, or a tax that is borne by whomever a police officer chooses to pull over?

The one big unknown is the answer to the fifth Surveillance Question. Once the cameras are set up, might the data eventually be used not just to catch red light runners but to photograph and identify all drivers? More about that shortly.

Other types of cameras, such as cameras at stadiums that look for known fugitives, or cameras mounted on government buildings and streetlamps that monitor the surrounding area for crime, are also probably worth experimenting with. They can at least theoretically help catch some street criminals and deter others (though we should always realize that crime control proposals that sound worthwhile may end up not working in practice). I'm not sure how much the cameras would help fight terrorism, as some people have suggested, but if they just catch street criminals, that's not chopped liver.

These cameras pose some risk of government abuse, from petty indignities, such as security guards using cameras to ogle women, to more serious misuse, such as officials trying to find possibly embarrassing behavior by their enemies. But they can also reduce the risk of government abuse: the camera that might videotape a mugging can also videotape police stops of citizens, providing evidence of possible

police misconduct and maybe even to some extent deterring such misconduct. And videotape evidence can decrease the risk that the wrong person will be arrested.

### What about the Slippery Slope?

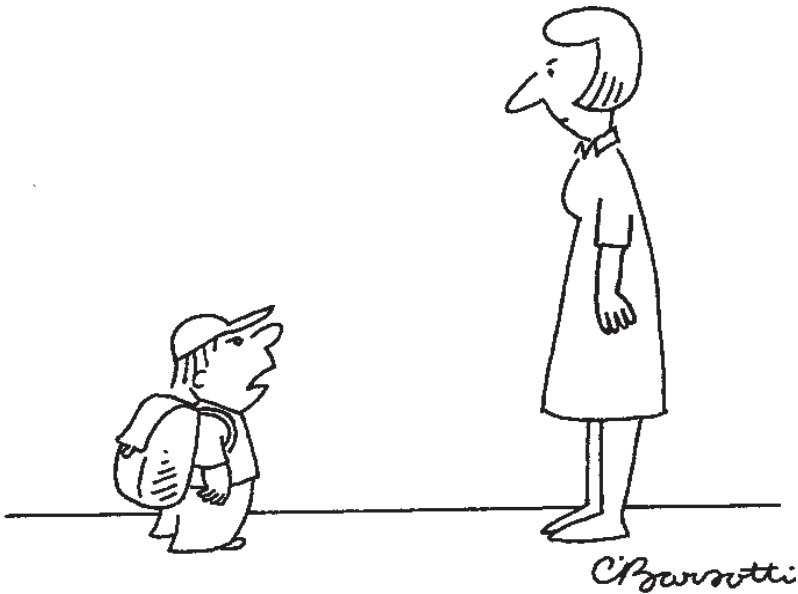
The modest proposals that we hear today are not, by themselves, particularly troubling. I must acknowledge, though, that they do carry the potential for future danger. Once voters get used to surveillance, they might become more tolerant of the government using the data in ways that do pose more risk of abuse.

Proposals to let the government connect cameras to face recognition software, keep the recordings indefinitely rather than just recycling them after a few days, and merge the data in a centralized database—measures that could indeed be abused by some officials—might become more politically viable once cameras in public places are a part of our daily lives. Slippery slope arguments are often overstated, but in a legal and political system that relies heavily on precedent and analogy, the slippery slope is a real risk. Moreover, once the government invests money in cameras, voters might want to get the most bang for their buck by having the police store, merge, and analyze the gathered data. This slippage isn't inevitable, but it's not implausible.

But even if there is slippage, it's important that the potential for abuse is limited and limitable. The danger isn't the government looking into homes, or tapping private telephone conversations. Rather, it's that cameras in public places will be abused by officials who want to harass or blackmail their political enemies.

There are such rotten apples in government. If you think that there are very many and that law enforcement is fundamentally corrupt, you should oppose any extra tools for the police, because in your perspective the tools would more likely be used for ill than for good, but I don't take so dim a view. I think that for all its faults, law enforcement is filled mostly with decent people. And more importantly, good law enforcement is vitally necessary to the safety of citizens of all classes and races.

Instead of denying potentially useful tools to the police, we should think about what control mechanisms we can set up to make abuse less likely, and we should recognize that some surveillance tools can themselves decrease the risk of government abuse rather than increase it.



*"I'm taking my voucher and going to circus school."*

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## ESSAYS

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### CORE VALUES

#### The Trouble with Bonding

Stephen Macedo

**W**hat is the proper relationship between public and faith-based institutions? It has become increasingly clear that the real question is not whether public funds will flow to and through religious and faith-based schools and social service agencies, but rather on what terms and under what regulations and conditions. I am prepared to accept that these organizations can help to provide quality social services and that it is unfair to exclude them from competing for a share of public dollars along with other nonpublic organizations in civil society. However, if religious institutions want to be treated like other organizations in civil society and allowed to serve as conduits for the delivery of social welfare services, including public education, they should expect to be treated like other institutions in civil society and to be subject to regulations that ensure accountability to the public and compliance with a range of public values. Doing this will, of course, likely lead to complaints from some religious groups and organizations that their religious freedom is being constrained and that public policies are favoring some and disfavoring others. How should we respond to such complaints?

Religious organizations are vitally important parts of civil society, but the ideal of civil society is far from neutral with respect to



various forms of community and contending religious visions. Insofar as we look to civil society institutions to partner with public agencies to advance important public purposes—with tax dollars—we should not be surprised if some communities (religious and otherwise) are not altogether happy with the conditions that come attached to public funds. Robert Putnam’s work on how intermediate associations and social networks help make democracy work can help us understand one important basis for policies that have the effect of favoring some communities over others.

### The Moral Distinctiveness of Social Capital

Putnam’s conception of social capital will be well known to most readers of this journal. Societies are high in social capital when trusting attitudes prevail and cooperative activities abound among citizens. The phrase “social capital” is meant to identify a central feature of good citizenship: virtuous citizens are active in cooperative groups, associations, and social networks. As Putnam argues in his book *Bowling Alone: The Collapse and Revival of American Community*, “civic virtue is most powerful when embedded in a dense network of reciprocal social relations.” Just as physical capital is required to produce material goods, social capital is required to produce active citizens.

What is not widely noted is that Putnam’s ideal of civil society is morally substantive and distinctive; it is tied to an account of liberal democratic flourishing. Many associations, groups, and social networks will *not* qualify as contributors to civil society on Putnam’s account.

Putnam distinguishes between “bonding” and “bridging” associations. Bonding associations are “inward looking and tend to reinforce exclusive identities and homogeneous groups.” Examples include “ethnic fraternal organizations, church-based women’s reading groups, and fashionable country clubs.” Bonding associations tend to heighten distinctions between insiders and outsiders. Bridging associations are more specifically attuned to the values and virtues required by a liberal democratic social order: they are “outward looking and encompass people across diverse social cleavages.” Examples include “the civil rights movement, many youth service groups, and ecumenical religious organizations.”

Bonding associations have their uses. The intensity of the bonds they sustain can provide “crucial social and psychological support for less fortunate members of the community.” Bonding associations cannot be altogether left behind, but their exclusivity makes them intrinsically problematic in a liberal democratic context. Bonding social capital is not always to be welcomed. It is sometimes harmful because it “bolsters our narrower selves,” and “by creating strong in-group loyalty, [it] may also create strong out-group antagonism.” Bridging social capital, on the other hand, is always to be welcomed. It is an unambiguous good because it generates all the benefits of social cooperation as well as “broader identities and reciprocity.” The crucial point for Putnam is that bridging social capital promotes concern for the broader society and a willingness to cooperate with all of one’s fellow citizens, and these qualities are needed by a large and diverse liberal democracy.

Putnam does not make much of the fact, but he is obviously sorting and ranking basic human goods. He clearly favors values such as equal respect for all persons, friendship, and cooperation among all citizens across social boundaries. Particular religious and moral worldviews that prioritize their own distinctive values may come into conflict with Putnam’s ideal of civil society. Equality of respect among all citizens may be seen as at odds with the judgmentalism needed to sustain a commitment to severe forms of self-control. There are communities that do what they can to maintain strong community boundaries in order to support ethical visions at odds with mainstream values; they will not place a high value on broad social cooperation and reciprocity. Moreover, the shared and fluid cultural milieu promoted by bridging social capital may have the effect of undermining the strong bonds necessary to uphold demanding traditional sexual and moral codes that proclaim the permanence of marriage, the wrongness of premarital sex, wives’ proper subordination to their husbands, or other convictions counter to the cultural mainstream. Elevating bridging over bonding will have intentional and accidental effects that are not ethically neutral. Favoring bridging social capital means believing that undermining the moral codes sustained by bonding social capital is either good or, at least, is a worthwhile trade-off for promoting the values embodied by bridging social capital.

## Religion and Social Capital

Religious communities, like any others, can tend in the direction of either bonding or bridging. In his study of Italy, Putnam found that the uncivic regions tend to be traditionally Catholic. Where church attendance is high, divorce is rejected, and religious marriages are strongly favored over civil ones, rates of civic participation are low. The civic regions are characterized by greater evidence of secularism, but also by stronger lay involvement in religious affairs. Traditional Catholicism and clericalism promote hierarchical patterns of authority and dampen civic activity, whereas in the civic regions authority tends to flow horizontally across congregations and citizens.

Putnam argues in *Bowling Alone* that, in America, the important cleavage runs through the Protestant denominations. Mainline Protestant and Catholic churches seem to help mobilize civic engagement. They have the qualities of bridging associations: they don't monopolize their congregants' attention or discourage wider social involvements; indeed, members of these communities often help to lead secular civic groups. Mainline churches are schools of liberal democratic civic engagement. Evangelical churches, on the other hand, tend to be more exclusive bonding associations: they invest their social capital "at home more than in the wider community," and their members do not tend to become active leaders in wider civic associations. They are more concerned with reaffirming their faith and less concerned with bettering the larger society. Fundamentalist and evangelical churches offer more intense forms of communal commitment, but this inward-looking intensity seems positively to discourage participation in efforts to improve the wider society. Conservative congregations offer fewer "social outreach services or programs" than liberal or moderate ones. Strikingly, while black church involvement has always been regarded as essential to the mobilization for civil rights, the story is not so simple: "black civic engagement was positively correlated with involvement in mainline black churches, but negatively associated with involvement in black fundamentalist denominations." In sum, two trends in church attendance in America bode ill for social engagement and civic virtue: the decline of ("more worldly") mainline denominations, and the revitalization of evangelical religion, which Putnam describes as "an insur-

gent, more disciplined, more sectlike, less ‘secularized’ religious movement.”

### Discouraging Sectarianism

The appearance of the word “sect” in Putnam’s account and its association with bonding rather than bridging associations is important. In his book *The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies*, Charles L. Glenn complains that when political actors, including the Supreme Court, have branded religious communities as “sectarian,” it has typically been no more than a way to discriminate arbitrarily against religious communities.

Glenn believes that there is no reason for the government not to fund faith-based social services and schools alongside secular ones. He argues that even when receiving public funds, faith-based organizations should not, for the most part, be subject to regulations that would make it difficult for them to maintain their distinctive character and mission. From his perspective, “It is not enough that faith-based organizations be eligible for funding unless they are also protected from interference with how they approach the work for which they are funded.” Glenn believes many American policies unfairly discriminate against religious groups.

Glenn cites Richard A. Baer’s article, “The Supreme Court’s Discriminatory Use of the Term ‘Sectarian,’” in support of his claims. According to Baer, the Supreme Court’s use of “sectarian” to describe religious groups indicates its bias against religion because

Throughout American history, ‘sectarian’ has been used to exclude and to ostracize. It is a term that is used to disparage and marginalize particular groups of Americans and particular kinds of thinking. . . .

[It] always implies that there exists a contrasting mainstream, a right way of thinking, a common position that deserves to be accepted by everyone.

Glenn sums up the essential point of Baer’s analysis: “Baer argues that the Supreme Court’s use of *sectarian* is by no means neutral” (italics in original). As Baer elaborates,

the Court refers to ‘sectarian exclusivity,’ ‘narrower sectarian purpose,’ ‘sectarian division,’ ‘sectarian controversies,’ ‘po-

litical fragmentation on sectarian lines,' and 'sectarian bickering and strife.' Terms such as 'bitter controversies,' 'proselytizing function,' and 'bias' are closely conjoined with the term 'sectarian.' . . .

Conversely, the Court uses more neutral or even positive language in conjunction with the terms 'secular' and 'nonsectarian.'

Glenn joins Baer in complaining of the arbitrariness and unfairness of the pejorative label "sectarian," which is used to cast a negative light on religious groups. Is sorting communities (and not only religious communities) according to their degree of sectarianism totally arbitrary, or does it have a legitimate, civic basis?

I do not want to survey and assess the accuracy of this account of the Supreme Court's use of the category of sectarianism. In addition, the Court may or may not be right to label specific groups or institutions "sectarian," and perhaps Glenn is correct that the Court is inconsistent in its use of the term. However, insofar as groups do have the traits that the Court associates with the term "sectarian," they may be especially prone to object to legitimate regulations designed to promote liberal civic values, and such groups have no presumptive right to be accommodated.

The qualities of "sectarian" organizations in Glenn and Baer's account are strikingly similar to the worrisome qualities that Putnam ascribes to "bonding" associations. Both encourage inward-looking concern with traits and values particular to the group at the expense of wider forms of social cooperation and engagement with social problems. I want to reiterate that there are both bridging and bonding religious organizations, just as there are both bridging and bonding secular organizations. I certainly do not advocate discriminating against groups for religious reasons; I am arguing that a wariness of "sectarian" or "bonding" qualities results from the legitimate, civic purpose of promoting the goods that Putnam prioritizes in his ideal of civil society and does not reflect a bias against religion.

Many regulations and policies have nonneutral impacts on different faiths and religious communities and organizations, but these policies are often not simply arbitrary and unfair. Liberal democratic values such as inclusion, equality, and individual freedom will often

support regulations and conditions on public funding schemes that have the effect of promoting bridging associations and discouraging the qualities of bonding associations. (This is not to say that courts and policymakers have been consciously and principally motivated by the desire to promote this vision of civil society, though no doubt many at least have something like Putnam's vision of pluralism in the back of their minds.)

Programs such as school vouchers and faith-based initiatives show how regulations based on liberal democratic values can disfavor some religious groups even though these regulations are intended to accomplish civic, not religious, goals. With respect to school voucher experiments in Cleveland and Milwaukee, it is notable that in response to concerns expressed by courts and in legislative hearings, the receipt of publicly funded vouchers by religious schools has been attended by the following sorts of conditions: religious schools may decide how many students with vouchers they wish to take, but if they are oversubscribed they cannot pick and choose among children with vouchers on religious grounds (they may be allowed to prefer students with siblings already enrolled, as well as children who live in the school's neighborhood). In addition (in at least one of these cities) the schools may not impose mandatory religious exercises on children attending with vouchers. The primary justification for these conditions is no doubt equity: if vouchers are being publicly funded because religious schools provide a better education than public schools, all of the community's children should have a fair and equal chance of securing admission to those better schools. In addition, the prohibition of mandatory religious exercises helps protect the freedom of children with vouchers.

The effect of these conditions is to make religious schools that would otherwise be sect-like bonding associations open only to the children of a particular religious community more like inclusive bridging associations that are open to educating all of the children in the larger community. This would seem to be exactly the sort of thing Glenn would object to. Indeed, evangelical schools in Milwaukee and Cleveland that view their curriculum in pervasively religious terms have refused to accept children with vouchers because they believe that the conditions that come attached to vouchers would require

them to dampen their religious identity. On the other hand, Catholic schools have had no difficulty accepting children under these voucher programs. The regulatory provisions of some voucher experiments are, thus, weighted against “sect-like” communities. When the U.S. Supreme Court recently upheld the constitutionality of vouchers in *Zelman v. Simmons-Harris*, it left these regulations in place.

Other public programs have other conditions that tilt against the qualities of bonding associations and in favor of bridging associations. The extension of antidiscrimination requirements to publicly funded nonprofits has the effect of undermining the ability of religious organizations to maintain their distinctiveness: it requires these organizations to be open to hiring otherwise qualified staff people who are not church members.

Even President Bush’s faith-based initiative, which is designed to make it easier for religiously-based social service agencies to apply for and receive public funds, retains some of the limiting features described above. Under Bush’s proposals, agencies may not discriminate on religious grounds in deciding which clients to serve, and they may not require clients to participate in religious exercises as a condition of service. The faith-based initiatives coming out of Washington still insist that public policy should tilt in the direction of equality and inclusion, so even though they are intended to give faith-based organizations a fairer shake, they reflect a partiality toward bridging organizations.

If we accept that government should promote liberal civic values, it is very likely that groups that do not uphold these values will find themselves running afoul of government regulations and requirements when they seek access to public funds. Governments should make sure that public programs serve legitimate and important public purposes, but they cannot guarantee that public programs will treat religious or other groups neutrally. As I argued in my book *Diversity and Distrust: Civic Education in a Multicultural Democracy*, this sort of neutrality is neither possible nor desirable. The health of liberal democracy depends on citizens possessing certain values and virtues, such as tolerance and a willingness to cooperate in civic life with citizens of other faiths. A liberal democratic society cannot and should not be indifferent to the values of its citizens. Despite Glenn’s

objections to the term “sectarian,” it may describe certain religious and secular groups. As Putnam’s work on bridging and bonding social capital reveals, fostering good citizenship depends on promoting bridging associations that embody liberal democratic values. Some may claim that this liberal vision is itself a kind of sectarianism. But unlike truly sectarian groups, liberalism provides reasonable terms for peaceful cooperation across social boundaries. If religious groups wish to receive public funds, they should not expect and have no right to claim a blanket entitlement to noninterference.

#### What Role for Sect-Like Communities?

Sect-like communities may sometimes have their public uses. Consider Teen Challenge, a drug rehabilitation program that its proponents claim enjoys rates of success that far surpass those of secular agencies. According to Glenn, those secular agencies are typically staffed by therapeutic and medical professionals who treat “chemical dependency” as a medical problem. Teen Challenge regards drug addiction as rooted in sin, and its religious orientation is expressed “in every detail of its work.” The key to breaking drug dependence, for Teen Challenge, is to develop a personal relationship with Jesus Christ, with the support of an intensely committed group of peers. Teen Challenge provides “a community within which recovery is strongly valued and indeed insisted upon as the condition of continued participation.” Teen Challenge creates close Christian communities “in the intensive setting of a rural retreat.” Through “the relatively high level of continuing participation in a church,” the program helps ensure that reform becomes “a habitual mode of life.” Teen Challenge in this way helps addicts find “a substitute purpose in life” that brings with it, in the words of a Teen Challenge document, “a whole new way of living.”

Glenn argues that government bureaucrats have unfairly ignored the success rates of Teen Challenge and have sought to deny the program government funding. They have done this in spite of the fact that, according to a study Glenn cites, nearly 70 percent of Teen Challenge graduates remained free of drugs, alcohol, and even nicotine seven years after completing the program. Glenn may be right that, when confronting horrible and life-destroying forms of addiction, we may need to appreciate and accommodate the virtues of



communities and institutions that have some of the characteristics of sects, or bonding associations. It may be, in other words, that Teen Challenge deserves government funding if—and it is a big “if”—the sorts of empirical studies cited by Glenn in support of it are sound. This does not mean, however, that the public policy of a liberal democratic constitutional order will or should be indifferent to the values and methods of institutions that seek public funding. The public policy of this constitutional order should still aim to prepare citizens to be liberal democratic citizens. That means promoting an overall political order in which the virtues of bridging associations predominate. Within this political order there may sometimes be a role for groups and institutions that have some of the characteristics of bonding associations.

Persons who struggle with debilitating dependencies on drugs or alcohol may need the support of membership in a tight-knit community that is intensely committed to sobriety and self-control. If the groups that successfully undertake the interventions required to address long-term addictions mainly have intensely spiritual motivations and methods—if rehabilitation is linked to conversion, for example—then we may face some difficult trade-offs. The presumption that groups that are publicly funded ought to comply with important public values including freedom and equality should only be relaxed in cases in which particular bonding groups are unusually successful in dealing with intractable social or personal problems.

Some groups embody values that are simply unacceptable and should be prohibited from receiving public funding no matter how effectively they provide particular services. It is one thing to build prayer into a drug treatment program, it would be another if this prayer contained a message of white supremacy. Decisions at the policy level about what groups to fund and what requirements to place on them should depend on both practical considerations and on the particular characters of the groups.

#### What Religious Freedom Does and Does Not Guarantee

Any secular or religiously-based nonprofit that finds reasonable regulations accompanying public funds to be too intrusive or too burdensome such that they interfere with the organization’s moral or

spiritual mission is entirely free not to take the money. That is the principal and most deeply principled guarantee of religious freedom in this area of church-state partnerships. Churches and other associations may guard their autonomy and integrity by not participating in public programs. These acts of disassociation are not costless, but no sensible view of liberty should guarantee that the cost of exercising a broad right such as religious or associative freedom will be the same for all groups. A liberal society should respect freedom of association, including religious association, but it makes no sense to try to provide a level playing field for the different groups that compete for members in society. The right to religious liberty does not entail a right to public funds. Some forms of group life will be more consistent with the values of liberal democracy than others.

As a matter of principle it is important that the strings that come attached to public dollars flowing to religious nonprofits are voluntarily accepted and justified in terms of valid and important public purposes (such as equity, fairness, and the promotion of broad forms of social cooperation among citizens). Public regulations should not impose huge burdens on nonprofit institutions for the sake of trivial public benefits. It would be foolish to scare off religious and other nonprofits from accepting public funds or to undermine their effectiveness gratuitously by imposing needless and meddlesome regulations (some of which may be supported by self-interested public bureaucrats who would rather not compete with nonpublic agencies).

I am generally in favor of the trend toward taking greater advantage of intermediate associations and nonprofit institutions in the delivery of social services. The recent preoccupation with civil society institutions is a healthy and timely one. But we should not mistake what we are up to. If it is true that we can advance public purposes and spend tax dollars more effectively by relying on faith-based and other private agencies to deliver social services such as drug rehabilitation, nursing and health care, education, and other social services, then they should be utilized. However, regulation and institutional design should ensure that our public purposes are served. To put it otherwise, I sympathize with the view that the well-working of the formal institutions of a liberal constitutional order depends on the

health of informal social institutions and associations, yet this seems to me to point toward a complex public project. This project will be deeply nonneutral with respect to normative diversity. In promoting the public values associated with liberal democratic forms of social capital, we often in effect make it easier to live some ways of life and harder to live others. Liberal democratic patterns of social life represent a definite ranking of competing human goods that will be consistent with some versions of religious truth and not with others. In this sense, the project of promoting a healthy liberal democratic civil society will inevitably favor some groups over others.

### A Public Thing

We live, here and now, in an increasingly interdependent web of relationships with many other persons and with the natural environment. A public philosophy that acknowledges this *de facto* reality is both necessary and possible. It is required by what human beings have become at the beginning of the twenty-first century. The human good, including the good of freedom and self-determination, is a “public thing”—a *res publica*. Achieving this good calls for a common life in which freedom is more fully shared, for a society in which all people more fully participate in the common goods that can be achieved in their social, political, and economic activity together. Response to this *de facto* context calls for a public philosophy whose normative understandings of the good also take common life seriously.

from *The Common Good and Christian Ethics*,  
a new book by David Hollenbach, S.J.

## A Note from the Editor: A Transnational Moral Dialogue

In February of this year, a group of American scholars and public intellectuals (which, to be forthright, includes me) released a letter arguing that the war against terrorism, at least in its general outlines, is a just war. In the ensuing months, other groups of intellectuals from the United States (many in this group are known for their progressive views), Germany, and Saudi Arabia issued response letters. The original American group then released a response to the German letter (and plans to respond to the Saudi Arabian letter). We present these letters (two in this issue, others in future issues) to the readers of *The Responsive Community* in part for the obvious reason: anyone who cares about what is virtuous, a major communitarian subject, will want to establish whether the war against terrorism declared by the United States is a just war. In addition, we see in this exchange of views a prime example of a moral dialogue.

Moral dialogues differ from reasoned deliberations in that they openly and explicitly engage the values of those who participate in them, rather than focusing the exchange of views on facts, logic, or reason, or declaring that value differences are private matters about which we can agree to disagree. Moral dialogues often are passionate, disorderly, have no clear starting or ending point, but nevertheless result in new shared moral understandings. There have been moral dialogues on our moral commitment to the environment, relations between blacks and whites, and relations between men and women. There are currently dialogues about gay marriages and the death penalty.

It might seem as if moral dialogues are most suited for a small community, or that, at most, they could encompass an imagined community as large as a nation. However, as the documents before us so well illustrate, these dialogues can and do take place on a global level. Indeed, there have been or currently are dialogues on matters as different as whaling, trade in ivory, slave trafficking, child labor, women's rights, and, of course, the environment. We are now in the midst of one on the justness of the war against terrorism.

In order to avoid turning into culture wars and, in turn, into shooting wars, moral dialogues must follow rules of engagement that ensure that they stay within the bounds of constructive interaction. Contesting parties should refrain from demonizing one another. They should make a genuine effort to understand the other side before criticizing its position. They should try not to affront the deepest moral commitments of other groups. It is helpful to leave out of the debate issues that don't truly need to be discussed, although this doesn't mean setting aside our deepest convictions—these must be brought to the table for meaningful dialogue to occur. The success of the dialogue on the justness of the war depends on all parties (and, of course, I include myself in this) keeping these rules in mind. The two letters included here, and others to be included in future issues, provide rich examples of how to engage in dialogue—and of what is best avoided.\*

A.E.

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\* *Letters have been edited to match Responsive Community style (unless a change in style would change meaning); their wording has not been modified.*

## What We're Fighting For: A Letter from America\*

### Preamble

**A**T TIMES, it becomes necessary for a nation to defend itself through force of arms. Because war is a grave matter, involving the sacrifice and taking of precious human life, conscience demands that those who would wage the war state clearly the moral reasoning behind their actions, in order to make plain to one another, and to the world community, the principles they are defending.

We affirm five fundamental truths that pertain to all people without distinction:

1. All human beings are born free and equal in dignity and rights.
2. The basic subject of society is the human person, and the legitimate role of government is to protect and help to foster the conditions for human flourishing.
3. Human beings naturally desire to seek the truth about life's purpose and ultimate ends.
4. Freedom of conscience and religious freedom are inviolable rights of the human person.
5. Killing in the name of God is contrary to faith in God and is the greatest betrayal of the universality of religious faith.

We fight to defend ourselves and to defend these universal principles.

### What Are American Values?

SINCE SEPTEMBER 11, millions of Americans have asked themselves and one another, why? Why are we the targets of these hateful attacks? Why do those who would kill us, want to kill us?

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\* Letter was released on February 12, 2002.

We recognize that at times our nation has acted with arrogance and ignorance toward other societies. At times our nation has pursued misguided and unjust policies. Too often we as a nation have failed to live up to our ideals. We cannot urge other societies to abide by moral principles without simultaneously admitting our own society's failure at times to abide by those same principles. We are united in our conviction—and are confident that all people of goodwill in the world will agree—that no appeal to the merits or demerits of specific foreign policies can ever justify, or even purport to make sense of, the mass slaughter of innocent persons.

Moreover, in a democracy such as ours, in which government derives its power from the consent of the governed, policy stems at least partly from culture, from the values and priorities of the society as a whole. Though we do not claim to possess full knowledge of the motivations of our attackers and their sympathizers, what we do know suggests that their grievances extend far beyond any one policy, or set of policies. After all, the killers of September 11 issued no particular demands; in this sense, at least, the killing was done for its own sake. The leader of Al Qaeda described the “blessed strikes” of September 11 as blows against America, “the head of world infidelity.” Clearly, then, our attackers despise not just our government, but our overall society, our entire way of living. Fundamentally, their grievance concerns not only what our leaders do, *but also who we are*.

SO WHO ARE WE? What do we value? For many people, including many Americans and a number of signatories to this letter, some values sometimes seen in America are unattractive and harmful. Consumerism as a way of life. The notion of freedom as no rules. The notion of the individual as self-made and utterly sovereign, owing little to others or to society. The weakening of marriage and family life. Plus an enormous entertainment and communications apparatus that relentlessly glorifies such ideas and beams them, whether they are welcome or not, into nearly every corner of the globe.

One major task facing us as Americans, important prior to September 11, is facing honestly these unattractive aspects of our society and doing all we can to change them for the better. We pledge ourselves to this effort.

At the same time, other American values—what we view as our founding ideals, and those that most define our way of life—are quite different from these, and they are much more attractive, not only to Americans, but to people everywhere in the world. Let us briefly mention four of them.

The first is the conviction that all persons possess innate human dignity as a birthright, and that consequently each person must always be treated as an end rather than used as a means. The founders of the United States, drawing upon the natural law tradition as well as upon the fundamental religious claim that all persons are created in the image of God, affirmed as “self-evident” the idea that all persons possess equal dignity. The clearest political expression of a belief in transcendent human dignity is democracy. In the United States in recent generations, among the clearest cultural expressions of this idea has been the affirmation of the equal dignity of men and women, and of all persons regardless of race or color.

Second, and following closely from the first, is the conviction that universal moral truths (what our nation’s founders called “laws of Nature and of Nature’s God”) exist and are accessible to all people. Some of the most eloquent expressions of our reliance upon these truths are found in our Declaration of Independence, George Washington’s Farewell Address, Abraham Lincoln’s Gettysburg Address and second inaugural address, and Dr. Martin Luther King, Jr.’s *Letter from the Birmingham Jail*.

The third is the conviction that, because our individual and collective access to truth is imperfect, most disagreements about values call for civility, openness to other views, and reasonable argument in pursuit of truth.

The fourth is freedom of conscience and freedom of religion. These intrinsically connected freedoms are widely recognized, in our own country and elsewhere, as a reflection of basic human dignity and as a precondition for other individual freedoms.

To us, what is most striking about these values is that they apply to all persons without distinction, and cannot be used to exclude anyone from recognition and respect based on the particularities of race, language, memory, or religion. That’s why anyone, in principle,



can become an American. And in fact, anyone does. People from everywhere in the world come to our country with what a statue in New York's harbor calls a "yearning to breathe free," and soon enough, they are Americans. Historically, no other nation has forged its core identity—its constitution and other founding documents, as well as its basic self-understanding—so directly and explicitly on the basis of universal human values. To us, no other fact about this country is more important.

Some people assert that these values are not universal at all, but instead derive particularly from western, largely Christian civilization. They argue that to conceive of these values as universal is to deny the distinctiveness of other cultures. We disagree. We recognize our own civilization's achievements, but we believe that all people are created equal. We believe in the universal possibility and desirability of human freedom. We believe that certain basic moral truths are recognizable everywhere in the world. We agree with the international group of distinguished philosophers who in the late 1940s helped to shape the United Nations Universal Declaration of Human Rights, and who concluded that a few fundamental moral ideas are so widespread that they "may be viewed as implicit in man's nature as a member of society." In hope, and on the evidence, we agree with Dr. Martin Luther King, Jr., that the arch of the moral universe is long, but it bends toward justice, not just for the few, or the lucky, but for all people.

Looking at our own society, we acknowledge again the all-too-frequent gaps between our ideals and our conduct. But as Americans in a time of war and global crisis, we are also suggesting that the best of what we too casually call "American values" do not belong only to America, but are in fact the shared inheritance of humankind, and therefore a possible basis of hope for a world community based on peace and justice.

#### What about God?

SINCE SEPTEMBER 11, millions of Americans have asked themselves and one another, what about God? Crises of this magnitude force us to think anew about first principles. When we contemplate the horror of what has occurred, and the danger of what is likely to

come, many of us ask: is religious faith part of the solution or part of the problem?

The signatories to this letter come from diverse religious and moral traditions, including secular traditions. We are united in our belief that invoking God's authority to kill or maim human beings is immoral and is contrary to faith in God. Many of us believe that we are under God's judgment. None of us believe that God ever instructs some of us to kill or conquer others of us. Indeed, such an attitude, whether it is called "holy war" or "crusade," not only violates basic principles of justice, but is in fact a negation of religious faith, since it turns God into an idol to be used for man's own purposes. Our own nation was once engaged in a great civil war, in which each side presumed God's aid against the other. In his second inaugural address in 1865, the sixteenth president of the United States, Abraham Lincoln, put it simply: "The Almighty has his own purposes."

Those who attacked us on September 11 openly proclaim that they are engaged in holy war. Many who support or sympathize with the attackers also invoke God's name and seem to embrace the rationale of holy war. But to recognize the disaster of this way of thinking, we as Americans need only to remember our own, and western, history. Christian religious wars and Christian sectarian violence tore apart Europe for the better part of a century. In the United States, we are no strangers to those who would murder at least in part in the name of their religious faith. When it comes to this particular evil, no civilization is spotless and no religious tradition is spotless.

The human person has a basic drive to question in order to know. Evaluating, choosing, and having reasons for what we value and love are characteristically human activities. Part of this intrinsic desire to know concerns why we are born and what will happen when we die, which leads us to seek the truth about ultimate ends, including, for many people, the question of God. Some of the signatories to this letter believe that human beings are by nature "religious" in the sense that everyone, including those who do not believe in God and do not participate in organized religion, makes choices about what is important and reflects on ultimate values. All of the signatories to this letter recognize that, across the world, religious faith and religious institu-

tions are important bases of civil society, often producing results for society that are beneficial and healing, at times producing results that are divisive and violent.

So how can governments and societal leaders best respond to these fundamental human and social realities? One response is to outlaw or repress religion. Another possible response is to embrace an ideological secularism: a strong societal skepticism or hostility regarding religion, based on the premise that religion itself, and especially any *public* expression of religious conviction, is inherently problematic. A third possible response is to embrace theocracy: the belief that one religion, presumably the one *true* religion, should be effectively mandatory for all members of society and therefore should receive complete or significant state sponsorship and support.

We disagree with each of these responses. Legal repression radically violates civil and religious freedom and is incompatible with democratic civil society. Although ideological secularism may have increased in our society in recent generations, we disagree with it because it would deny the public legitimacy of an important part of civil society as well as seek to suppress or deny the existence of what is at least arguably an important dimension of personhood itself. Although theocracy has been present in western (though not U.S.) history, we disagree with it for both social and theological reasons. Socially, governmental establishment of a particular religion can conflict with the principle of religious freedom, a fundamental human right. In addition, government control of religion can cause or exacerbate religious conflicts and, perhaps even more importantly, can threaten the vitality and authenticity of religious institutions. Theologically, even for those who are firmly convinced of the truth of their faith, the coercion of others in matters of religious conscience is ultimately a violation of religion itself, since it robs those other persons of the right to respond freely and in dignity to the Creator's invitation.

At its best, the United States seeks to be a society in which faith and freedom can go together, each elevating the other. We have a secular state—our government officials are not simultaneously religious officials—but we are by far the western world's most religious society. We are a nation that deeply respects religious freedom and

diversity, including the rights of nonbelievers, but one whose citizens recite a Pledge of Allegiance to “one nation, under God,” and one that proclaims in many of its courtrooms and inscribes on each of its coins the motto “In God We Trust.” Politically, our separation of church and state seeks to keep politics within its proper sphere, in part by limiting the state’s power to control religion, and in part by causing government itself to draw legitimacy from, and operate under, a larger moral canopy that is not of its own making. Spiritually, our separation of church and state permits religion to *be* religion, by detaching it from the coercive power of government. In short, we seek to separate church and state for the protection and proper vitality of both.

For Americans of religious faith, the challenge of embracing religious truth *and* religious freedom has often been difficult. The matter, moreover, is never settled. Ours is a social and constitutional arrangement that almost by definition requires constant deliberation, debate, adjustment, and compromise. It is also helped by, and helps to produce, a certain character or temperament, such that religious believers who strongly embrace the truth of their faith also, not as a compromise with that truth but as an aspect of it, respect those who take a different path.

What will help to reduce religiously-based mistrust, hatred, and violence in the 21st century? There are many important answers to this question, of course, but here, we hope, is one: deepening and renewing our appreciation of religion by recognizing religious freedom as a fundamental right of all people in every nation.

### A Just War?

WE RECOGNIZE that all war is terrible, representative finally of human political failure. We also know that the line separating good and evil does not run between one society and another, much less between one religion and another; ultimately, that line runs through the middle of every human heart. Finally, those of us—Jews, Christians, Muslims, and others—who are people of faith recognize our responsibility, stated in our holy scriptures, to love mercy and to do all in our power to prevent war and live in peace.

Yet reason and careful moral reflection also teach us that there are times when the first and most important reply to evil is to stop it. There are times when waging war is not only morally permitted, but morally necessary, as a response to calamitous acts of violence, hatred, and injustice. This is one of those times.

The idea of a “just war” is broadly based, with roots in many of the world’s diverse religious and secular moral traditions. Jewish, Christian, and Muslim teachings, for example, all contain serious reflections on the definition of a just war. To be sure, some people, often in the name of realism, insist that war is essentially a realm of self-interest and necessity, making most attempts at moral analysis irrelevant. We disagree. Moral inarticulacy in the face of war is itself a moral stance—one that rejects the possibility of reason, accepts normlessness in international affairs, and capitulates to cynicism. To seek to apply objective moral reasoning to war is to defend the possibility of civil society and a world community based on justice.

The principles of just war teach us that wars of aggression and aggrandizement are never acceptable. Wars may not legitimately be fought for national glory, to avenge past wrongs, for territorial gain, or for any other non-defensive purpose.

The primary moral justification for war is to protect the innocent from certain harm. Augustine, whose early-fifth-century book, *The City of God*, is a seminal contribution to just war thinking, argues (echoing Socrates) that it is better for the Christian as an individual to suffer harm rather than to commit it. But is the morally responsible person also required, or even permitted, to make for *other* innocent persons a commitment to non-self-defense? For Augustine, and for the broader just war tradition, the answer is no. If one has compelling evidence that innocent people who are in no position to protect themselves will be grievously harmed unless coercive force is used to stop an aggressor, then the moral principle of love of neighbor calls us to the use of force.

Wars may not legitimately be fought against dangers that are small, questionable, or of uncertain consequence, or against dangers that might plausibly be mitigated solely through negotiation, appeals to reason, persuasion from third parties, or other nonviolent means. But if the danger to innocent life is real and certain, and especially if

the aggressor is motivated by implacable hostility—if the end he seeks is not your willingness to negotiate or comply, but rather your destruction—then a resort to proportionate force is morally justified.

A just war can only be fought by a legitimate authority with responsibility for public order. Violence that is freelance, opportunistic, or individualistic is never morally acceptable.

A just war can only be waged against persons who are combatants. Just war authorities from across history and around the world—whether they be Muslim, Jewish, Christian, from other faith traditions, or secular—consistently teach us that noncombatants are immune from deliberate attack. Thus, killing civilians for revenge, or even as a means of deterring aggression from people who sympathize with them, is morally wrong. Although in some circumstances, and within strict limits, it can be morally justifiable to undertake military actions that may result in the unintended but foreseeable death or injury of some noncombatants, it is not morally acceptable to make the killing of noncombatants the operational objective of a military action.

These and other just war principles teach us that, whenever human beings contemplate or wage war, it is both possible and necessary to affirm the sanctity of human life and embrace the principle of equal human dignity. These principles strive to preserve and reflect, even in the tragic activity of war, the fundamental moral truth that “others”—those who are strangers to us, those who differ from us in race or language, those whose religions we may believe to be untrue—have the same right to life that we do, and the same human dignity and human rights that we do.

ON SEPTEMBER 11, 2001, a group of individuals deliberately attacked the United States, using hijacked airplanes as weapons with which to kill, in less than two hours, over 3,000 of our citizens in New York City, southwestern Pennsylvania, and Washington, DC. Overwhelmingly, those who died on September 11 were civilians, not combatants, and were not known at all, except as Americans, by those who killed them. Those who died on the morning of September 11 were killed unlawfully, wantonly, and with premeditated malice—a kind of killing that, in the name of precision, can only be described as

murder. Those murdered included people from all races, many ethnicities, most major religions. They included dishwashers and corporate executives.

The individuals who committed these acts of war did not act alone, or without support, or for unknown reasons. They were members of an international Islamicist network, active in as many as 40 countries, now known to the world as Al Qaeda. This group, in turn, constitutes but one arm of a larger radical Islamicist movement, growing for decades and in some instances tolerated and even supported by governments, that openly professes its desire and increasingly demonstrates its ability to use murder to advance its objectives.

We use the terms “Islam” and “Islamic” to refer to one of the world’s great religions, with about 1.2 billion adherents, including several million U.S. citizens, some of whom were murdered on September 11. It ought to go without saying—but we say it here once, clearly—that the great majority of the world’s Muslims, guided in large measure by the teachings of the Qur’an, are decent, faithful, and peaceful. We use the terms “Islamicism” and “radical Islamicist” to refer to the violent, extremist, and radically intolerant religious-political movement that now threatens the world, including the Muslim world.

This radical, violent movement opposes not only certain U.S. and western policies—some signatories to this letter also oppose some of those policies—but also a foundational principle of the modern world, religious tolerance, as well as those fundamental human rights, in particular freedom of conscience and religion, that are enshrined in the United Nations Universal Declaration of Human Rights, and that must be the basis of any civilization oriented to human flourishing, justice, and peace.

This extremist movement claims to speak for Islam, but betrays fundamental Islamic principles. Islam sets its face *against* moral atrocities. For example, reflecting the teaching of the Qur’an and the example of the Prophet, Muslim scholars through the centuries have taught that struggle in the path of God (i.e., *jihad*) forbids the deliberate killing of noncombatants, and requires that military action be undertaken only at the behest of legitimate public authorities. They

remind us forcefully that Islam, no less than Christianity, Judaism, and other religions, is threatened and potentially degraded by these profaners who invoke God's name to kill indiscriminately.

We recognize that movements claiming the mantle of religion also have complex political, social, and demographic dimensions, to which due attention must be paid. At the same time, philosophy matters, and the animating philosophy of this radical Islamicist movement, in its contempt for human life, and by viewing the world as a life-and-death struggle between believers and unbelievers (whether non-radical Muslims, Jews, Christians, Hindus, or others), clearly denies the equal dignity of all persons and, in doing so, betrays religion and rejects the very foundation of civilized life and the possibility of peace among nations.

Most seriously of all, the mass murders of September 11 demonstrated, arguably for the first time, that this movement now possesses not only the openly stated desire, but also the capacity and expertise—including possible access to, and willingness to use, chemical, biological, and nuclear weapons—to wreak massive, horrific devastation on its intended targets.

Those who slaughtered more than 3,000 persons on September 11 and who, by their own admission, want nothing more than to do it again, constitute a clear and present danger to all people of goodwill everywhere in the world, not just the United States. Such acts are a pure example of naked aggression against innocent human life, a world-threatening evil that clearly requires the use of force to remove it.

Organized killers with global reach now threaten all of us. In the name of universal human morality, and fully conscious of the restrictions and requirements of a just war, we support our government's, and our society's, decision to use force of arms against them.

## Conclusion

WE PLEDGE TO DO all we can to guard against the harmful temptations—especially those of arrogance and jingoism—to which nations at war so often seem to yield. At the same time, with one voice we say solemnly that it is crucial for our nation and its allies to win



this war. We fight to defend ourselves, but we also believe that we fight to defend those universal principles of human rights and human dignity that are the best hope for humankind.

One day, this war will end. When it does—and in some respects even before it ends—the great task of conciliation awaits us. We hope that this war, by stopping an unmitigated global evil, can increase the possibility of a world community based on justice. But we know that only the peacemakers among us in every society can ensure that this war will not have been in vain.

We wish especially to reach out to our brothers and sisters in Muslim societies. We say to you forthrightly: We are not enemies, but friends. We must not be enemies. We have so much in common. There is so much that we must do together. Your human dignity, no less than ours—your rights and opportunities for a good life, no less than ours—are what we believe we're fighting for. We know that, for some of you, mistrust of us is high, and we know that we Americans are partly responsible for that mistrust. But we must not be enemies. In hope, we wish to join with you and all people of goodwill to build a just and lasting peace.

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*"It's not as if I'm asking you to acknowledge our common humanity."*

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## A Critical Response: "A Letter from United States Citizens to Friends in Europe"\*

**F**ollowing the September 11, 2001 suicide attacks on the World Trade Center in New York and the Pentagon in Washington, U.S. President George W. Bush has declared an open-ended "war on terrorism." This war has no apparent limits, in place, time, or the extent of destruction that may be inflicted. There is no telling which country may be suspected of hiding "terrorists" or declared to be part of an "axis of evil." The eradication of "evil" could last much longer than the world can withstand the destructive force to be employed. The Pentagon is already launching bombs described as producing the effect of earthquakes and is officially considering the use of nuclear weapons, among other horrors, in its constantly improving arsenal.

The material destruction envisaged is immeasurable. So is the human damage, not only in terms of lives, but also in terms of the moral desperation and hatred that are certain to be felt by millions of people who can only watch helplessly as their world is devastated by a country, the United States, which assumes that its moral authority is as absolute and unchallengeable as its military power.

We, as U.S. citizens, have a special responsibility to oppose this mad rush to war. You, as Europeans, also have a special responsibility. Most of your countries are military allies of the United States within NATO. The United States claims to act in self-defense, but also to defend "the interests of its allies and friends." Your countries will inevitably be implicated in U.S. military adventures. Your future is also in jeopardy.

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\* Letter was released in early April, 2002.

Many informed people both within and outside your governments are aware of the dangerous folly of the war path followed by the Bush administration. But few dare speak out honestly. They are intimidated by the various forms of retaliation that can be taken against “friends” and “allies” who fail to provide unquestioning support. They are afraid of being labeled “anti-American”—the same label absurdly applied to Americans themselves who speak out against war policies and whose protests are easily drowned out in the chorus of chauvinism dominating the U.S. media. A sane and frank European criticism of the Bush administration’s war policy can help anti-war Americans make their voices heard.

Celebrating power may be the world’s oldest profession among poets and men of letters. As supreme world power, the United States naturally attracts its celebrants, who urge the nation’s political leaders to go ever farther in using their military might to impose virtue on a recalcitrant world. The theme is age-old and forever the same: the goodness of the powerful should be extended to the powerless by the use of force.

The central fallacy of the pro-war celebrants is the equation between “American values” as understood at home and the exercise of U.S. economic and especially military power abroad.

Self-celebration is a notorious feature of U.S. culture, perhaps as a useful means of assimilation in an immigrant society. Unfortunately, September 11 has driven this tendency to new extremes. Its effect is to reinforce a widespread illusion among U.S. citizens that the whole world is fixated, in admiration or in envy, on the United States as it sees itself: prosperous, democratic, generous, welcoming, open to all races and religions, the epitome of universal human values, and the last best hope of mankind.

In this ideological context, the question raised after September 11, “Why do they hate us?” has only one answer: “Because we are so good!” Or, as is commonly claimed, they hate us because of “our values.”

Most U.S. citizens are unaware that the effect of U.S. power abroad has nothing to do with the “values” celebrated at home, and indeed often serves to deprive people in other countries of the opportunity to attempt to enjoy them should they care to do so.

In Latin America, Africa, and Asia, U.S. power has more often than not been used to prop up the remnants of colonial regimes and unpopular dictators, to impose devastating commercial and financial conditions, to support repressive armed forces, to overthrow or cripple by sanctions relatively independent governments, and finally, to send bombers and cruise missiles to rain down death and destruction.

## The “Right of Self-Defense”

### 1. *Whose right?*

Since September 11, the United States feels under attack. As a result, its government claims a “right to self-defense,” enabling it to wage war on its own terms, as it chooses, against any country it designates as an enemy, without proof of guilt or legal procedure.

Obviously, such a “right of self-defense” never existed for countries such as Vietnam, Laos, Cambodia, Libya, Sudan, or Yugoslavia when they were bombed by the United States. Nor will it be recognized for countries bombed by the United States in the future. This is simply the right of the strongest, the law of the jungle. Exercising such a “right,” denied all others, cannot serve “universal values” but only undermines the very concept of a world order based on universal values with legal recourse open to all on a basis of equality.

A “right” enjoyed only by one entity—the most powerful—is not a right but a privilege exercised only to the detriment of the rights of others.

### 2. *How is the United States to “defend” itself?*

Supposedly in self-defense, the United States launched a war against Afghanistan. This was not an action specially designed to respond to the unique events of September 11. On the contrary, it was exactly what the United States was already doing, and had already planned to do, as outlined in Pentagon documents: bomb other countries, send military forces onto foreign soil, and topple their governments. The United States is openly planning an all-out war—not excluding use of nuclear weapons—against Iraq, a country it has been bombing for a decade, with the proclaimed aim of replacing its government with leaders selected by Washington.

### 3. *Precisely what is being “defended”?*

What is being defended is related to what was attacked.

Traditionally, “defense” means defense of national territory. On September 11, an attack actually took place on and against U.S. territory. This was not a conventional attack by a major power designed to seize territory. Rather, it was an anonymous strike against particular targeted institutions. In the absence of any claim of responsibility, the symbolic nature of the targets may have been assumed to be self-explanatory. The World Trade Center clearly symbolized U.S. global economic power, while the Pentagon represented U.S. military power. Thus, it seems highly unlikely that the September 11 attacks were symbolically directed against “American values” as celebrated in the United States.

Rather, the true target seems to have been U.S. economic and military power as it is projected abroad. According to reports, 15 of the 19 identified hijackers were Saudi Arabians hostile to the presence of U.S. military bases on Saudi soil. September 11 suggests that the nation projecting its power abroad is vulnerable at home, but the real issue is U.S. intervention abroad. Indeed, the Bush wars are designed precisely to defend and strengthen U.S. power abroad. It is U.S. global power projection that is being defended, not domestic freedoms and way of life.

In reality, foreign wars are more likely to undermine the domestic values cherished by civilians at home than to defend or spread them. But governments that wage aggressive wars always drum up domestic support by convincing ordinary people that war is necessary to defend or to spread noble ideas. The principal difference between the imperial wars of the past and the global thrust of the United States today is the far greater means of destruction available. The disproportion between the material power of destruction and the constructive power of human wisdom has never been more dangerously unbalanced. Intellectuals today have the choice of joining the chorus of those who celebrate brute force by rhetorically attaching it to “spiritual values,” or taking up the more difficult and essential task of exposing the arrogant folly of power and working with the whole of humanity to create means of reasonable dialogue, fair economic relations, and equal justice.

The right to self-defense must be a collective human right. Humanity as a whole has the right to defend its own survival against the “self-defense” of an unchecked superpower. For half a century, the United States has repeatedly demonstrated its indifference to the collateral death and destruction wrought by its self-proclaimed efforts to improve the world. Only by joining in solidarity with the victims of U.S. military power can we in the rich countries defend whatever universal values we claim to cherish.

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## Libertarian Confusions

Stephen L. Elkin

**L**ibertarians have long been engaged in an effort to provide a strong foundation for the idea of limited, free, or republican government. Many believe that we Americans have come loose from our moorings and have moved into the murky waters of a state that is a danger to individual liberty, that is grossly inefficient, and that is largely in the business of transferring money and benefits from the pockets of one set of people into those of another. It is not a pretty picture, they argue, and the way to stop the forces that promote this unhappy state of affairs, and even to reverse the tide, is to develop explicit and clear principles that can guide discussion of the extent and kind of state activity.

A notable example of such efforts is a recent book by Richard Epstein, *The Principles of a Free Society*, and I will use this work as a point of departure to consider the prospects for developing a compelling libertarian political theory. Epstein interprets his task as presenting a rehabilitated theory of laissez-faire that can tell us where state activity is acceptable beyond merely preventing force and fraud—the particular concerns of the traditional version of laissez-faire doctrine. The means by which Epstein attempts to rehabilitate laissez-faire, and thus the doctrine of sharply limited government, is to show its roots in utilitarianism and natural law thinking. In particular, Epstein argues that there is a surprising overlap between these two bodies of thought. Thus the burden of his argument is that utilitarianism, properly understood, points to leaving much of the society's business to be carried on through private exchange and other forms of private

cooperative behavior. Epstein argues that these conclusions are consistent with the natural law thinking of theorists such as John Locke, updated by reference to a kind of Darwinian natural selection that is said to show the origins and purposes of human norms. Wise utilitarians, argues Epstein, will see the value of this kind of natural law thinking for their own political project. Epstein goes on to argue that this case for a compelling form of laissez-faire doctrine is also rooted in a proper understanding of the value of social norms in coordinating and regulating social decision making. Both points—the roots of laissez-faire in utilitarianism and natural law thinking, and the value of social norms—deserve further consideration, starting with the point about social norms.

Epstein's point concerning the value of norms for organizing our collective life is of particular interest in the contemporary United States, especially for communitarians. In the United States and arguably in all states with highly developed administrative apparatuses, there is a strong temptation to turn to the formalities of law and regulation, thus raising the worrying possibility that such actions will displace the normative conventions that have served well in settling disputes, coordinating efforts among citizens, and the like. Typically missing in such efforts to rely heavily on law is a strong sense that no society—not even a complex one with a sophisticated apparatus of law, legislation, and regulation—can run, let alone be attractive, without a heavy reliance on social norms.

Epstein's argument for the value of social norms is thus an important one. The fundamental problem here, as Epstein indicates, is when to rely on norms and when on legal command. From the point of view of liberal theory, the reign of norms should be extensive in private life. From courtesies to the frail and elderly to injunctions against lying to informal rules that make cooperative undertakings possible, norms make what we have learned to call civil society not only possible but a realm of freedom. Moreover, civic cooperation is also crucial for the kind of associational life that Tocqueville thought was necessary for limited government—and with it, again, liberty. Epstein rightly appreciates that if state power is consistently and broadly used to bring about social coordination, it may displace such nonstate cooperative undertakings. In general, he is right to insist that the power of government should be used with restraint—law should

not be routinely substituted for norms, as if the latter were somehow incomplete without the backing of the law.

There is still, however, a strong case to be made for a significant measure of legal regulation of behavior in a wide range of matters, from the environment to civil rights. Epstein himself understands this, but his way of addressing the matter is distinctly worrying. He argues that, given the costs of legal sanctions—the need for judges, lawyers, police, etc.—they should only be applied when “the superior outcome, if any, from supplementing social norms with legal sanctions is large enough to justify the extra cost, given the risk of error inherent in the operation” of both norms and law. In putting the matter this way, Epstein invites us to understand government as a giant cost-benefit calculating machine. This is problematic, and I will say why in a moment.

There is also a second difficulty. Law does not only have the instrumental function of directly bringing about a particular sort of behavior. It also has what might be termed an expressive function. In making law, we announce, with all due formality and seriousness, that some sorts of behaviors are simply wrong and others right. Thus, even were it true that market behavior and private cooperation over time could have eliminated racial domination in the United States—and thus spared us the morass of law and regulation that has invaded our lives with seemingly endless litigation on workplace and employment questions—there would still be an overwhelming case for civil rights legislation. A society of free men and women must announce with the deepest seriousness that it cannot tolerate racial subordination, and lawmaking from our highest officials is the most solemn way we have of saying so. Thus, the problem of choosing between law and norms escapes the net of utilitarian thought and instrumental rationality that is the mainstay of libertarian theory. Equally important, this expressive view of the law indicates that the acts of legislatures and courts are not simply devices by which some people tell others what to do; instead, the law has a sort of majesty, an idea that many libertarians seem to find puzzling.

Many of the same points emerge from a consideration of environmental regulation. It is possible to imagine that a combination of self-regulation by businesses, market pressures from environmentally-

mindful consumers, and tort law could do a reasonable job of environmental regulation. But here again, it is important for the society to announce with great collective emphasis that the environment is not a free good to be used as individuals choose to use it, and that we will be better human beings if we understand our place in the natural world. The law can capture and emphasize such sentiments—as it did until recently by setting its face against the selling of “rights” to pollute and as it still does with the prohibition against selling babies and body parts, even though many will benefit from such sales taking place. We might say here, then, that in assessing the merits of relying on norms versus law, we do not have a simple means-ends problem where the only concern is which is more effective in producing some desired outcome. The law allows us to express our aspirations for the kind of society we wish to be.

### An Unlikely Pair

Epstein’s attempt to show the convergence of utilitarian and natural law thinking also reflects a further difficulty characteristic of much of libertarian theory. It would be a great boon to libertarians if it could be demonstrated that utilitarianism and natural law thinking converge around an advocacy of some form of laissez-faire thinking. Two great traditions of political inquiry would come to rest in the same place. This, however, is unlikely. To take one example, once the utilitarian door is opened up to address redistributive questions—as Epstein and other libertarians feel compelled to do, if only to dismiss egalitarian proposals—it is much harder to swing it shut than Epstein allows. There is no *prima facie* way, as Epstein seems to assume, to settle the question of whether redistributive efforts will or will not increase the utility of the have-nots and have-littles to a greater degree than they will decrease the utility of the haves from whom the resources are taken. Thus, unless we believe that virtually all the haves are mad misers—or students of Imelda Marcos whose welfare increases just as much from their tenth house on the Riviera as from their first, from their fifth Rolls as from their first—redistribution in most circumstances will increase aggregate social utility. In much the same way, it is far from clear, as theorists like Epstein seem to assume, that a natural law version of individual rights cannot give a significant place to the idea of *equal* rights, and in doing so open the door to

an extended discussion of what resources and capabilities people need if they are to be counted equal in this regard. It may be that other forms of natural law thinking point away from this conclusion, as may utilitarian theory, but that is precisely the point. A convergence in the theories is just one of several possibilities, and not a very likely one at that.

We can go even further here and note that those devoted to individual liberty should be wary of anchoring their arguments in any form of utilitarian thinking. If, say, market socialists do finally set out a workable form of a market society in which productive property is held in various socialized forms, there will be no right to private property and thus less liberty, as libertarians understand it—and yet by utilitarian standards this form of social organization may well be superior to the one we have now.

Most important of all, Epstein's book raises the question of how best to understand the problem of free government. His account of this form of government focuses on two closely related problems: What are the limits on the scope of government? And what principles should guide lawmakers and judges when they must reach particular decisions on matters within this proper scope of government? The answer to both, according to Epstein, is to be found in utilitarian reasoning. As already noted, in the case of the scope of government, utilitarianism points to a modified form of laissez-faire that gives substantial weight to the power of social norms to regulate social behavior. Similarly, in the case of particular lawmaking decisions, it gives full weight to the various costs of employing government to solve social problems. Epstein argues that if, as he has attempted to do, we can define precise principles that delimit the proper relation between society and state and that ought to guide state action, we will have solved the essential question of free government. But is this so?

Consider that in a democratic regime, which I assume is encompassed within Epstein's idea of a free society, attempting to secure limited government by defining the scope of government is unlikely to be very effective, even if the principles on which such a definition is said to rest are simply and powerfully stated. The reason was seen long ago by Walter Lippmann. In a book entitled *The Good Society*, which was his attempt to breathe life into classical liberalism,

Lippmann noted that it is inevitable that the people, in the form of the various interests that compose a free society, will work to use the powers of government to improve their lot, and that in a democracy this is entirely legitimate. Much the same point was made earlier by James Madison, who said that factions, a particularly dangerous form of interest group, were inevitable under free government, and that any attempt to eliminate them, for example by enforcing principles such as Epstein's, would be a cure worse than the disease: it would amount to a denial of liberty.

As for the principles that should guide the particular decisions that lawmakers will need to make, the point, to state it again, is that Epstein comes perilously close to defining government as a utilitarian calculating machine. He writes as if lawmaking and judicial decision making should rest on adding up the costs and benefits of any proposed legislation or legal rule. The difficulty here is one Epstein shares with many other students of popular self-government: the belief that it is possible to provide lawmakers with precise rules for decisions that are rooted, depending on the theorist, in either a utilitarian calculus (or its close cousin, cost-benefit analysis), or in a set of well-defined policy goals. But as theorists as diverse as Hayek, Buchanan, and Lindblom have taught us, we do not have the ability to define purposes so precisely.

### Institutional Design

What is going wrong in Epstein's account of the essence of free government? In a sentence, it is that Epstein looks to the rules for decision making in a free government when the real problem is the design of its institutions. Yes, we need principles if we are to have free government, but the most important ones are those concerned with the design of institutions, not ones that aim to bind lawmakers, judges, and other public officials to arrive at particular conclusions. We cannot remove the tendency for a free people to press its various concerns on government, nor can we extend our collective capacity for rationality far enough either to define a list of costs and benefits to be fed into utilitarian calculations or devise with any precision a wide range of policy goals. We must, therefore, accommodate behaviors we cannot prevent (except at prohibitive cost), strengthen behaviors that move us in appropriate directions, and make it difficult for

behaviors to flourish that move us in unattractive directions. We must, in short, create the political institutions that will make us a free, self-governing people.

In particular, we will need a design for free government that is built around the fact that lawmakers will not have clear and precise policy goals or a detailed list of costs and benefits that they must consider. To say that lawmakers will not have precise goals does not mean they will not have any. It is reasonable to suppose that under a free popular government that is working tolerably well, there will be some broadly agreed upon purposes that government is to serve. We might, and typically do, try to capture these broad purposes under the rubric of the public interest. Thus most of us would say that government should serve the purposes of securing individual rights and seeing that we maintain a measure of economic equality sufficient to ensure that no one lives in abject want. Similarly, most of us would say that a central task of government should be to work to secure political equality.

Such purposes, the ones that are likely to garner widespread assent, will inevitably be broadly stated. Moreover, more well-defined purposes (i.e., substantive goals that can more precisely guide legislation) are generally not available to us, not least because we are unlikely to agree on much that is very precise, let alone be able to demonstrate that any such purposes simply follow from what we can agree upon, or that they are anchored in some set of foundational moral principles. Also, the distinction between procedural and substantive goals is more elusive than is often supposed. For example, the effort to secure a particular set of rights, which sounds like a substantive enough undertaking, is probably better understood as the effort to make available to all a certain set of procedures, such as procedures of due process. In this view, to secure rights and individual liberty means to create and maintain certain legal and governmental procedures, fundamental features of which will inevitably be disputed.

An essential problem of lawmaking under free government, then, is to define a set of institutionally-generated incentives that will dispose lawmakers to take seriously broad purposes of the kind noted, giving these purposes concrete meaning in particular acts of lawmaking. Similarly, the institutional design must provide lawmak-

ers with not only the incentives but the capacity to give these purposes concrete meaning in particular acts of lawmaking—which, among other things, means that we must create a political environment in which it is possible to think about policy goals and their proper interpretation.

A well-used metaphor in political theory will help here. Republican lawmakers are like the navigators of a ship that must be built and repaired on the open seas; the ship is not designed by someone else and handed over to them to sail. Moreover, they do not know the precise ports to which they wish to sail as they do not know enough to make such decisions in advance. But they are not completely at sea; they do know the directions in which they wish to sail, and the dangerous climes they wish to avoid. Central to the building and repairing of the ship, therefore, is that the navigator-builders must make it capable of sailing in various kinds of weather and seas: they do not know enough to design the ship to do very specific jobs, only that it must be seaworthy in a variety of conditions. As various ports come into sight, these navigator-builders must also be so organized that they can effectively think about the difficulties of reaching the destinations that have now come into view, and whether they need to actually anchor at them or whether it will be enough to have a look at the flora and fauna from some way off. In addition, the relations among the sailors must be such that they encourage one another to continue sailing in the directions they agreed upon when they set out. They must, moreover, be so organized that they are able to amend their purposes in light of what they have learned as they have sailed.

Ship-building navigators and republican lawmakers (or, more precisely perhaps, republican constitution-makers) are, then, in similar positions. For both, the essential problem is one of creating a design that will give them the capabilities they need and that will foster the dispositions required to keep them oriented in the right direction.

We can go further down this institutional path and consider how to structure the political environment of lawmakers so that they are free to concentrate on giving concrete meaning to the broad purposes they are to serve. One means of doing so is to see that they are not under regular and strong pressure to use the powers of the state for



other purposes, particularly those that require unlimited or precariously limited exercise of those powers. Thus, Madison thought that the key to such limited government lay with a design that would make it unlikely that those who wished to use state power for unlimited purposes would ever achieve a majority. Political power, he thought, should be divided and powers should be given to each branch of government to protect itself should such overweening interests gain control of the other branches. The districts from which members of the legislature were to be chosen should also be large and thus heterogeneous, making it less likely that any given lawmaker would be the captive of a factional interest. And the country itself must be large and heterogeneous, thus reducing the probability that any single faction would itself be a majority. No matter what one thinks of the Madisonian design, it is important to see that it does not rely on rules or principles in the sense of injunctions to do or not do various things. Madison called these “parchment barriers,” by which he meant that they could have little effect.

If we follow Madison’s lead we will see that the central problem of free or republican government is that in attempting to limit political power, we do not have a set of clear, bright principles on which to rely for keeping in check those who illegitimately wish to expand state power, and for guiding decisions on how that power is to be properly used. Instead, we must harness to the purpose of limited popular government the behaviors that we will inevitably find under it. The results will not be neat, and the lines of demarcation will change over time, but at least we will prevent the worst forms of unlimited government from being imposed—and we will have a set of lawmakers who are both inclined and able to think about the concrete meaning of the broad purposes they are to serve. If not perhaps the best that can be done, at least such an approach does not ask of the citizenry and their lawmakers things they cannot or will not do.

Perhaps it is Epstein’s training as a lawyer that makes him want to substitute hard principles for squishy politics. The same training characterizes many libertarians, and where it does not, we likely are faced with economists showing all the disdain one often encounters in members of that profession when they confront democratic politics, particularly as it gets in the way of implementing the precise

principles of economic efficiency. But the clumsy, messy, and uncertain art of constitutional and institutional design is what we have to work with. We should not heed admonitions to define a clear set of principles telling citizens and lawmakers what the precise boundaries of public authority are and what factors lawmakers must take into account as they make and interpret law. If we do, not only is it unlikely that we will succeed in these tasks, but in trying to do so, we risk neglecting the need to understand how the design of our political institutions can give us the free, limited, and popular government we wish to have.

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## The Education of Business Leaders

Amitai Etzioni

Since the Enron scandal broke, business schools, where future CEOs and corporate directors are trained, have been scrambling to figure out why they failed to protect capitalism, and how they may shore it up. Why they failed is a complex but revealing tale. I know a thing or two about it from personal experience: I taught ethics at the Harvard Business School (HBS) during the years that many of the current corporate officers were in training, from mid-1987 until mid-1989.

The failings of HBS deserve attention because it is the school to which many others look when they shape and reshape their curricula and practices, and it is far from atypical, as examining other business schools reveals. In 1987, HBS had next to no courses that taught ethics. Ethics requirements are minimal at most business schools. A 1988 survey of MBA schools found that only one-third had even one separate, required class in ethics. If, in the wake of Enron et al., business schools suddenly decided to beef up significantly their course offerings in ethics, someone would have to train scores, or perhaps hundreds, of professors; those who are prepared to teach business ethics are few and far between.

In 1987, John S. R. Shad, chairman of the Securities and Exchange Commission, granted HBS \$20 million to support the teaching of ethics. The business school charged an associate dean with the delicate task of convincing the faculty to introduce a major ethics program. He spent nearly a year meeting with small groups of professors, trying to win them over to the program. He found it a tough sell.

Then, on April 21, 1989, the proposed ethics program was put to a vote by the whole faculty. The faculty's reactions ranged from cold to hostile. One economist argued, "We are here to teach science." Another faculty member wanted to know, "Whose ethics, what values, are we going to teach?" A third pointed out that the students were adults who got their ethics education at home and at church. It was decided to return the program to the drawing board.

In the deliberations that followed, the faculty debated whether ethics would be an elective or a requirement for all students and, above all, whether it would be taught separately or be integrated into all classes. Many on the faculty did not want to make ethics a requirement, but they especially objected to integrating it into their curricula. A leading member of the marketing department suggested that if the latter course were followed, his department would have to close because much of what they were teaching constituted a form of dissembling: putting small products into large boxes, putting hot colors on packages because they are known to make people buy impulsively, and so on.

The prospect of integrating ethics posed a similar problem for finance. In those days, students learned how to make a killing by breaking implicit contracts. Say, for instance, that you acquire controlling shares in a company like Delta, where workers had always worked hard and posed fewer demands than in other airlines because it was understood that they were promised lifelong employment. This arrangement, however, was never written down or formally agreed to by the management. The finance course explained that once you take over as the new management, you should announce that you are not bound by any such informal commitment. Your stock jumps (because your labor costs seem lower, absent commitments to employ workers during a downturn), you sell the company, and you move on. (To be precise, most classes at HBS are arranged as open discussions of case studies. Hence, theoretically, the faculty does not advance any prepackaged conclusions. In effect, though, professors are expected to lead their class discussion to the desired conclusion, and typically do.)

In the following years, the school decided to relegate the teaching of ethics to a separate class, to get it out of the way early in the year,

and not to integrate it into all classes (the widely preferred way of teaching ethics). Students take a “mini” course on ethics upon arrival, and that is that. (Stanford Business School, until recently, prescribed a similar program—“like going to church on Sunday,” said one student.)

The George Washington University’s School of Business and Public Management has one course dedicated to ethics—an elective on moral reasoning. Moral reasoning is the art of clarifying what one’s values are, but does not help to develop higher moral standards. Stanford describes its class on ethics in the following terms that speak for themselves:

The three principal objectives of this course are to consider an important set of ethics systems, increase the precision with which students think about, discuss and practice ethics, and provide opportunities to apply ethics systems to business problems. The approach taken to ethics is based on moral principles of teamwork and to give students practice diagnosing team problems and taking action to improve team performance.

That is, the course’s goal is to clarify moral thinking, to make it “precise”—but not transmit or promote any specific values. Many schools do less.

### The Dominance of Economics

More subtle, but at least as damaging to teaching ethics, is the dominance of economists in business schools. Although business schools often offer a handful of classes on human relations and courses with titles such as “Law and Society,” the faculty, conscious of the unspoken pecking order that exists among all sciences, considers economics the queen bee of social science. Other disciplines are secondary. Students are keenly aware that economics is what matters. Courses in economics and related fields, such as finance and accounting, are the core of their business education; the rest are considered by most to be merely add-on requirements.

Economists bristle at the suggestion that their field makes people less ethical than they would be otherwise. And there is no evidence that economists are personally less ethical than members of other disciplines. Moreover, economists argue that economics’ assumption

that people seek to maximize their self-interest or pleasure—and, in the case of corporations, profit—is simply the way of the world; “We did not make human nature.” Taking this into account makes it possible to have an efficient, rational economy that maximizes the goods we all seek. However, approaching the world through the dollar sign makes people more cynical, although this is hardly economists’ intention. This fact has been documented by an oft-cited experiment, which provides the kind of data economists say they respect.

Sociologists Gary Marwell and Ruth E. Ames conducted an experiment to test the standard economics teaching that people will (and ought to—that is, “it is rational to”) “free ride.” In other words, in a group in which it is impossible to tell what contribution each person has made, and rewards (say, pay raises) will be given to all members of the group, a rational person will work as little as possible. A game was arranged in which 12 groups were given a chance to free ride. The members of 11 of the groups refrained. The obvious question was, how did the 12th group differ? Its members were graduate students in economics. They learned their lesson well; too well one might say. They behaved like the “rational actors” they assume people to be.

In my own HBS classes, students mightily resisted my argument that executives can and ought to take into account ethical considerations when making decisions. (My lectures were later published in a book called *The Moral Dimension: Toward a New Economics*.) The students held, as they were taught, that if one company is 100 percent efficient and pays no mind to ethical considerations, and another company does, the first will drive the second out of business. Ethics, they told me repeatedly, is something a corporation simply cannot afford—unless being moral is good public relations and buys the corporation “goodwill,” and thus has a value that can be calculated and demonstrated. I tried to sway them, and may have won over a few, but most left my class about as hard-nosed as their other classes, dominated by economists, had made them.

#### Ethics and Social Causes

When I asked a 1990 graduate of Stanford Business School, now the CEO of a bank, if his school taught ethics, he first simply said,

“No.” On second thought, he added that it had a course on the social environment (“or something like that”), but in this course, students learned how to cope if they faced a challenge on ethical grounds from environmentalists or a community objecting to the closure of a plant. Clearly, this is not what an ethics course should be. Many business schools have such classes. These classes address how to “manage” so-called stakeholders other than shareholders—with the focus being on profit and shareholder “values” (the price of their stocks), not on social-moral values.

Over recent years, many business schools have added courses on the social responsibilities of corporations. These new courses do promote values other than maximization of investors’ and managers’ income and wealth. One of these courses might favor concern for the environment, not in order to get the Sierra Club off your back, but out of the moral obligations we have to future generations. These courses engage social values, and usually liberal ones, such as concern for the well-being of minorities, workers, and people in the Third World. They do not address traditional values, such as personal integrity, veracity, and loyalty. This raises the interesting question: might we, some day soon, discover an environmentally friendly corporation whose managers cook the books, or a not-for-profit corporation whose CEO gets interest-free loans or uses company assets for personal aggrandizement? Whatever the merits or faults of such classes, most students do not even take them in the first place. They gain little moral education of any sort in business schools.

### Open-Ended Morality

In private conversations, many a faculty member will point out, with some justification, that while it is relatively clear what economics dictates and even what the law dictates, what is “ethical” is far from obvious. Many, however, go much further and argue that what is ethical to one person is not to another; there are no objective ways to prove the merit of our moral standards. This is the business school variety of a popular philosophical position known as relativism.

The problems that result from relativism were driven home to me during a “crisis” that erupted during my time at HBS. A professor had his class read a case study about Braniff, an airline that was headed

toward bankruptcy. After a customer heard that Braniff was in financial trouble, he called the head of the company and said that he wanted to purchase a bundle of tickets but wondered if the company would still be up and flying a few months later. The head of Braniff, the story goes, responded that he was not sure.

The students argued that the CEO should have lied, that he endangered the shareholders' equity by being candid, and that he represented the shareholders, not the customers. The professor teaching the class was at a loss as to how to respond and asked the associate dean in charge of ethics development how to proceed. Unsure himself, the associate dean made some phone calls to other professors. When he discovered how divided opinions were, he arranged for a faculty meeting.

Those present made numerous arguments to justify lying. One was that in many social situations, lying is common and expected. Business was said to be like poker: if you play, you know that bluffing will take place. Others advocated a "market" approach to truth-telling: people who are found to be lying will lose customers while those who are trustworthy will gain them. To the extent that this does not occur, it shows that customers do not appreciate truth-telling enough to meet its costs to them.

Others employed utilitarian arguments and a calculus of harm. Based on this calculus, it was argued that by telling the truth, the CEO could have caused the already troubled airline to collapse, causing harm to the shareholders, employees, and creditors; therefore, the CEO should have lied, even if this harmed some customers. Only two members of the seminar insisted that the CEO should not lie because in principle truth-telling is superior to lying, which is one of those self-evident truths that speaks to us directly in an unmistakable voice. (There are some exceptions to this, such as so-called "white lies." For instance, when cancer patients ask if all hope is lost, we have reason to wonder if they really want to hear the answer. But these exceptions do not a rule make.) The professor returned to his classes, as many others did, with a reinforced sense that teaching ethics was a tricky business and that he should not take a firm position in favor of one value or another. It all depends.



Unlike the purely economic approach that dominated discussions, arguments based on a calculus of harm do, in effect, address the question, “What’s right?” However, in such a calculus, moral assumptions are hidden in the relative weight given to each party. For instance, if harm to shareholders is considered something that a CEO should place greater weight on than harm to employees, the results of the calculus will reflect this normative assumption. If, in contrast, one assumes that employees are of higher moral standing, different results will ensue. If one assumes that all parties should be given equal weight, this seemingly objective tool will yield still different conclusions. The calculus of harm, then, is just a way to avoid making straightforward moral judgments by using an “objective” procedure, helping the faculty to avoid basic moral injunctions such as “don’t lie.”

It is tempting simply to point to the recent scandals to show the net effect of ethics not being taught properly in typical business schools. But this would be unfair. Many other factors combine to form the character of a business executive. Among these is the total social environment—the Reagan eighties were more supportive of a business free-for-all than the liberal sixties. Peer pressure and internal corporate culture also play key roles.

A study conducted by the Aspen Institute found that business school education not only fails to improve the moral character of the students—it weakens whatever they brought with them to business school. Entering students showed some interest in creating quality products and being helpful to consumers; by the time they got their diplomas, the main thing on their minds was how to increase the share prices of the company they were about to serve. The study encompassed nearly 2,000 MBAs who graduated in 2001 from the top 13 business schools, including those at Carnegie Mellon, Columbia, the University of Pennsylvania, and Northwestern. The study examined student attitudes upon entering, at the end of one year, and upon graduating. Those who held that maximizing shareholder values was one of the primary responsibilities of a corporation increased from 68 percent upon entrance to 82 percent by the end of the first year. While this attitude fell back a bit upon graduation, it was still more widely held than when students entered the school, before they took any classes. The percentage of those who held that a primary responsibil-

ity of a corporation is to “comply with all laws and regulations” did increase during schooling—all the way to 24 percent. Other concerns, such as the environment, equal opportunity employment, and privacy, fared less well. Asked what they would do if their own values and those their corporation was pursuing came into conflict, students said that they were most likely to move on. Over the course of graduate school, students became less willing to get together with like-minded others to try to straighten out the course of the corporation or otherwise act on behalf of what they considered right.

In another study, which focused on the students of business schools at state universities, nearly two-thirds (63 percent) of the students admitted to having stolen something from their employers. (Typically business schools expect their students to have had some work experience.) Of these, a majority (61 percent) said “no” when asked if they felt guilty about their acts. Students were asked, suppose they could make (for themselves or their company) over \$100,000 if they acted illegally, and there was only a 1 percent chance that they would be caught and sent to a minimum-security prison—would they do it? Thirty-five percent responded “yes.” One student remarked, “People who commit white collar crimes spend a few months in a ‘prison country club’ and come out set for life. If no one gets hurt [as a result of the illegal act], why not go for the gusto!” In another study, 71 percent of surveyed business students believed that their own intuition was adequate for rendering moral decisions.

### What Is to Be Done?

Some of what is needed clearly follows from the preceding analysis: ethics education should move from its supplemental, separate status into all parts of the curriculum; it should be required of all students rather than merely being an elective; more faculty capable of and committed to teaching business ethics must be trained and recruited; and economists are best put down a peg or two and the humanities raised up. Ethics should not be treated as a way to cope with or circumvent challenges by outsiders (such as the consumer protection movement or advocates of the poor) but as something a decent human being heeds, what Orit Gadiesh, the chair of the consulting firm Bain & Company, calls their “true north,” and others call an inner, nonnegotiable core. Imparting concern for fashionable

social causes is fine, but this should not come at the cost of failing to promote personal values and moral character.

As mentioned before, the concern that ethical issues are often complicated and controversial and that it is often unclear what values should be taught is a reasonable one. However, there are some basic moral principles that are not complicated and can be taught without great controversy. The type of behavior at the heart of recent scandals—cooking the books, deceiving employees and costing them their savings, issuing audit results verifying the legitimacy of bogus financial statements—is roundly condemned. Business schools should teach that these actions—and others like them are unacceptable even if it is possible to get away with them. This would not require agreement on other values or more complex issues.

Congress could haul the deans of the leading business schools before a hearing to tell the public what they have been doing—and what they plan to do differently now—for ethics education. The resulting public scrutiny might prompt them (and other members of faculties) to serve as better role models than they now are. At the least it would get them off the boards of companies such as Enron, where some deans of business schools found themselves during the recent scandals.

The accrediting body of business schools can also play a significant role. Schools that are not accredited or lose their accreditation are clearly disadvantaged in the marketplace of getting students and placing them once they graduate. Currently, the ethics requirements set by the Association to Advance Collegiate Schools of Business are vague at best. Ethical concerns are included under the broader topic of the need for “an understanding of perspectives that form the context for business.” Coverage of this topic is expected to include “ethical and global issues” as well as political, social, legal, regulatory, environmental, and technological issues. Read between the lines: this framework suggests, you must learn to negotiate a minefield of social demands; one of the many is ethics. Instead, the requirement should be straightforward: no MBA student should graduate without having taken at least one full-term course in a class aimed at heightening students’ ethical standards, and ethics education should be incorporated into all classes.

Ethics education will not guarantee that we will never face another slew of business scandals or unethical directors and CEOs. It will only make scandals less likely, and business a better place. Education is often expected to make future generations—and through them society—better off than we now are. It is less frequently noted that education reflects the social environment in which it takes place. Hence, given that there is now a great concern with business ethics, we are likely to see (and are already witnessing) numerous new attempts to strengthen ethics education in business schools. Not a moment too soon.



*“Accountant.”*

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## THE COMMUNITY BOOKSHELF

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### Where's the Juice?

Mark Satin

Ted Halstead and Michael Lind, *The Radical Center: The Future of American Politics* (New York: Doubleday, 2001), 264 pp.

Ever since the collapse of the New Left in the 1970s—but especially since the anti-globalization protests in Seattle—many writers and activists have been attempting to articulate a political perspective that transcends both politics-as-usual and bitter alienation. Increasingly they've begun exploring the notion of a “radical middle” or “radical centrist” politics committed to taking imaginative and often bold approaches to solving the practical problems of capitalism and democracy in the Information Age.

Though the term “radical center” was first used in the 1970s to characterize the beliefs of George Wallace Democrats, its more pertinent political origins are countercultural. Throughout the 1970s and 1980s, leaders of the human potential and New Age movements such as Marilyn Ferguson spoke of an emerging politics of the radical center that would synthesize the highest values of the left and right. The Democratic Leadership Council began calling for a Third Way, and periodicals ranging from the hyperpragmatic *Washington Monthly* to the hyperidealistic *New Options* began imagining a post-liberal, post-conservative, post-socialist world.

The post-Seattle radical middle movement is made up of many currents. There is the serious-minded, non-opportunistic faction of the Third Way, whose ideas are well expressed in the recent work of British sociologist Anthony Giddens. There is the communitarian project of bringing people together through policies that “involve much more than a compromise between Democrats and Republicans,” as Amitai Etzioni puts it in his book *Next*. There is the emerging civic renewal movement—brilliantly delineated by Carmen Sirianni and Lewis Friedland in *Civic Innovation in America*—which differs significantly from traditional social justice movements by seeking common ground with both City Hall and local businesses.

Fueling such movements are rampant desires that as yet have no formal political vehicle: the desire of frustrated citizens to clean up the political system, stop corporate malfeasance, and restore civility to daily life; the near-universal Gen-X desire for greater individual choice, greater economic fairness, and greater global connectedness (see young British economist Diane Coyle’s books *The Weightless World* and *Paradoxes of Prosperity*); and, not least, the longing among grizzled survivors of the Sixties Generation to play the role of political synthesizers and healers—an aspiration beautifully expressed in Paul Ray and Sherry Anderson’s *The Cultural Creatives*, and actually realized, at least on paper, in Walter Truett Anderson’s *All Connected Now*.

Into this glorious cacophony comes Ted Halstead and Michael Lind’s *The Radical Center*—the first explicit and systemic introduction to radical middle ideas by U.S. authors—and in most ways it does not disappoint.

The writing is crystal clear, the arguments as carefully crafted as those you’d find in books from Brookings or the American Enterprise Institute. No surprise there. After capacious intellectual-professional journeys, the authors are now president and senior fellow, respectively, of The New America Foundation, a three-year-old Washington, DC think tank specializing in new ideas from young or undiscovered voices. (Halstead is all of 33; Lind, 39.) The Foundation’s 20 fellows publish in radical, liberal, and conservative periodicals, and money is cascading in from liberal and conservative foundations.

*The Radical Center* is elegantly structured. Definitions come early and are very similar to those used by writers like Coyle and Giddens.

The term “Radical Center,” we’re told, is meant to instantly differentiate the authors’ “principles and policies from those of the Democratic Left and the Republican Right.” The word “radical” conveys that the authors “are interested not in tinkering at the margin . . . but rather in promoting, when necessary, a wholesale revamping” of institutions.

Next comes the heart of the authors’ argument, and if you’re an old activist you’ll smile at the quasi-Marxian nature of it. The “Information Age”—based on brainpower—has made us “increasingly competent” as citizens, but our “basic social contract, our political parties, our governmental programs, and our educational and even charitable institutions are designed on the premise that highly educated experts should be in charge of relatively passive, ignorant, and incompetent people. A century ago this paternalistic approach may have promoted progress. Today it retards progress.”

The authors then suggest “design criteria” for an “Information Age political program”—in effect, a program for the competent masses. First and foremost is “increasing the amount of choice available to individual citizens,” including voting choices, educational choices, medical choices, and retirement choices. Another criterion is providing a “true safety net” for those who make unfortunate choices.

The policy chapters—on the economy, governance, and community, respectively—don’t just bring the design criteria down to earth. They also demonstrate with great sophistication and panache that the radical middle has arrived as a distinct and cohesive political position.

A radical centrist economy would stress fairness, freedom, and personal responsibility rather than one-size-fits-all government programs. That’s why each of us would receive a \$6,000 grant from the government at birth (basically untouchable by mom and dad), which with interest would climb to \$20,000 by high school graduation. Later on, as adults, we’d each be required to purchase a “basic” private health insurance policy (we could always buy more if we chose), and the government would subsidize basic health insurance for the poor. We’d also be required to save 5 percent of our gross earnings for retirement (Social Security would be eliminated), and those whose retirement incomes fell below a certain “floor” would receive govern-



ment assistance. Thanks to these and similar measures, say the authors more than once, each of us would have more real options in life—and corporations would have far fewer employee administrative costs, enabling them to better compete in the global economy.

Governance would change equally deftly and dramatically in radical centrist society. For example, the federal government would pay for most or all K-12 education—it's the “only way to ensure that all students have access to a quality education on a relatively equal basis,” say the authors, sounding very much like the *Washington Monthly*. In addition, the progressive income tax would be radically simplified—and made more truly equitable—by eliminating most tax deductions, credits, and exemptions. Here the authors differ profoundly from Giddens and other radical centrists who advocate generating less tax revenue from income and more from consumption of goods and “bads” (e.g., energy, waste, transport).

Like Sirianni and Friedland, Halstead and Lind emphasize that community need not mean balkanization. For example, to combat the “racial divide,” the authors would pursue affirmative action “by race-neutral methods like better primary education for all Americans.”

A closing chapter scours the United States for a “coalition of the Radical Center”—and finds the elements for one among “disaffected voters,” “the newly wealthy and influential elites of the technology sector,” and “young adults.” The authors' analysis differs significantly from that of Ray and Anderson, who focus not on identifying promising social sectors but on the potential of certain broad values (e.g., altruism, globalism, ecology, self-actualization) to cut across social sectors. Both analyses are provocative, and both seem to be pointing to the same 50 million people.

Halstead and Lind have provided us with an extraordinarily rich blueprint of radical middle society. Policy analysts should find it especially useful. But like many early blueprints, it's less complete than meets the eye.

Most books setting forth a whole new approach to politics go to great lengths to invoke distinguished or colorful forebears, parallel thinkers, overlapping movements. Jeff Gates's *Democracy at Risk* (on economic democracy) and Michael Shuman's *Going Local* (on prin-

cipled decentralism) are two recent and delightful examples. But there's little of that here. The movements and writers mentioned in this review are nearly absent from the body of *The Radical Center*. A being from Mars—or from *Time* magazine—could peruse this book and conclude that Halstead and Lind are the only comprehensive radical middle thinkers in the world. Ted and Michael: A little generosity of spirit wouldn't hurt, and it would help immeasurably in building the coalition you say you want to see.

Another hole in the soul of this book is that it shies away from two issues that nearly all other radical centrists put at the very top of their agendas. Halstead and Lind devote a scant page and a half to the environment (and that to a single issue—tradable carbon emissions), and they devote no space at all to globalization, explaining—lamey—that “doing justice” to the subject would require “another book in itself.” Both omissions smack of a failure of nerve. Many radical middle thinkers are courageously moving away from the doctrinaire environmentalism of the Sixties Generation (see Gregg Easterbrook's *A Moment on the Earth* or Marian Chertow and Daniel Esty's *Thinking Ecologically*), and it would have been nice if Halstead and Lind had risked some of their moral capital by at least drawing attention to this important development. And how can you be a radical middle thinker—which means, among other things, a holistic thinker—without staking out a position on globalization at the dawn of the 21st century? Giddens, Coyle, and Anderson, all at least as intellectually credible as Halstead and Lind, put the need for socially conscious capitalist globalization at the heart of their recent books, which are all quite short.

A third omission is less tangible, but no less egregious in the post-Seattle world. Of all the books mentioned above, *The Radical Center* may be the meatiest in terms of public policy; yet when you're done, it's strangely unsatisfying. It stirs the mind, but you're not tempted to go out and fight for the radical center. This is no small matter. As I write, millions of good people are being diverted from mainstream struggles because of the persuasive power of nihilistic texts, like Michael Hardt and Antonio Negri's *Empire*, or messianic texts, like David Korten's *The Post-Corporate World*. Halstead and Lind are thoroughly sensible, but that's not enough to inspire a “[b]road-based social movement,” which the authors claim they'd like to see. There's

no animating passion in *The Radical Center*, and there's never been a social movement without an animating passion. Halstead and Lind have given us plenty of beef—but where's the juice?

## Myths and Reality

Peter Skerry

Mark R. Warren, *Dry Bones Rattling: Community Building to Revitalize American Democracy* (Princeton and Oxford: Princeton University Press, 2001), 322 pp.

**A**long with alligators in New York's sewers, the late Saul Alinsky has become the stuff of urban legend. By the time of his death in 1972, Alinsky's skills as a hard-nosed community organizer had earned him the status of folk hero—a "prophet of power to the people," according to *Time* magazine. The problem with such legends, of course, is that their familiarity lulls us into accepting the half-truths and misconceptions that they encapsulate.

In *Dry Bones Rattling: Community Building to Revitalize American Democracy*, sociologist Mark R. Warren not only sets the record straight on Alinsky and the Industrial Areas Foundation (IAF), the community organizing training institute that Alinsky founded in 1940, he updates it. The book offers a comprehensive account of how Alinsky's heir, Ernesto (Ernie) Cortes, has revitalized the IAF in Texas and throughout the Southwest. Placing the Texas IAF and the Southwest IAF network of community organizations in the context of the social-scientific critique of contemporary American political institutions, as well as the debate over declining social capital, Warren has written what should become the standard work on Alinsky organizing at the beginning of the 21st century.

On the way to his broader argument, Warren addresses several wrongheaded notions about Alinsky methods that persist across the political spectrum. Leftists have long tended to dismiss Alinsky organizing as narrowly focused on local issues, on "fixing traffic

lights.” Others have criticized the IAF for its hardball confrontation tactics, which an influential Catholic priest once described to me as “un-Christian.”

There are kernels of truth in both perspectives, but only kernels. As Warren notes, the IAF’s long-standing focus on local organizing is especially compelling in an era when our political institutions are thoroughly deracinated and dominated by elites only loosely accountable to those they represent. Anyway, Cortes and company have moved beyond local arenas and developed networks, especially in Texas, capable of leveraging support from elected officials statewide.

As for IAF tactics, Warren makes clear that while its paid organizers and volunteer leaders are willing to disrupt public meetings and demonize their opponents, they are also capable of quiet negotiation with those same opponents. Indeed, Cortes and his colleagues have proven to be effective policy entrepreneurs. Warren points to their Alliance Schools initiative, first launched in Fort Worth and designed to promote the involvement of minority parents in their children’s schools. Most impressive is Project QUEST, San Antonio’s innovative job training program that relies on the local IAF affiliate’s dense social networks in heavily Mexican-American Catholic churches. The affiliate recruits and then monitors trainees enrolled in long-term programs, at the end of which local businesses have committed to providing graduates living-wage jobs.

Warren also highlights lesser-known aspects of IAF organizing—for example, its wariness of activists and conviction that those “involved in social justice politics are too righteous and fail to understand that politics is about practical power.” In the same vein, the IAF shuns protest politics and what it calls “movement issues” (i.e., “single-issue campaign[s] that [do] not lead to long-term change”).

Warren underscores how the Texas IAF has long avoided explicitly addressing racial injustice—a policy it has reluctantly begun to change as it has sought to move beyond its Mexican-American base and make inroads among African Americans. Indeed, the first time a Texas IAF affiliate publicly raised the issue of racism was in Dallas in 1996. But even as they seek out more black organizers, Cortes and his colleagues resist “black on black organizing.” As IAF supervisor

Sister Christine Stephens puts it, “In principle we are against the idea of assigning African American organizers to recruit and work with African American churches. We want to hire the best.” On the other hand, the IAF is not above ticket balancing to make sure that it presents a multiracial face at major public events.

Particularly compelling is Warren’s analysis of how Cortes’s original success among Mexican Americans in San Antonio has been built on: throughout Texas and the Southwest there are now IAF affiliates comprised of working-class Latino Catholics, black Protestants, middle-class white Protestants, and even a few Jewish congregations. Warren lays bare the enormous difficulties that the IAF overcomes to build genuinely multiracial organizations. He also highlights that Cortes is moving beyond religious congregations to include schools and unions in his organizing ambit.

But for all these valuable insights, perhaps Warren’s greatest contribution is his answer to the perennial question: do these impressive accomplishments reflect a grassroots mobilization towards greater civic engagement, or are they simply orchestrated by the IAF’s paid organizers? Although Warren acknowledges that IAF organizers definitely and self-consciously wield considerable authority, he argues that they do so in a participatory context that continually emphasizes the development of community leaders. As Warren puts it, the IAF “combines authority with participation.” And it is this emphasis on community-based resources, he maintains, that is essential to revitalizing American democracy.

To be sure, these organizers do work intensively with local leaders. Yet Warren exaggerates when he describes the IAF as “participatory.” For its key leaders, it surely is. But for its rank and file, it just as surely is not. IAF foot soldiers are quite passive. This doesn’t mean that they are dupes, or that they are being manipulated. But Warren would have done well to make clear that not all IAF members learn the skills vital to democratic participation.

Nevertheless, Warren’s fundamental point here stands. In contrast to what he sees in the IAF, he notes, “A pervasive bias against any form of authority has blinded many analysts to considering the essential role that authoritative leadership plays in democratic institutions.”

To his credit, Warren is not without distance on his subject. He reports that some leaders find the organizers so arrogant that they leave the IAF. Warren also confirms what most politicians and leaders of other organizations already know: that the IAF can be almost impossible to work with. But Warren saves his real criticism for the IAF's reluctance to explicitly confront racism. Indeed, he argues persuasively that unless this changes, the IAF will not be able to reach out effectively to African Americans.

If Warren's exhaustive, field-work-based study has any drawbacks, they begin with his taking his interviews with leaders a bit too much at face value, and failing to discount the bravado that such individuals typically acquire as part of their IAF training.

Another concern is that Warren does not adequately portray how hard-fought and divisive an IAF organizing drive in, for example, a Catholic parish can be. At various points he conveys the impression that wealthy conservative Catholics are the primary source of potential opposition to such organizing. But the fact is that many working- and lower-middle-class Mexican Americans also object to the IAF coming into their parishes and, in their view, bringing politics into the church.

This points to a larger shortcoming of Warren's analysis. To him, the most salient aspect of today's IAF is that it offers "progressive politics" the potential for real grassroots strength. And as far as Warren is concerned, the IAF can and should move in an even more progressive direction. Thus his case for confronting racism.

Warren of course is entitled to his views, and he is not wrong to see the IAF in this way. It is almost certainly how some IAF organizers see their work. For all I know, it may be how most such organizers see their efforts. But even if accurate today, it has not always been thus. Not so long ago, Cortes and his colleagues were as suspicious of liberals as of conservatives. Not surprisingly for a group heavily influenced by Catholic social teaching, a connection Warren does acknowledge, the IAF has been highly critical of contemporary liberalism's preoccupation with individualism and rights. It is this current in the IAF that causes it to be uneasy with the righteousness of racial protest and very comfortable with organizational authority and hierarchy.

Unfortunately, none of this comes through in Warren's account. Why? Perhaps because of his own political orientation. Or perhaps because the IAF has in fact repositioned itself in recent years. As Warren does point out, Cortes and his Southwest IAF network have been enjoying considerable support from liberal foundations like Ford and Rockefeller. As liberal elites have paid increasing attention to Cortes's impressive and important work, the IAF's orientation may have shifted. There would be nothing surprising or insidious in this. But if true, this development was certainly aided by the obtuseness of conservative elites who have refused to see Cortes and company as innovative and tough-minded political entrepreneurs, not warmed-over New Leftists.

The tragedy here—for Warren's analysis and for American politics—is that the IAF could be much more than the institutional legs for a revived progressive politics. It could have contributed—and might still contribute—to the transformation of our political discourse and move us beyond stale debates between left and right, progressives and conservatives. The IAF has the potential to form the basis of a homegrown American social democracy—or, alternatively, a conservative welfare state—that should be of great interest to communitarians and readers of this journal. For all its virtues, Warren's treatment simply fails to explore the enormous promise of the IAF. Curiously, in his preoccupation with encouraging the IAF to be more progressive, Warren settles for much less than the true potential of what Ernesto Cortes and his colleagues have been forging in the Southwest for almost three decades now.

## Morality in America

William M. Sullivan

Alan Wolfe, *Moral Freedom: The Search for Virtue in a World of Choice* (New York: W. W. Norton, 2001), 224 pp.

**A**mong the conditions contributing to the stability of democratic life in the United States of his time, Alexis de Tocqueville singled out what he quaintly called the “severity of customs sur-

rounding marriage.” Two centuries later, the severity of those and many other customs has loosened in America; it is the purpose of Alan Wolfe’s *Moral Freedom* to provide a sociological account of their decline. The book does not, however, follow Tocqueville’s lead very far in trying to connect this cultural shift to the state of American democratic life beyond the intimate sphere.

*Moral Freedom* is part of a larger project that Wolfe has been pursuing for much of the past decade. He has sought to show that the “culture wars” between self-styled conservatives and their liberal opponents have remained largely an affair of mobilized elites. While they have roiled the surface, these ideological conflicts have roused few lasting echoes from the depths of American moral feeling. More recently, Wolfe has undertaken an ambitious project in conjunction with the *New York Times Magazine* to survey opinion about “traditional values” compared with moral experimentation. *Moral Freedom*, he points out, deliberately seeks to canvass Americans whose views “gravitate toward the extremes.” These vocal champions of relatively extreme positions are taken to “establish the parameters of the proper way to live, within which everyone else makes choices.”

The varied interviews on which Wolfe draws give the book its energy: they range from discussions with gay men and lesbians in San Francisco, through high-tech entrepreneurs in Silicon Valley, to a Mexican-American community in Texas, a Southern university attended largely by first-generation college students, a wealthy Ohio suburb, an African-American neighborhood in Hartford, an immigrant town in Massachusetts, and a small town in rural Iowa. Along the tour, the reader meets born-again Christian moralists and secular antimoralists, individualists who dislike “religion” but affirm “spirituality”—a whole set of articulate Americans from the varying demographics suggested by Wolfe’s choices of place.

*Moral Freedom* paints an arresting portrait of the vast spectrum of contemporary American attitudes on moral matters. The reader learns a good deal about the complex casuistry through which Americans today struggle to remain loyal to each other and their institutions while also “taking seriously other vows that may come into conflict” with their pledged commitments. Wolfe then places these contemporary discussions within a history of American thinking about the



moral life that focuses on the shift from the World War II generation's experience of "miracles of social cooperation" to what he sees as the twin sources of the more recent upsurge of individualism: the counterculture of the 1960s and the Reaganites' revival of a strong entrepreneurial ethos.

Throughout the book, the common concern voiced by the interview subjects is, of course, with the moral implications of how they and their families, friends, and acquaintances live. As Wolfe presents them, they are indeed searching for virtue, for a good way to live, in "a world of choice." The recurring theme of the interviews, as Wolfe hears it, is by now familiar: a willingness to tolerate diverse opinions, a fear of being judgmental. There are exceptions—love between members of the same sex is still a major sticking point for many of Wolfe's interviewees—yet overall, Wolfe can conclude, "There is a moral majority in America. It just happens to be one that wants to make up its own mind."

What are the deeper roots of this historically unprecedented sort of moral consensus? In Alan Wolfe's interpretation, the deepening of moral freedom over time corresponds to the spread of an optimistic understanding of human nature within American society. According to this view, human beings are innately good and at the same time have the "capacity to alter their inborn nature." This view is intertwined with the nation's long-standing belief in progress and, though Wolfe does not talk much about this, with its belief in its special divine election as well.

Wolfe argues that just as the economic freedom emphasized in the 19th century was complemented in a more radically democratic direction by the extension of political freedom to organized workers and African Americans in the century just past, we now find ourselves in a period of expanding moral freedom. This claim resonates with the research by Ronald Inglehart and others that documents the emergence over recent decades of a "postindustrial" sensibility throughout the developed countries. However, Wolfe insists that this means neither antinomian license nor amorality, but that individuals rightfully can (and should) decide how they wish to live. They may "consult" traditional authorities as sources of inspiration, but in contemporary America, "any form of higher authority has to tailor its commandments to the needs of real people."

What are we to make of this development? Here *Moral Freedom's* argument—that the radicalization of personal freedom in the moral sphere is itself a moral advance—runs the risk of simplifying a situation that is far from simple. Sociologically, one might argue that the likely implication of Wolfe's findings is a society in which sympathy for others is readily aroused but where longer-term commitments and enduring solidarity become harder to sustain. Several recent studies point in that direction, such as Robert Putnam's *Bowling Alone*, Robert Wuthnow's *Loose Connections*, and James Davison Hunter's *Death of Character*. As if in confirmation of these misgivings, in the wake of the September 11 tragedy the huge national upsurge in giving to the victims of the attacks turned out to be not in addition to but at the expense of the public's commitments to local charities. Moreover, looser moral agreements would lead one to expect that social coordination in such a complex society as the United States would rely ever more heavily upon other, amoral forms of motivation and compulsion, such as the market—an idea sketched out by Robert Reich in *The Future of Success*. This development is also not without serious implications for the quality of democratic practice.

In short, there is a lot to probe and discuss here in order to make an informed judgment about the contribution of burgeoning "moral freedom" to democratic life. Alan Wolfe has done us a service in providing a rich survey of opinion about one area of the moral life in short compass. *Moral Freedom* might, to borrow a title from Søren Kierkegaard, be seen as a sort of "Sociological Fragment" that can provide readers with an intriguing entry into one of the most important, and complex, issues of our time. But clearly, in the study of Americans' conception of virtue at the turn of the millennium, Wolfe's book marks only the opening chapter.

## THE COMMUNITY'S PULSE

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### Trust in Corporate Executives

*Do you think that the senior corporate executives are more or less honest and trustworthy today than they were 10 years ago?*

	<u>More honest and trust- worthy</u>	<u>Less honest and trust- worthy</u>	<u>No differ- ence</u>	<u>Not sure/ Refused</u>
Total	14%	68%	14%	4%
Republican	13	69	15	3
Democrat	17	67	11	5
Independent	10	68	18	4

### Feeling Affected by Corporate Scandals

*In the future, do you think that those corporate frauds and accounting problems\* probably will have any serious effect on you or your family, or not?*

	<u>Total</u>	<u>Income</u>					
		<u>Less than \$15,000</u>	<u>\$15,000 to \$24,999</u>	<u>\$25,000 to \$34,999</u>	<u>\$35,000 to \$49,999</u>	<u>\$50,000 to \$74,999</u>	<u>\$75,000 and over</u>
Will have serious effects	48%	54%	41%	47%	50%	49%	51%
Will not	41	35	45	45	38	40	45
Not sure/ Refused	11	10	12	8	11	11	4

\*The previous question in the survey referred to instances in "companies such as Enron, Qwest, ImClone, Xerox and WorldCom."

Source: Harris Poll, July 18-22, 2002  
U.S. national sample of 1,010 adults

Compiled by Deirdre Mead

“Very, very important to the life of the United States, to the West, and, I am convinced, to freedom.”

—*Jeane J. Kirkpatrick*



# Commentary

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## LIBERTARIANS, AUTHORITARIANS, COMMUNITARIANS

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### From the Libertarian Side

#### The Right to Smoke?

New York City Mayor Michael Bloomberg recently released a proposal to ban smoking in all workplaces—including bars, restaurants, and bowling alleys. Bloomberg and other supporters of the measure insist that the main purpose is not to limit the places where people can smoke, but to protect employees at bars and restaurants, who, according to the *New York Times*, are 50 percent more likely to have lung cancer than other workers, even after taking into account their own smoking habits.

But critics interpret the proposed legislation as an attack on the rights of smokers, calling it paternalistic and comparing it to Prohibition. Political analyst Douglas Muzzio called it a “questionable intrusion of government in the affairs of the people,” while *National Review* columnist Dave Shiflett wrote that New Yorkers’ freedoms are “under attack not only from without but from within” and called the proposed ban a “humiliation.”

In spite of the vocal opposition, the *New York Times* reports that a survey released by the American Cancer Society shows that 73 percent of city residents support the kind of restrictions Bloomberg proposed.

## Public Access Excess

In Hillsborough County, Florida, a debate is raging over how much freedom of expression on public access television should be allowed. In March, Charles Perkins, host of the *Happy Show*, ran a video of a nude woman fondling herself in the shower. Then in May, on a different show, Saheeb Yusef Al-Mahdi aired footage of the public suicide of former Pennsylvania Treasurer R. Budd Dwyer. The graphic footage of Dwyer shooting himself in the head at a press conference was accompanied by a voice-over of Al-Mahdi urging him to “do it, do it, do it.”

The state attorney’s office has said that neither show violated any laws. Steve Effros, who helped draft cable industry regulations as a lawyer for the FCC in the 1970s, explained to the *Tampa Tribune* that public access stations can’t edit or eliminate material from their shows unless it is legally obscene. “That’s one of the prices of the First Amendment,” he said.

Perkins defended himself to the *Tampa Tribune*, saying, “America was founded on freedom of speech,” and cautioning, “This is going to become another Afghanistan.”

For his part, Al-Mahdi claims that his show was taken out of context and actually discourages violence when looked at as a whole. Fred Cusik, a journalist who witnessed the original suicide, characterized Al-Mahdi’s airing of the footage as “sick thrills,” but added that “it’s a free country and I guess he can do that.”

## From the Authoritarian Side

### Cruel and Unusual Punishment

Islamic courts in Nigeria have recently sentenced two single mothers convicted of adultery to death by stoning. Sex out of wedlock is considered adultery, a capital crime under the Islamic law in place, and the fact that the women had conceived more than nine months

after their divorces was thus considered sufficient grounds for conviction.

While one of the women was acquitted by the Islamic appeals court because the act of adultery took place before Islamic law was implemented in her state, the sentence of the other has been upheld by the Islamic high court. As soon as the woman has weaned her baby, she is to be buried up to her neck in sand, then stoned to death by executioners.

A version of the *sharia*, or Islamic law, has been in place in 12 states in northern Nigeria for the past two years, during which time Islamic courts have also ordered six hand amputations as punishment for stealing and the stoning of one man for sodomy. The courts have prescribed floggings for lesser crimes, such as consumption of alcohol. (It is worth noting that the *sharia* has been implemented differently in other countries, and not all countries that embrace Islamic law sanction these extreme punishments.)

Nigeria's president has expressed uneasiness over the sentences, and the attorney general has declared that the punishments violate the country's constitution. But the governors of the states with Islamic law in place disagree, claiming that the *sharia* is part of the constitution. Meanwhile, human rights groups continue to put pressure on the federal government. Legal rights lobbyist Innocent Chukwuma comments, the situation "makes nonsense of our democracy."

## From the Community

### Growing a Healthy Community

Finding fresh produce can be a major feat in many inner-city neighborhoods, where large grocery stores are rare and smaller stores offer inferior products at high prices. After observing the diabetes, high blood pressure, and heart disease afflicting their neighbors on

Chicago's West Side, LaDonna and Tracey Redmond decided to try something new to bring healthier food into their community.

They started by installing a large garden in vacant lots behind their home and are devoting themselves full time to cultivating it. Neighbors, many of whom have rural roots, have come forward both to offer advice and to help out with the building and tending of the garden. In addition, a consortium of local universities has provided technical assistance.

With the support of the Chicago Community Trust, the Redmonds also started a farmers' market on Saturdays to increase the access of people in their neighborhood to fresh produce. To make it easier for the poor to afford this healthy food, they convinced the government to allow them to take food stamps, becoming the first farmers' market to do so. Eventually, they'd like to see a full-time grocery cooperative in their neighborhood that would sell fresh meats and produce and offer cooking classes.

In the meantime, their initial garden project is having benefits beyond just providing good produce. The once-vacant lots have become a neighborhood meeting place, and the constant activity has made local drug dealers nervous. The Redmonds are careful to make clear that they are not just providing a service to a destitute area, but attempting to strengthen the community from within. Social services look at the neighborhood as "a place that has a lot of deficits," LaDonna Redmond told the *New York Times*. "We want to build on community assets."

*Mackenzie Baris*



## COMMENTARY

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### A Watchful America

**J**ames Madison told the Virginia ratifying convention, “There are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.” Heeding this cautionary note, born of experience, Americans have approached the war on terror with caution and watchfulness.

Those who drafted the Constitution designed the federal government to be a government of “few and defined” powers. Yet the fear of governmental excess was so great that the ratifying conventions in several states sought a bill of rights to make the people’s freedom from federal power explicit. Among the freedoms thought most dear was a prohibition on the use by government agents of “general warrants”—that is, authority to search while lacking any articulated specification of the person, place, or thing to be searched or seized. The fear of a generalized police power was no mere hypothetical: when a bag of commercial goods went missing in Wilton, Connecticut, the police obtained a warrant from a magistrate authorizing a search for the stolen bag in every shop, store, and barn in the city. The state supreme court found the warrant so facially overbroad that it upheld a trespass damage award against the issuing magistrate and the police who executed the warrant. Our earliest history thus reflects a firm rejection of the unfettered liberty of government agents to search and seize the citizenry or their possessions when, where, and as they please.

Yet the trend in today's America is an expansion of police power and the curtailment of individual liberty. All can see the change in the conduct of government agents since September 11. No one may enter the Capitol without consenting to an intrusive search of his or her bags. Congress is considering repealing the Posse Comitatus Act and authorizing the use of military personnel as police officers. Suspected enemy combatants are detained indefinitely and the government argues that its decision to do so is not subject to judicial review. Or, to put it most prosaically, could anyone have imagined having to take off his or her shoes to board an airplane in August 2001?

Nobody would seriously dispute the major premise of Judge Posner's recent contribution, "The Truth about Our Liberties" [Summer 2002]: in assessing the appropriateness of infringements on American liberty we must take into account the severity of the threat being averted. In this time of terror, some adjustment of the balance between liberty and security is both necessary and appropriate. And the Constitution is sufficiently malleable and pragmatic to accommodate this balancing of interests. Indeed, the very text of the Fourth Amendment—with its prohibition only of "unreasonable" searches and seizures—implicitly recognizes the need to balance the harm averted against the extent of governmental intrusion.

But in combating the increased threat to public safety we risk systematically undervaluing the countervailing liberty interest. Our history suggests precisely why this risk exists—the insidious contraction of liberty results from measures taken with the best intentions, not malevolent ones. As Judge Posner writes, at the time, the internment of Japanese Americans seemed like a reasonable attempt to ensure public safety. Yet, in retrospect, all agree that in placing so great a priority on public-safety interests the government acted unjustly and without sufficient regard for the liberty interests of the Japanese-American citizens.

It may well be that liberty must be curtailed when the public need is great enough. But our history teaches us that we should interpret the Constitution as embodying a cautionary rule: public safety should be effectuated through the least intrusive means possible, allowing maximum scope for personal liberty.

How, then, should we approach the practical questions of governmental conduct arising in a post-September 11 world? With our eyes wide open and with a dose of healthy skepticism. The good news is that we have plenty of both. Courts and the Congress are casting a jaundiced eye at the administration's more extravagant and overblown proposals for reform, while accommodating and expediting the more urgent and reasonable requests. Already, for example, the courts have rejected governmental claims to the right to keep the identities of detainees secret and have begun to scrutinize the indefinite detention of individuals as material witnesses or unlawful combatants. The press has accepted the challenge of fulfilling its traditional function as a check on authoritarian excess. Most importantly, the pendulum of public opinion has steadied as the initial shock of terrorism wears off. The American public instinctively understands that prudential adjustments during times of crisis do not (and should not) reset the balance between liberty and security permanently. Once the necessity of war has lapsed, we anticipate a return to the general rule of constitutional liberty.

So long as we keep a vigilant eye on police authority, so long as the federal courts remain open, and so long as the debate about governmental conduct is a vibrant part of the American dialogue, the risk of excessive encroachment on our fundamental liberties is remote. The only real danger lies in silence and leaving policies unexamined.

Thomas Jefferson said, "The natural progress of things is for liberty to yield and government to gain ground." While accommodating the need for government to ensure domestic tranquility in these troubled times, a watchful America can guard against this natural tendency.

*Paul Rosenzweig  
The Heritage Foundation  
George Mason University Law School*

## The Truth about Our Institutions

Judge Posner sees the question of civil liberties as a simple balancing of a “public-safety interest” and a “liberty interest” [“The Truth about Our Liberties,” Summer 2002]. He insists that it is “common sense” that we should surrender rights given the situation we now face. But he neglects the crucial question of incentives, a strange omission for a scholar who has spent much of his distinguished career reminding us of their importance.

The issue before us today is not simply whether civil liberties should be curtailed, but whether executive officials should be given increased power without increased accountability. Institutions, and in particular government institutions, have inherent incentives to try to increase their authority while decreasing their accountability. It is no accident that the present administration has simultaneously sought greater enforcement powers, promoted secrecy vigorously even in areas unrelated to national defense, and attempted to make as much law as possible without congressional consultation. And it is no accident that the same administration has attempted to justify its secrecy, its consolidation of power, and its unilateralism by manipulating a climate of free-floating fear.

Power without accountability leads to arrogance and corruption, and these lead to errors of judgment. Government officials are agents of the people, and like all those who wield power on behalf of others, they have natural incentives to abuse their authority if there are not sufficient checks and monitoring devices. We have seen this in the recent corporate scandals, where lack of managerial accountability led inevitably to fraud, self-dealing, and mismanagement. An administration composed largely of businessmen is unlikely to be any more impervious to the law of bad incentives.

When government officials act in secret, when they arrest individuals without disclosing their identities or hold them indefinitely and deny their right to an attorney or to judicial review, these officials make it easier to cover up their mistakes. And when government officials are utterly convinced of their rectitude and view others as mere hindrances to the pursuit of the nation’s interests, they are more likely to succumb to the perils of groupthink, self-delusion, and hubris. This administration has been particularly emphatic about its

sense of moral certainty and about the dubious patriotism of those who dare criticize it. That should be a warning sign to anyone.

Moreover, the notion that “we” must surrender our civil liberties to preserve our safety glosses over the fact that the burden of deprivation is not evenly distributed. Judge Posner will not be rounded up secretly and held without access to counsel. The brunt of the nation’s fears will be borne by others. Governments tend to overreach against those who have the least power to object—hence the blanket closing of immigration hearings, the secret roundup of aliens, and the indefinite detention of Muslims. Institutional incentives lead governments to hassle not the most dangerous but those most accessible to hassling and those the public cares least about.

Civil liberties and democratic accountability might seem rather inefficient means of governance, but they have considerable advantages. Forcing government officials to explain and justify their actions to Congress and to an impartial judiciary keeps them grounded and honest.

To be sure, civil liberties do not exist merely to secure democratic accountability; that is why increased accountability does not always justify increased power. The government should not be allowed to round up Muslim citizens for indefinite detention even if Congress and the voters have approved it. But weakening individual rights eliminates a crucial source of restraint on executive power, and unrestrained power usually leads to arrogance and bad judgment. Thus we shouldn’t assume that maintaining civil rights and democratic accountability necessarily decreases our safety. To the contrary, it may secure better decision making and greater security in the long run. Suppression leads to fear, fear leads to hatred, and hatred leads to violence and instability. Unwise attacks on other countries may provoke countermeasures that harm our own citizenry. A government untethered from the checks and balances that individual rights and democracy provide may make serious errors of judgment that lead to more deaths and more human suffering, both for our own people and for people in other lands.

Emergencies create dangers, but they also create possibilities for amassing power. When the perils we face are, in Judge Posner’s words, “diffuse” and “shadowy,” those in power will ask for as much

as they can get, including prerogatives they sought long before the emergency appeared. Yet it is precisely when the threat is most uncertain and diffuse that the balance between liberty and security that Judge Posner celebrates becomes hardest to fathom and the problems of overreaction and opportunism become greatest. For pragmatic reasons, then, it is best to require the strongest showing before the mechanisms of accountability are dismantled and the executive is given free rein to arrest, incarcerate, and spy upon the people at will.

It might be objected that the balance should be struck differently in times of emergency, as we face now. But we have no idea when this state of danger will end, or when the war on terrorism will be concluded. The Cold War spanned nearly half a century; what we do now under the name of temporary necessity is very likely to become business as usual. Other nations have not had much success with the declaration of emergency powers. By removing the safeguards of accountability they have often spiraled into greater and greater acts of arbitrariness and tyranny.

Judge Posner insists that we should not be concerned that officials will “exaggerate dangers to the nation’s security,” because “the lesson of history” points in the opposite direction. “It is because officials have repeatedly and disastrously underestimated these dangers,” Posner asserts, “that our history is as violent as it is.” He offers as examples Southern secession, Pearl Harbor, Soviet espionage during the Cold War, urban rioting in the 1960s, the Tet Offensive, and the Iranian revolution, as well as September 11. But Judge Posner does not seriously contend that these episodes arose because of too much protection for civil liberties. There is no evidence that Southern secession was caused by an excess of civil liberties—Southern states held human beings in slavery, ruthlessly enforced the rights of slaveowners, and regularly censored the speech of those who disagreed with their policies. The urban riots of the 1960s were not caused by ten years of civil rights progress, but by three hundred years of racial oppression. Our lack of preparedness for Pearl Harbor resulted from failures of diplomatic and military intelligence overseas, not too many writs of habeas corpus or an overindulgent constabulary. No one thinks that *Miranda v. Arizona* caused the Tet Offensive or the Iranian revolution. The problem of domestic espio-

nage during the Cold War began well before the great civil liberties innovations of the Warren Court, so it can hardly be blamed on civil libertarians.

Posner's argument overlooks the fact that government officials might systematically overestimate the dangers that come from accountability and civil liberties—because accountability and civil liberties interfere with their power—while systematically underestimating dangers to the nation that arise from other sources and causes. Indeed, this seems to be the real lesson of our history. We should not blame civil liberties for our lack of preparedness, but we can blame officials for routinely using threats of emergency as an excuse to curtail domestic civil liberties. Because of the fear of blacks, Southern states wreaked havoc on the rights of Americans, black and white. Because of a racist suspicion of a Japanese fifth column, our country created its own set of concentration camps. Because of the fear of Communism, the lives and fortunes of many good people were destroyed in an orgy of hysteria. And all of this was done in the name of emergency, in the name of America, in the name of protecting our way of life.

Like Judge Posner, I consider myself a pragmatist, one who, in his words, regards law as “a human creation rather than a divine gift.” I think his views insufficiently pragmatic, for he fails to recognize that our institutions will rot and decay without the checks and balances that keep us a free society. He worries about the mysticism of civil liberties. I worry about the mysticism of authority.

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*After 11 years, the Communitarian Platform is again open for endorsement. The text of the platform, a list of previous endorsers (which includes John Anderson, Robert Bellah, Betty Friedan, Francis Fukuyama, and other leaders of society), and a form to sign the platform are available at [www.communitariannetwork.org](http://www.communitariannetwork.org).*

## CONTRIBUTORS

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