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Does the Internet Strengthen Community?

Suppose that in the summer of 1952, someone had organized a conference on the social consequences of television. The participants would have faced two crucial problems. First, social reality was moving faster than empirical scholarship. Television was diffusing at an explosive rate, from a relative rarity in the late 1940s to near-ubiquity only a decade later. Scholars in 1952 studying the social effects of television might have noted how neighbors crowded into a living room to watch the only set on the block, and they might have drawn conclusions about the medium's community-reinforcing tendencies that would have seemed antique only a few years later.

The second problem would have been even more daunting. Reasoning by analogy from, for example, the automobile's effects on sexual morality in the 1920s, the participants might have suspected that television's unintended consequences would turn out to be at least as significant as its directly contemplated purposes. But they would have been hard-pressed to move much beyond this general insight. The emergence of a new communications technology within a complex social system was bound to reconfigure everything from intimate relations to the distribution of public power. But how, exactly?

According to Alan Ehrenhalt, the front stoop was one of the centers of social life in Chicago's blue-collar neighborhoods of the early 1950s. But during that decade, the introduction of television into nearly every home affected not only the dissemination of news and entertainment, but also patterns of social interaction. Families spent more time clustered

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With this issue, the Institute for Philosophy and Public Policy expresses its deep thanks and best wishes to Arthur Evenchik, who began editing this Report in 1992. For seven years, Arthur served as our muse, mentor, and intellectual conscience. Although he rarely wrote under his own name, he co-authored many of the articles that have appeared here. Arthur taught us to be better philosophers and better writers by subjecting our drafts to the most forceful yet gentle criticism—usually by asking us embarrassing questions, which we eventually learned to ask of ourselves. We thank him, too, for helping to bring out the current issue. In working with him, we have been reminded of just how difficult a task he had, and how extraordinarily well he did it. As he takes up new responsibilities at Johns Hopkins University, we wish him the greatest success.

around the television set, and less talking with their neighbors on the street. In turn, the increased atomization of social life had important ripple effects. Spontaneous neighborhood oversight and discipline of children became harder to maintain, and less densely populated streets opened the door for increased criminal activity.

I don't mean to suggest (nor does Ehrenhalt) that television was solely responsible for these changes; the advent of air conditioning also helped depopulate streets by making the indoors far more habitable during summer's dog days, and important cultural changes reduced the influence of various forms of

authority that helped hold neighborhoods and communities together. I do want to suggest, however, that today it is as if it were 1952 for the Internet, and the methodological problems I have just sketched are the ones we must confront in assessing the impact of this new medium.

In the face of such challenges, it is natural, perhaps inevitable, that our thought will prove less flexible and our imagination less capacious than the future we seek to capture. In our mind's eye, we may hold constant what will prove to be most mutable. One of my favorite examples of this principle in the past (there are many) comes from an article published in the *St. Louis Globe-Democrat* in 1888:

The time is not far distant when we will have wagons driving around with casks and jars of stored electricity, just as we have milk and bread wagons at present. . . . The arrangements will be of such a character that houses can be supplied with enough stored electricity to last twenty-four hours. All that the man with the cask will have to do will be to drive up to the back door, detach the cask left the day before, replace it with a new one, and then go to the next house and do likewise.

As Carolyn Marvin points out, this vision of the future reflects the assumption of, and hope for, the continuation of the economically and morally self-sufficient household, not beholden to outside forces, and going about its own business—a way of life undermined by the very patterns of distribution and concentration that electrical power helped foster.

I draw two lessons from this cautionary example. First, in speculating about the effects of the Internet on community life, we should be sensitive to the often surprising ways in which market forces can shape emerging technologies to upset entrenched social patterns. (This maxim is particularly important for an era such as ours, in which the market is practically and ideologically ascendant.) Second, we should be as self-conscious as possible about the cultural assumptions and trends that will shape our use of, and response to, new technologies such as the Internet. Contemporary American society, I would argue, is structured by two principal cultural forces: the high value attached to individual choice, and the longing for community.

Choice and Community

During the past generation, scholars in a range of disciplines have traced the rise of choice as a core value. Daniel Yankelovich suggests that what he calls the "affluence effect"—the psychology of prosperity that emerged as memories of the Depression faded—weakens traditional restraints:

People came to feel that questions of how to live and with whom to live were a matter of individual choice not to be governed by restrictive norms. As a nation, we came to experience the bonds to marriage, family, children, job, community, and country as constraints that were no longer necessary.



"Honey, please don't talk to Daddy when he's in a chat room."

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In Ehrenhalt's analysis, the new centrality of choice is a key explanation for the transformation of Chicago's neighborhoods since the 1950s. Lawrence Friedman argues that individual choice is the central norm around which the modern American legal system has been restructured. Alan Wolfe sees individual choice at the heart of the nonjudgmental tolerance that characterizes middle-class morality in contemporary America.

The problem (emphasized by all these authors) is that as individual choice expands, the bonds linking us to others tend to weaken. To the extent that the desire for satisfying human connections is a permanent feature of the human condition, the expansion of choice was bound to trigger an acute sense of loss, now expressed as a longing for community. (The remarkable public response to Robert Putnam's "Bowling Alone" can in part be attributed to this sentiment.) But few Americans are willing to surrender the expansive individual liberty they now enjoy, even in the name of stronger marriages, neighborhoods, or citizenship.

This tension constitutes what many Americans experience as the central dilemma of our age: as Wolfe puts it, "how to be an autonomous person and tied together with others at the same time."

I do not believe that this problem can ever be fully solved; to some extent, strong ties are bound to require compromises of autonomy, and vice versa. (This exemplifies Isaiah Berlin's pluralist account of our moral

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condition: the genuine goods of life are diverse and in tension with one another, so that no single good can be given pride of place without sacrificing others.) Still, there is an obvious motivation for reducing this tension as far as possible—that is, for finding ways of liv-

ing that combine individual autonomy and strong social bonds.

This desire gives rise to a concept that I will call "voluntary community." This conception of social ties compatible with autonomy has three defining conditions: low barriers to entry, low barriers to exit, and interpersonal relations shaped by mutual adjustment rather than hierarchical authority or coercion. Part of the excitement surrounding the Internet is what some see as the possibility it offers of facilitating the formation of voluntary communities, so understood. Others doubt that the kinds of social ties likely to develop on the Internet can be adequate substitutes—practically or emotionally—for the traditional ties they purport to replace.

Are Online Groups "Communities"?

In a prophetic account written thirty years ago, Licklider and Taylor suggested that "life will be happier for the on-line individual because the people with whom one interacts most strongly will be selected more by commonality of interests and goals than by accidents of proximity." Whether Internet users are in fact happier and, if so, because they are users, remains to be seen and may never be known (the problems of research design for that issue boggle the mind). The

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underlying hypothesis—that "accidents of proximity" are on balance a source of unhappiness—seems incomplete at best. But Licklider and Taylor were certainly right to predict that online communication would facilitate the growth of groups with shared interests. Indeed, participation in such groups is now the second most frequent interactive activity (behind email) among Internet users.

Anecdotal evidence suggests that these groups fill a range of significant needs for their participants. For some, the exchange of information and opinions about shared enthusiasms—e.g., rock groups, sports teams—is satisfying as an end in itself. For others, this exchange serves important personal or professional goals. Those suffering from specific diseases can share information about promising doctors, therapies, and treatment centers more widely and rapidly than ever before. A friend of mine who works as the lone archivist in a city library system tells me that participating in the online group of archivists from around the country mitigates her otherwise intense sense of personal and professional isolation. In this regard,

computer-mediated communication can be understood as raising to a higher power the kinds of non-place-based relationships and associations that have existed for centuries in industrialized societies.

But are these shared activities "communities"? What is at stake in this question? J. Snyder, a commentator skeptical of the claims of technocommunitarian enthusiasts, argues as follows:

A community is more than a bunch of people distributed in all 24 time zones, sitting in their dens and pounding away on keyboards about the latest news in alt.music.indigo-girls. That's not a community; it's a fan club. Newsgroups, mailing lists, chat rooms—call them what you will—the Internet's virtual communities are not communities in almost any sense of the word. A community is people who have greater things in common than a fascination with a narrowly defined topic.

Note that this objection revolves around the substance of what members of groups have in common, not the nature of the communication among them. By this standard, stamp clubs meeting face to face would not qualify as communities. Conversely, Jews in the diaspora would constitute a community, even if the majority never meet one another face to face, because what they have in common is a sacred text as an authoritative guide to the totality of temporal and spiritual existence.

To assess these claims, we may begin with Thomas Bender's classic definition of community:

A community involves a limited number of people in a somewhat restricted social space or network held together by shared understandings and a sense of obligation. Relationships are close, often intimate, and usually face to face. Individuals are bound together by affective or emotional ties rather than by a perception of individual self-interest. There is a "we-ness" in a community; one is a *member*.

Upper-middle-class American professionals tend to dismiss this picture of community as the idealization of a past that never was. But Bender insists that it offers a tolerably accurate picture of town life in America prior to the twentieth century:

The town was the most important container for the social lives of men and women, and community was found within it. . . . The geographic place seems to have provided a supportive human surround that can be visualized in the image of concentric circles. . . . The innermost ring encompassed kin, while the second represented friends who were treated as kin. Here was the core experience of community. Beyond these rings were two others: those with whom one dealt regularly and thus knew, and, finally, those people who were recognized as members of the town but who were not necessarily known.

A recent personal experience has convinced me that community, so understood, is not simply part of a vanished past. On a recent trip to Portugal, my family stopped for the night at the small town of Condeixa, about ten miles south of the medieval university of Coimbra. After dinner I went to the village square, where I spent one of the most remarkable evenings of my life. Children frolicked on playground equipment

set up in the square. Parents occupied some of the benches positioned under symmetrical rows of trees; on others, old men sat and talked animatedly. At one point a group of middle-aged men, some carrying portfolios of papers, converged on the square and discussed what seemed to be some business or local matter. The square was ringed by modest cafés and restaurants, some catering to teenagers and young adults, others to parents and families. From time to time a squabble would break out among the children playing in the square; a parent would leave a café table, smooth over the conflict, and return to the adult

While many kinds of groups can undergo rapid changes of membership, they may respond differently.

conversation. As I was walking around the perimeter of the square, I heard some singing. Following the sound, I peered into the small Catholic church on the corner and discovered a young people's choir rehearsing for what a poster on the next block informed me was a forthcoming town festival in honor of St. Peter.

Many aspects of this experience struck me forcibly, particularly the sense of order, tranquility, and human connection based on years of mutual familiarity, stable social patterns, and shared experience. I was not surprised to learn subsequently that about half of all young people born in Portuguese small towns choose to remain there throughout their adult lives—a far higher percentage than for small-town youth in any other nation of western Europe.

Bender's examples of community (and my own) are place-based. But it is important not to build place, or face-to-face relationships, into the definition of community. To do this would be to resolve by fiat, in the negative, the relationship between community and the Internet. Instead, I suggest that we focus on the four key structural features of community implied by Bender's account—limited membership, shared norms, affective ties, and a sense of mutual obligation—and investigate, as empirical questions, their relationship to computer-mediated communication.

Limited Membership

While technical restrictions do exist and are sometimes employed, a typical feature of online groups is weak control over the admission of new participants. Anecdotal evidence suggests that many founding members of online groups experience the rapid influx of newer members as a loss of intimacy and dilution of the qualities that initially made their corner of cyber-

space attractive. Some break away and start new groups in an effort to recapture the original experience.

Weak control over membership is not confined to electronic groups, of course. Up to the early 1840s, for example, Boston was conspicuous among American cities for the relative stability and homogeneity of its population, which contributed to what outside observers saw as the communitarian intimacy and solidarity of Boston society. And then, in the single year of 1847, more than 37,000 immigrants arrived in a city of less than 115,000. By the mid-1850s, more than one third of its population was Irish. Boston was riven, and the consequences persisted for more than a century.

While many kinds of groups can undergo rapid changes of membership, they may respond differently. In a famous discussion, Albert Hirschman distinguishes between two kinds of responses—exit and voice—to discontent within organizations. "Exit" is the act of shifting membership to new organizations that better meet needs, while "voice" is the effort to alter the character of existing organizations. Exit is, broadly speaking, market-like behavior, while voice is political.

An hypothesis: when barriers to leaving old groups and joining new ones are relatively low, exit will tend to be the preferred option; as these costs rise, the exercise of voice becomes more likely. Because it is a structural feature of most online groups that border-crossings are cheap, exit will be the predominant response to dissatisfaction. If so, it is unlikely that

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online groups will serve as significant training grounds for the exercise of voice—a traditional function of Tocquevillean associations. In Boston, by contrast, because the perceived cost of exit was high, the Brahmins stayed, struggled, and ultimately worked out a modus vivendi with their Irish neighbors—a process that took over a hundred years. The mutual accommodation of the two groups helped develop one of this country's richest political traditions.

In a diverse democratic society, politics requires the ability to deliberate, and compromise, with individuals unlike oneself. When we find ourselves living cheek by jowl with neighbors with whom we differ but whose propinquity we cannot easily escape, we have powerful incentives to develop modes of accommodation. On the other hand, the ready availability of exit tends to produce internally homogeneous groups that may not communicate with other groups and lack incentives to develop shared understandings across their

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This volume consists of essays originally presented at a conference hosted by the Visions of Governance Project at the John F. Kennedy School of Government. *democracy.com?* examines the effects of information technologies on various aspects of democratic governance, such as representation, community, politics, bureaucracy, and sovereignty. Fifteen scholars offer a balanced and sometimes skeptical look at the transformations that the proliferation of information and the ubiquity of computer networks are making in our basic institutions and processes of governance.

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differences. One of the great problems of contemporary American society and politics is the proliferation of narrow groups and the weakening of structures that create incentives for accommodation. It is hard to see how the multiplication of online groups will improve this situation.

Shared Norms

A different picture emerges when we turn our attention from intergroup communication to the internal life of online groups. Some case studies suggest that online groups can develop complex systems of internalized norms. These norms arise in response to three kinds of imperatives: promoting shared purposes; safeguarding the quality of group discussion; and managing scarce resources in what can be conceptualized as a virtual commons.

As Elinor Ostrom has argued, the problem of regulating a commons for collective advantage can be solved through a wide range of institutional arrangements other than private property rights or coercive central authority. Internet groups rely to an unusual degree on norms that evolve through iteration over

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time and are enforced through moral suasion and group disapproval of conspicuous violators. This suggests that despite the anarcho-libertarianism frequently attributed to Internet users, the medium is capable of promoting a kind of socialization and moral learning through mutual adjustment.

I know of no systematic research exploring these moral effects of group online activities and their consequences (if any) for offline social and political behavior. One obvious hypothesis is that to the extent that young online users come to regard the internal structure of their groups as models for offline social and political groups, they will be drawn to (or demand) more participatory organizations whose norms are enforced consensually and informally. If so, it would be important to determine the extent to which this structure reflects the special imperatives of organizations where barriers to entrance and exit are low. The ideal of voluntary community reinforced by the Internet is likely to run up against the coercive requisites of majoritarian politics.

Affective Ties

Proponents of computer-mediated communication as the source of new communities focus on the development of affective ties among online group members. Thus, Howard Rheingold, while acknowledging concerns that people interacting online "lack the genuine personal commitments to one another that form the bedrock of genuine community," insists that cyberculture can overcome this limitation. He defines "virtual communities" as "social aggregations that emerge from the Net when enough people carry on . . . public discussions long enough, with sufficient human feeling, to form webs of personal relationships."

Here, the crucial empirical question is the relationship between face-to-face communication (or its absence) and the development of affective ties. How

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important are visual and tonal cues? How important is it to have some way of comparing words and deeds? Here's one hypothesis: it is impossible to create ties of depth and significance between A and B without each being able to assess the purposes and dispositions that underlie the other's verbal communications. Is the interlocutor sincere or duplicitous? Does he really care about me, or is he merely manipulating my desire for connection to achieve (unstated) purposes of his own? Is the overall persona an interlocutor presents to me genuine or constructed? We all rely on a range of nonverbal evidence to reduce (if never quite eliminate) our qualms about others' motivations and identities.

Internet enthusiasts respond to these questions by deconstructing the ideal of face-to-face communication. They point out (correctly) that duplicity and manipulation have been enduring facts of human history and that the advent of computer-mediated communication raises at most questions of degree rather than kind. I must confess that I come away unconvinced. Considerable evidence suggests that the Internet facilitates the invention of online personalities at odds with offline realities and that the ability to simulate identities is one of its most attractive features for many users (gender-bending is said to be especially popular). But the playful exercise of the imagination, whatever its intrinsic merits and charms, is not readily compatible with the development of meaningful affective ties. (Devotees of what might be called postmodern psychology, with its emphasis on social construction and *bricolage* and rejection of the distinc-

tion between surface and depth, might want to quarrel with this. So be it. I see no way of discussing affective ties without invoking some distinction between genuine and spurious emotions and identities.)

Another hotly debated issue is the relationship between computer-mediated communication and the tendency to express strong sentiments in antisocial ways. Some researchers have argued that because the absence of visual and tonal cues makes it more difficult to see the pain words can inflict, the Internet reduces restraints on verbal behavior and invites individuals to communicate in impulsive ways. (An analogy would be the asserted desensitizing effects of high-altitude bombing.) Other researchers argue that it is precisely the absence of traditional cues that promotes the formation of social norms for Internet speech and that there is no evidence that this speech is more antisocial on average than is face-to-face communication. Given the fragmentary evidence, I see no way of resolving this debate right now.

Mutual Obligation

The final dimension of community to be considered here is the development of a sense of mutual obligation among members. Recall John Winthrop's famous depiction of the communal ideal aboard the *Arbella*:

We must entertain each other in brotherly affection, we must be willing to abridge ourselves of our superfluities, for the supply of others' necessities. . . . We must delight in each other, make others' conditions our own, rejoice together, mourn together, labor and suffer together.

While this may seem too demanding, at the very least community requires some heightened identification with other members that engenders a willingness to sacrifice on their behalf.

The technology critic Neil Postman argues that whatever may be the case with norms and emotions, there's no evidence that participants in online groups

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develop a meaningful sense of reciprocal responsibility or mutual obligation. Groups formed out of common interests need not develop obligations because by definition the interest of each individual is served by participating in the group. (If that ceases to be the case, it is almost costless to leave the group.) The problem is that bonds created by "interests" (in either sense of the term) provide no basis for the surrender of interests—that is, for sacrifice.

I find it intriguing that many defenders of online groups concede Postman's factual premise but deny its normative relevance. Nessim Watson, for example, argues that communities characterized by a strong sense of mutual obligation have virtually disappeared in contemporary America; to single out online groups for criticism on this score is both unfair and an exercise in nostalgia. Efforts to resuscitate the obsolescent idea of mutual obligation are likely to prove counterproductive:

Those who champion Postman's noble metaphor of community as common obligation are most often faced with the task of dragging other community members kicking and screaming into their part of the obligation. Attempts to construct community usually result in the increased frustration of organizers and the increased cynicism of participants toward the entire idea of community.

In late twentieth-century America, Watson concludes, there is no alternative to voluntary community based on perceptions of individual interest; we will have to get along as best we can without antique norms and practices of sacrifice and mutual obligation.

I very much doubt that our society—or any society—can indefinitely do without these civic virtues. The question of whether emerging forms of group activity help foster these virtues or reinforce their absence is likely to prove significant for the future.

Conclusion

I conclude by restating what appears to me to be the central question. Many Americans today are looking for ways of reconciling powerful but often conflicting desires for autonomy and connection. The idea of voluntary community draws its appeal from that quest: if we are linked to others by choice rather than accident, if our interaction with them is shaped by mutual adjustment rather than hierarchical authority, and if we can set aside these bonds whenever they clash with our individual interests, then the lamb of connection can lie down with the lion of autonomy. Online groups are paradigmatic examples of voluntary community—whence the enthusiasm they have aroused in many quarters.

It is far too early to know what kinds of effects such groups will have over time on the relations between individuals and communities in America. But three kinds of structural doubts can be raised about the civic consequences of voluntary communities. Because they emphasize exit as a response to discontent and dissatisfaction, they do not promote the development of voice; because they emphasize personal choice, they do not acknowledge the need for authority; because they are brought together and held together by con-

verging individual interests, they neither foster mutual obligation nor lay the basis for sacrifice.

In today's cultural climate, the response to these doubts is obvious: anything less than voluntary community will trap individuals in webs of oppressive relations. And what could be worse than that? My answer: learning to make the best of circumstances one has not chosen is part of what it means to be a good citizen and mature human being. We should not organize our lives around the fantasy that entrance and exit can always be cost-free. Online groups can fulfill important emotional and utilitarian needs. But they must not be taken as comprehensive models of a future society.

—William A. Galston

This essay has been excerpted from *democracy.com? Governance in a Networked World*, edited by Elaine Ciulla Kamarck and Joseph S. Nye, Jr. Copyright © 1999 by Hollis Publishing Company; reprinted with permission. Sources: Alan Ehrenhalt, *The Lost City: Discovering the Forgotten Virtues of Community in the Chicago of the 1950s* (Basic Books, 1995); Carolyn Marvin, *When Old Technologies Were New: Thinking about Communications in the Late Nineteenth Century* (Oxford University Press, 1988); Daniel Yankelovich, "How Changes in the Economy Are Reshaping American Values," in *Values and Public Policy*, edited by Thomas E. Mann and Timothy Taylor (Brookings Institution Press, 1994); Lawrence Friedman, *The Republic of Choice: Law, Authority, and Culture* (Harvard University Press, 1990); Alan Wolfe, *One Nation After All* (Viking, 1998); Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, vol. 6, no. 1 (January 1995); Steven G. Jones, ed., *Virtual Culture: Identity and Communication in Cybersociety* (Sage, 1977) (contains quotations from Licklider and Taylor, and from Howard Rheingold); "Technology and Online Use Survey," The Pew Center for the People and the Press (1996) (this survey measures frequency of participation in online groups; cited in Pippa Norris, "Who Surfs? New Technology, Old Voters, and Virtual Democracy in America," in *democracy.com? Governance in a Networked World*); J. Snyder, "Get Real," *Internet World*, vol. 7, no. 2 (1996); Thomas Bender, *Community and Social Change in America* (Johns Hopkins University Press, 1982); Doris Kearns Goodwin, *The Fitzgeralds and the Kennedys: An American Saga* (St. Martin's Press, 1987) (on the Brahmins and the Irish in Boston); Margaret McLaughlin, Kerry K. Osborne, and Christine B. Smith, "Standards of Conduct on Usenet," and Nancy K. Baym, "The Emergence of Community in Computer-Mediated Communication," both in *Cybersociety: Computer-Mediated Communication and Community*, edited by Steven G. Jones (Sage, 1995); Nessim Watson, "Why We Argue about Virtual Community: A Case Study of the Phish.Net Fan Community," in *Virtual Culture: Identity and Communication in Cybersociety* (see full citation above); Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990); Giuseppe Mantovani, *New Communication Environments: From Everyday to Virtual* (Taylor & Francis, 1996) (on the absence of traditional visual and tonal cues in online communications); Neil Postman, *Technopoly: The Surrender of Culture to Technology* (Vintage, 1993).

Getting Practical about Deliberative Democracy

Democracy requires deliberation for at least three reasons. First, discussing public issues helps citizens to form opinions—on matters ranging from HMO regulation to global warming—where they might otherwise have none. Second, deliberation offers democratic leaders better insight into public concerns than elections do. Did voters choose a representative because of her views on Social Security, her family life, or the weaknesses of her opponent? To understand the meaning of votes, leaders must listen to public discourse.

Third, public deliberation offers a way—perhaps the only acceptable way—of getting people to justify their views so that we can sort out the better from the worse. If you say, “I demand lower taxes because I don’t like paying them,” you will persuade no one; but if you argue that you *deserve* more money in your pocket for some specific reason, then you may build public support for a position. Whether your position is *true* or *sound* can then be tested by other participants in the debate. In short, deliberation encourages people to provide general justifications or reasons, not just private preferences. And democracy works best when the public debates the public good.

But talk of a “deliberative democracy” often implies a lofty, informed, serious, fair, productive, and ceaseless conversation among all citizens—in other words, a fantasy. In Rousseau’s ideal society, for instance, “every man flies to the assemblies. . . . Bands of peasants are seen regulating affairs of state under an oak, and always acting wisely.” Instead of Rousseau’s peasants, other enthusiasts have envisioned toga-clad sages deliberating in a marble amphitheater or earnest Pilgrims at a town meeting.

These clichés are certainly utopian when applied to a nation of 273 million busy people. They are also somewhat frightening, because they assume that everyone should be of one mind—if not about issues, then at least about the proper methods and styles of debate. But people have (and ought to have) various and conflicting interests and customs. Besides, there are other things to do in life than to deliberate about public affairs. What we need are practical measures to raise the quantity and quality of public deliberation in a large and diverse society like ours, where most people’s attention is focused on private matters. This essay offers five proposals.

Campaign Reform

Political campaigns afford opportunities for public debate. But much of the money that finances American elections comes from groups that do not wish to see their interests candidly discussed. These funds flow overwhelmingly to incumbents to help them stave off competition and thereby avoid confronting difficult topics. Campaigns use their war chests to buy television and radio ads that do not inform voters or encourage disaffected people to become politically engaged. The professional consultants who advise candidates look for divisive “wedge issues” on which their clients happen to agree with the majority; they then try to prevent any shift in public opinion. Consultants are adept at using rhetorical formulas that discourage reflection and discussion, that freeze public opinion in place, and that polarize and inflame voters.

A system of (at least) partial public financing would generate a more robust and unfettered debate. Some of the public money could go toward activities that promote deliberation: for example, printed voter guides and official, televised debates. James Fishkin has devised an especially interesting format, *Deliberative Polling*TM, that could become part of a public campaign-finance regime. He writes:

The idea is simple. Take a . . . random sample of the electorate and transport these people . . . to a single place. Immerse the sample in the issues, with carefully balanced briefing materials, with intensive discussions in small groups, and with the chance to question competing experts and politicians. At the end of several days of working through the issues face to face, poll the participants in detail. The resulting survey offers a representation of the considered judgments of the public.

One such gathering took place in Texas during the 1996 presidential primary, with a nationally representative sample of 460 people. The experiment lasted for an entire weekend, during which the participants labored hard to assimilate information and share viewpoints. The national press corps attended in force, and ten million people watched some of the event on PBS, which broadcast it for more than nine hours. Such events could not be covered regularly on commercial television at any comparable length. However, broadcasters could be encouraged—or even required—to televise the period when the informed citizens pose questions to the political can-

didates. Then viewers would be able to watch the interchange between politicians and people who are like themselves demographically—except that the questioners would have studied the issues and exchanged ideas. Both candidates and citizens would learn the direction of an enriched or deepened public opinion, and everyone would witness a model of deliberation that might prove infectious.

Participants in the Texas experiment agreed that the experience was worthwhile and inspiring. The same year, another exercise in deliberation proved equally satisfying. The Commission on Presidential Debates asked 600 people to meet in groups and help choose the questions that candidates would be asked on national television. According to *The New York Times*, "An unexpected lesson was that participants lauded the sheer experience of post-debate discussion as much as the debates, bonding like jurists with other panelists and compounding their appetite for politics." A political scientist who managed the focus groups, Diana Carlin, said, "We didn't intend this; it just happened."

Public Journalism

The press has a crucial role to play in cultivating deliberation. When we think and talk about public affairs, we initially acquire most of our information from newspapers and television. Letters-to-the-editor pages, radio call-in programs, and television talk shows are forums for public deliberation. At their best, the national media can prevent our local conversations

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from becoming insular or uninformed. Nothing else can connect our small-scale discussions into what Benjamin Page calls one "deliberative national public."

Journalists often see their own job as providing information to citizens. But not all facts are equally helpful in promoting democratic deliberation. To dwell on information of the wrong kind can even be damaging. For example, when journalists mostly provide facts about the tactics and fortunes of political insiders, they make citizens seem insignificant. Likewise, information about who is likely to win the next election is of no use to citizens who are trying to decide who *ought* to win. Too often, these predictions turn into self-fulfilling prophecies that reduce the importance of actual votes.

Facts about "public opinion" can be equally harmful. Surveys often ask a random sample of Americans to answer preformulated questions without first reflecting,

discussing, or acquiring background information. The aggregated results are then presented as constraints within which politicians and the public must operate. We are told, for example, that a given policy is "unrealistic," because 65 percent of the public opposes it. Public opinion thus confronts citizens as an alien force, even though it is supposed to be something that they create.

Finally, many news stories "explain" officials' behavior by analyzing the political benefits that are likely to flow from their decisions. The implication that politicians act out of naked self-interest is often plausible—but also unverifiable and largely irrelevant. Motives are always difficult to assess, and in any case the important question is not why a politician votes in a particular way, but whether this position is right. Journalists are taught to keep their values out of their writing. But to limit the explanation of politicians' actions to self-interest is itself a moral judgment. It denies the legitimacy or relevance of any principled reasons that actors give for their decisions, and therefore makes deliberation seem pointless.

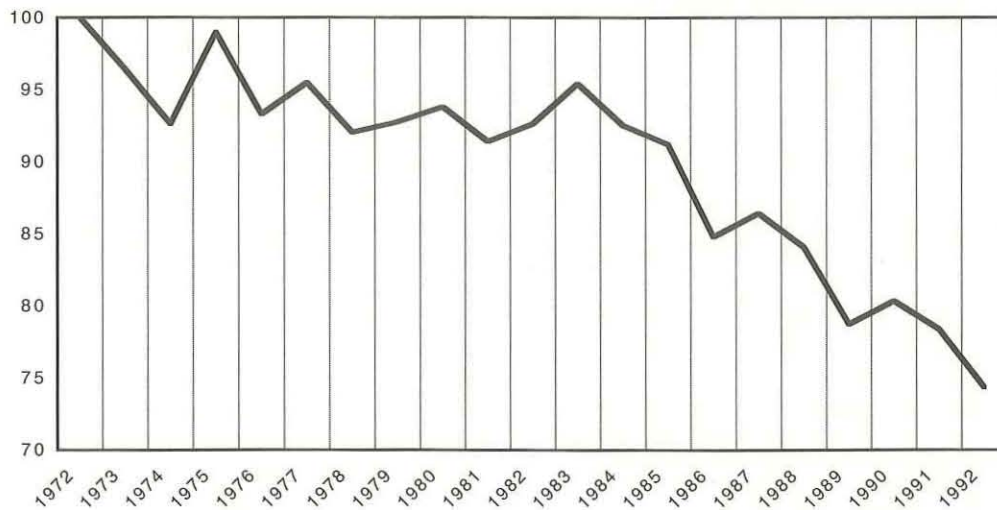
Fortunately, during the last few years, a new movement, called public or civic journalism, has begun to transform American newspapers, at least beyond the Capital Beltway. This label has been adopted by a loose coalition of reform-minded journalists with diverse ideals and projects. But a common theme unites many of their experiments: the cultivation of public deliberation.

Public journalists resist stories about the political "horse race" in favor of articles about issues. They also cover the public deliberations that occur in civil society, that is, within voluntary associations, neighborhood and civic groups, religious denominations, and universities. In covering these discussions, public journalists do not define "news" merely as moments of sharp disagreement, charges and countercharges, resignations and lawsuits. They also count routine exchanges of ideas as newsworthy.

Finally (and most controversially), public journalists instigate deliberation by convening citizens to talk about public affairs. For instance, during several recent elections, the *Charlotte* (North Carolina) *Observer* and the local ABC-television affiliate recruited people to serve on "citizens' panels" that collaborate with journalists to devise questions for candidates to answer. The politicians' responses were published in the newspaper. If a candidate refused to participate, a blank space was left by his name. Reporters from the business, health, education, and religion beats covered topics that the citizens' panel considered relevant to the election. Members of the panel met directly with candidates, and some of their deliberations were televised locally.

Such experiments cross traditional boundaries between objective reporting and activism. But North

Index of Deliberation



This chart tracks the decline of important deliberative activities since a baseline year of 1972 (when the index is arbitrarily set at 100). The activities are belonging to at least one group or attending church services, attending a local meeting, serving as an officer of an association, serving on a local committee, belonging to a reform group, attending a rally, reading the newspaper daily, writing a letter to the newspaper, making a speech, writing an article, being generally interested in politics, influencing other people's votes during campaigns, and wearing a button or displaying a sticker. The downward trend is statistically significant even if the weight of each component is treated as arbitrary. (Chart adapted from Levine, *The New Progressive Era*, p. 96.)

Carolina's public journalists have never forced candidates to take any particular position on issues. Instead, they have compelled politicians to engage in a dialogue with citizens. Thus public journalists have promoted a particular democratic *process*, and not a political *outcome*. Furthermore, it's worth remembering that conventional news stories about campaign tactics and polls are not truly neutral and detached, for they also affect public engagement. The effects of public journalism appear to be better: readers become demonstrably more active in community organizations and more interested in public affairs.

Changes in Civil Society

Major institutions in civil society that care about the health of our democracy should make internal changes so that they do more to cultivate deliberation. This is especially true of the "mailing-list" organizations that have grown since 1970, as fraternal societies have faltered. Many public-interest lobbies are organized democratically, with elected boards, state affiliates, and even referenda. However, members do not communicate horizontally, and most have so little commitment and knowledge that the professional staff dominate. To take just one example, according to John M. Holcomb, the "Center for Science in the Public Interest receives 75 percent of its revenues from over 80,000 members,

yet these contributors play no role in directing the affairs of the organization or in determining its goals."

The Harvard sociologist Robert Putnam doubts that mailing-list organizations build the interpersonal connections on which democracy depends. "For the vast majority of their members, the only act of membership consists in writing a check for dues or perhaps occasionally reading a newsletter. . . . Their ties, in short, are to common symbols, common leaders, and perhaps common ideals, but not to one another."

To be sure, mailing-list organizations may allow ordinary people to influence public policy (albeit indirectly) and to gain political information at a reasonable cost. Their effectiveness has declined, however, as groups on the Right and the Left have fought each other to a stalemate. To regain power and to strengthen their legitimacy in a democratic society, mailing-list groups should consider implementing or emphasizing a *chapter* structure, borrowing the best models from Amnesty International, the League of Women Voters, the American Civil Liberties Union, the Audubon Society, the National Rifle Association, and the Christian Coalition. To varying degrees, these groups ask local chapters to discuss issues and to initiate action. The chapters then become sites of deliberation and schools of leadership and participation.

Although it is difficult to grow rapidly and raise money with a chapter structure, this arrangement has

The New Progressive Era: Toward a Fair and Deliberative Democracy

Peter Levine

A century ago, Americans embarked on a period of civic renewal and political reform. Today, amid deep dissatisfaction with our major institutions, there are signs that a new movement may revive the spirit of the original Progressive Era. Peter Levine draws inspiration from the great Progressive leader Robert M. LaFollette, Sr., and his circle, which included John Dewey, Jane Addams, and Louis Brandeis. He discusses the shortcomings of this group as well as their successes, but he argues that their ideal of a fair and deliberative democracy is right for our time. Bringing their Progressive philosophy to bear on contemporary concerns, Levine advocates campaign finance reform, an entirely different approach to regulation, new styles of journalism and civic education, and fundamental changes in the tax system. Combining philosophical arguments, historical background, empirical data, and concrete proposals, *The New Progressive Era* offers today's most comprehensive plan for civic renewal and political reform.

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—David Mathews, President, Kettering Foundation

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several clear advantages. First, the traditional methods of grassroots lobbying are losing clout. Politicians are no longer impressed by telephone calls from a few voters, because corporate lobbyists and talk-show hosts can generate these calls almost at will, but they might respect chapters that were active in their districts. Second, local bodies offer social benefits (such as friendship and entertainment) that encourage people to join and to stay active. For instance, many people probably belong to the Sierra Club because of its nature walks and to the National Rifle Association because of its firearms classes. Finally, there is a public-interest rationale for establishing a chapter structure. National membership associations should devolve some responsibility to local bodies in an effort to enhance deliberation and strengthen democracy. The nation's largest mailing-list organization, the American Association of Retired Persons, has already taken this lesson to heart and is trying to increase the civic responsibilities and capacities of its volunteers and chapters.

These reforms would be easier if the federal deduction for charitable contributions were replaced with a system of vouchers. Each person would receive a voucher of equal size that he or she could donate to any registered nonprofit organization. This would surely cause a major redistribution of philanthropic money from prestigious national and cultural institutions (traditionally patronized by the wealthy) toward local groups that encourage participation and serve less privileged clienteles. All things being equal, it would be a shame if Harvard University and the Metropolitan Museum of Art lost revenue as a result of a tax reform—but all things are *not* equal. Given limited amounts of state-subsidized philanthropic money, the lion's share should go to non-elite institutions. Moreover, a voucher system would encourage organizations of all types to recruit active, engaged participants, because people who volunteered for a particular group might also give it their vouchers. As Fishkin has argued, a voucher system would alter the market for civic participation by raising the value of—hence the demand for—people without special wealth or ability.

Regulatory Reform

Ever since the New Deal, Congress has frequently delegated its lawmaking power to executive or regulatory agencies and commissions. For example, Congress has told the Federal Power Commission to "determine just and reasonable rates"; the Federal Communications Commission to promote "the public interest, convenience, and necessity" in broadcasting; and the Securities and Exchange Commission to "prevent an unfair or inequitable distribution of voting power among security holders." Congress has not even attempted to define "just rates," the "public interest," or

"unfair voting power." Theodore Lowi and others have argued that legislatures should debate values, priorities, and trade-offs in public so that voters can assess their arguments as well as their decisions. Democracy is not well served by statutes that announce the good news (e.g., that the air shall be clean or the workplace risk-free), while leaving it to regulators to spell out the bad news (the costs and who must pay them).

An example shows what damage delegation can do to deliberation. In 1970, Congress enacted the Occupational Safety and Health Act to control hazardous substances in the workplace that impaired workers' health, functional capacity, or life expectancy. Senator Jacob Javits (R-NY) warned that the law "might be interpreted to require absolute health and safety in all cases, regardless of feasibility." He and his colleagues thus faced a profound philosophical question: whether safety should ever be balanced against efficiency, prosperity, employment, equity, or other economic values—and if so, how the balance should be struck. Instead of

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answering this question, they told the Secretary of Labor to "set the standard which most adequately and feasibly prevents harm to workers." The Labor Department thereby acquired the discretion to make almost any decision it chose. Congress had violated Locke's dictum that a legislature may make laws, but not legislators.

A recent textbook on administrative law flatly states, "Although there may be academic squabbles over the degree of power that bureaucracies have acquired, there is virtually no disagreement over the fact that the old dichotomy between policy making and administration is gone and that administrative agencies now perform both functions, fused into one institution." Because they are not elected and have no mandate to decide questions of value, regulatory agencies often hide the political choices they make behind a smokescreen of technical, expert discourse. Technocratic debates about costs and benefits may then eclipse public deliberation about ends and priorities.

Last May, a panel of three judges of the U.S. Court of Appeals for the District of Columbia responded to this problem in an important decision, *American Trucking v. US EPA*. Under the Clean Air Act, the Environmental Protection Agency (EPA) must set standards for air pollution that it finds to be "requisite to protect the public health" with "an adequate measure of safety." This language makes it far from obvious where to set the stan-

dards, since, as the Appeals Court noted, "the only concentration" of pollutants "that is utterly risk-free . . . is zero." EPA's method has been to ask a group of experts to devise a numerical threshold that they deem adequately safe. In the case of ozone, the EPA's experts set the threshold at .08 parts per million. In establishing this threshold, the EPA implicitly decided the number of deaths society should be prepared to tolerate. Such decisions should only be reached by elected bodies that deliberate in public. The Constitution, indeed, vests "all legislative powers" in Congress. On this basis, the Appeals Court prevented the EPA from enforcing its ozone standard.

A strict opponent of legislative delegation would demand that Congress judge how many deaths from pollution were acceptable. EPA would then decide (on the basis of scientific evidence) what level of pollution would produce the results that Congress had deemed optimal. The Agency would still have a choice to make: it would have to identify the most plausible scientific theory about the effects of pollution on health. But it would not have the discretion to decide how much health is sufficient. Since the Environmental Protection Act does give EPA such discretion, the Act appears unconstitutional.

However, the Appeals Court read "current Supreme Court cases" as permitting Congress to delegate *some* legislative authority to regulators. Therefore, instead of voiding the whole Environmental Protection Act and closing the EPA, the Court said that it would give "the agency an opportunity to extract a determinate standard" from the Act. A "determinate standard" apparently means an explicit value judgment that would transform the original statute (which endorses public safety, but only up to an unspecified point) into a clear statement of national priorities. If Congress felt that EPA's values were wrong, it could then respond with new legislation. For instance, if EPA stated explicitly that it considered x chance of y deaths to be tolerable, then its regulation would pass constitutional muster, because it would have "extracted" an explicit value judgment from the statute. To be sure, the Agency's judgment would not be the product of Congressional deliberation. But at least elected officials and the public could easily debate and change an explicit moral position taken by a regulatory agency, whereas they cannot grapple with myriad apparently technical decisions, such as the EPA's inscrutable rule that the threshold for ozone is 0.08 parts per million, rather than 0.07 or 0.09.

Even if federal courts go beyond the *American Trucking* decision and interpret the Constitution to forbid legislative delegation entirely—thereby dismantling much of the federal regulatory apparatus—state intervention in the economy would not be precluded. Conservatives often assume that unregulated markets work better than regulated ones and that a democratic

society would embrace laissez-faire if only bureaucrats were stripped of their authority. I doubt it. The public in the United States—as in every other industrialized democracy—reasonably demands state action in many fields. Thus, if Congress could not delegate its law-making authority to executive agencies, voters might ultimately pressure it to adopt simple, efficient, transparent, but *ambitious* federal initiatives such as vouchers, cash transfers, and a guaranteed minimum income. But of course it would be up to citizens to decide how much federal intervention they wanted.

Partnerships with Local Bodies

I have argued that elected legislatures, not appointed experts, should make important value decisions. But in practice Congress can only set broad policies at the national level; it lacks the time and local knowledge necessary to devise the best plan for each specific circumstance. A promising strategy is to ask local groups to design legislative solutions appropriate for their own problems. Congress and state legislatures could then enact these agreements into law.

Something similar was attempted during the War on Poverty, when the federal government established Community Action Agencies, local democratic bodies that issued rules and managed some public resources within their areas. But where board members were chosen by voters, Community Action agencies began to look much like traditional city councils, except that turnout was unusually low in their elections. The alternative was to choose members by non-traditional means, finding the kind of “authentic” community representatives who might not win formal elections. In some cases, this meant choosing established leaders (ministers, association presidents, and the like) to serve *ex officio*. But often, as writer Tom Wolfe noted, militancy was treated as evidence of authenticity. “If you were outrageous enough, if you could shake up the bureaucrats so bad that their eyes froze into iceballs and their mouths twisted into smiles of sheer physical panic . . . then they knew you were the real goods. They knew you were the right studs to give the poverty grants and community organizing jobs to. Otherwise they wouldn’t know.”

This was no way to improve accountability or to encourage widespread participation. To make matters worse, Community Action boards competed with existing elected bodies that should have been forums for democratic self-government.

Intractable disputes about representation arose because Community Action boards were expected to vote on policies. Thus their decisions might well change if one extra neighborhood representative, professional politician, minority member, welfare recipient, or expert gained a seat on the board—perhaps at the expense of someone else. Today, however, local institutions could

be reconceived as *deliberative* bodies, whose main function is to discover consensus solutions to local problems. These solutions would have no legitimacy unless every relevant group participated and endorsed the results. Thus it wouldn’t matter exactly how many participants were associated with any particular group or interest. In fact, no one would have to be excluded from a deliberative body, except perhaps for bad conduct.

In a legislative body, a requirement of consensus would be disastrous, since legislatures must make decisions even when people disagree. But this doesn’t mean that seeking consensus outside of a legislature is useless. On the contrary, voluntary deliberation can change minds, refine opinions, and occasionally generate plans that all participants will choose to bind themselves to. Such agreements can make a legislature’s work much easier.

Consider a recent example. In the arid West, economic conflicts about water use are exacerbated by differences in ideology and culture among such groups as miners,

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ranchers, urban consumers, environmentalists, hunters, and Native American nations. To make matters worse, watersheds are sensitive systems that cross state lines; water use or pollution in one place affects everywhere else. Thus each watershed is vulnerable to the behavior of all who own, use, or regulate any part of it. From the outside, battles over land use in Western watersheds often look so contentious that no resolution can be reached until the federal government acts forcefully, perhaps using armed agents to administer its unpopular regulations.

But actually all the interests involved are harmed by conflict and would benefit from a consensus, if one could be reached. With this in mind, at least 76 local groups across the West have convened completely voluntary meetings of interested parties, known as “watershed partnerships.” Anyone who wants to join is invited; anyone who disagrees with the group may opt out without fear of becoming bound by its decisions. But those who choose to participate can work out significant mutual agreements to which they may voluntarily bind themselves. Landowners and corporations can promise to curb unpopular behavior, environmental groups can waive their rights to sue, and government agencies can manage public lands and resources according to the desires of the group. For instance, according to the University of Colorado Natural Resources Law Center, a management plan for the Upper Carson River

in Nevada and California was signed by "government agencies, the Washoe Tribe, state assembly members, local community leaders, ranchers, conservation groups and homeowners associations."

A recent and much celebrated example of stakeholder negotiation, the Quincy Library Group, may be particularly instructive. According to a local journalist, this negotiation began as an informal discussion among "sport fishing groups, conservation clubs, wild river clubs, timber companies, county commissioners, land and trails trusts, Women in Timber chapters, the local Audubon Society, and even one person ... who describes herself as a 'Quincy resident and independent thinker.'" They met in the Quincy, Calif., public library because libraries forbid shouting. Ultimately, they developed a management plan for the surrounding national forest, presented it to Congress, and saw it become law.

This process could become commonplace. Once local groups had developed generally acceptable and detailed plans, Congress could order federal agencies to enforce them. Instead of asking administrators to pursue ill-defined values, laws would mandate compliance with specific agreements. Federal officials would participate in developing these plans and would articulate the national interest in local debates, but ultimately Congress would decide the law.

It would also be the responsibility of Congress and state legislatures to decide which groups and individuals must consent to a plan to make it a "consensus" document. A particularly thorny problem arose in the Quincy Library case when national groups objected to a locally generated agreement. A possible solution is to press such groups to participate in local discussions through their chapters. Dissent by a chapter would certainly refute a claim to consensus, and thus leave legislatures to do their normal job of weighing arguments and interests and making decisions. But any agreements that did win consensus (as defined by elected legislatures) should quickly become law, and stakeholders should be encouraged to seek consensus through local deliberation. As a beneficial by-product, we might see growth in civic participation, because local self-government teaches (in John Adams' words) "the habit of discussing, of deliberating, and of judging public affairs."

Conclusion

Proponents of "deliberative democracy" have argued persuasively that democracies benefit when there is broad discussion of public affairs. But the United States will never become a perpetual town meeting in which citizens devote most of their energy to debating the public good. Nor can we divide our nation (or any of the 50 states) into small, self-governing units that would function like idealized versions of the Greek polis. Instead, we need practical, institutional reforms that will raise the

quality and quantity of political talk in a society like ours. If the public became more engaged, our government would be forced to become more accountable and principled. In turn, better government would increase trust and confidence and make people more likely to participate in public life. We have certainly seen the opposite: a vicious cycle of official misconduct and public withdrawal, each reinforcing the other. The start of a modest upward spiral should be our goal.

—Peter Levine

This article is drawn from Peter Levine's new book, *The New Progressive Era: Toward a Fair and Deliberative Democracy* (Rowman & Littlefield). Sources: Jean-Jacques Rousseau, *The Social Contract*, translated by G.D.H. Cole, revised edition (London: J.M. Dent), Book III, chapter 15 (p. 266); Book IV, chapter 1 (p. 274); James Fishkin, *The Voice of the People: Public Opinion & Democracy* (Yale University Press, 1995); Francis X. Clines, "'Ask Not ...' 'Military-Industrial Complex ...' 'but Fear Itself ...'" *New York Times* (September 23, 1996); Benjamin I. Page, *Who Deliberates? Mass Media in Modern Democracy* (University of Chicago Press, 1996); Esther Thorson, Lewis A. Friedland, and Peggy Anderson, "Civic Lessons: Report on a 1996 Evaluation of Four Civic Journalism Projects Funded by the Pew Center for Civic Journalism" (Pew Charitable Trusts, 1997); Sean Aday, "Does Civic Journalism Work? An Experimental Test Comparing the Effects of Civic and Conventional Journalism on Audience Attitudes, Cognitions, and Behavioral Intention," paper delivered at the University of South Carolina (October 12, 1998); John M. Holcomb, "Introduction" to the Foundation for Public Affairs' *Public Interest Profiles* (Foundation for Public Affairs, 1988-1989); Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, vol. 6, no. 1 (January 1995); Lester M. Salamon, *Holding the Center: America's Nonprofit Sector at a Crossroads* (The Nathan Cummings Foundation, 1997), p. 27; James Fishkin, *The Dialogue of Justice: Toward a Self-Reflective Society* (Yale University Press, 1992); Steven J. Cann, *Administrative Law* (Sage Publications, 1995); Theodore J. Lowi, *The End Of Liberalism: The Second Republic of the United States*, 2d ed. (Norton, 1979); *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607, at 677 (citing the Legislative History), 675; John Locke, *Second Treatise on Government*, section 141; 175 F.3rd 1027; 1999 U.S. App. LEXIS 9064; Tom Wolfe, "Mau-Mauing the Flak Catchers," in *Radical Chic & Mau-Mauing the Flak Catchers* (Farrar, Straus and Giroux, 1970); Jo Clark, *Watershed Partnerships: A Strategic Guide for Local Conservation Efforts in the West* (Western Governors' Association, 1997); University of Colorado Natural Resources Law Center, *The Watershed Source Book: Watershed-Based Solutions to Natural Resource Problems* (1995); Mark Sagoff, "The View from Quincy Library: Civic Engagement in Environmental Problem Solving," in *Civil Society, Democracy, and Civic Renewal*, edited by Robert K. Fullinwider (Rowman & Littlefield, 1999), pp. 151-183; Statement of Chairman Don Young (R-AK) during the Committee on Resources mark-up of the Quincy Library Group Community Stability Act (May 21, 1997), available at http://www.qlg.org/public_html/bill/dyoung.htm; Joseph Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (University of Chicago Press, 1994) (quoting John Adams).

What's Wrong with Exotic Species?

On the morning of December 19, 1997, Isabel, Yoyo, and Sydney—three young trumpeter swans following two ultralight aircraft across the Chesapeake Bay—landed near the Blackwater National Wildlife Refuge on Maryland's Eastern Shore. The three cygnets had adopted the French-made Cosmos ultralights as "mothers" to learn a 102-mile migration route to the Bay from a facility near Warrenton, Va., where the swans had hatched from eggs brought in from Canada. Defenders of Wildlife, using the "imprinting" technique made famous in the movie *Fly Away Home*, hoped to lure trumpeters to the Chesapeake region, where they had not been seen for nearly 200 years. About a year later, the environmental group, using the same technique, attempted to lead seventeen young trumpeters from western New York to the Eastern Shore. A spokesman for the group said that trumpeter swans would "help increase diversity" in the "critically important wetlands of the Chesapeake Bay."

While Defenders of Wildlife tempted trumpeters to the Chesapeake, wildlife officials in the region were trying to eradicate or at least to control over 2,000 mute swans that had proliferated there since 1960, when a few escaped from a private preserve. Because the State of Maryland lists swans as a protected species, wildlife officials use humane ways to control mutes, for example, vigorously shaking (or "addling") their eggs. "The potential for reproduction is out of control," says Doug Forsell, a biologist who works for the Chesapeake Bay office of the U.S. Fish and Wildlife Service. "The mute is a varmint species that we're going to have to spend a lot of money controlling."

It costs a lot of money to bring trumpeter swans to the Bay and to get rid of mute swans already there. What is the difference between the two breeds? Actually, they have much in common. Mute and trumpeter swans are usually monogamous and breed annually after reaching maturity. Clutch sizes vary but may average about 5 eggs. From March to May, during breeding and brooding season, both kinds of swans become fiercely territorial, chasing away any bird larger than a swallow and defending their eggs against predators. Swans are voracious vegetarians, often overgrazing marshlands. Unlike certain fish, such as striped bass, but like many waterfowl, such as Canada geese,

swans have no natural instinct to migrate. Both mute and trumpeter swans will take up year-round residence in a pleasant environment unless their parents teach them a migration route—and even then, they sometimes stay put. At least eight states are home to significant non-migratory populations of trumpeters, which in some instances have displaced mute swans from nesting places. Mutes and trumpeters occasionally interbreed and hybrids have been observed.

How do mute swans differ from trumpeters? The orange bill of the mute swan provides an easy way to tell the birds apart; a black fleshy knob extending from the base of its bill is another. Trumpeters are slightly larger—the males or cobs can weigh as much as 30 pounds and their wingspans measure up to seven feet. The mute grunts while the trumpeter trumpets. From the perspective of environmental policy, though, the crucial difference may be historical. Mute swans hail from Eurasia, where they were domesticated by royalty, while trumpeters are native to North America.

Does this historical fact, however, justify efforts to rid the Bay of the interloper and to restore the ancestral breed? Suppose that fossil or other records were suddenly to reveal that mutes, rather than trumpeters, inhabited the Chesapeake region centuries ago. Would volunteers then addle the eggs of trumpeters while ultralights helped mute swans fly home to the Chesapeake Bay?

What's Wrong with Exotic Species?

Last February President Clinton signed an "Invasive Species Executive Order" directing federal agencies to begin what Agriculture Secretary Dan Glickman called "a unified, all-out battle" against the spread of alien species in the United States. Praising the order, Interior Secretary Bruce Babbitt observed, "There are a lot of global bioinvasive hitchhikers, and now is the time to take action. The costs to habitat and the economy are racing out of control." Federal agencies require enormous budget increases to fight alien species. "New resources are needed now," Babbitt declared, "and this order opens the door to accomplish just that."

Critics often accuse federal agencies, such as the Department of Defense, of exaggerating threats in

order to increase budgets. During this century, the Forest Service requested and received tens of billions of dollars to fight forest fires. Today, scientists regard fire as a natural and necessary part of forest ecology and suspect that Smokey Bear has done more harm than good. Federal agencies could spend as many billions to control alien species as they have spent to control forest fires. Yet, the movement of species has been a constant occurrence in natural history—like the occurrence of fire. Before we commit a lot of (taxpayer) money to controlling exotic species, it might be helpful to understand why we should treat alien creatures any differently than we treat native species.

Those who call for additional resources to fight exotic species typically defend their position by pointing to examples of non-native species, such as the

*Non-native species,
like native ones, can be
harmful, beneficial, or both.*

zebra mussel, that have had costly or disruptive effects. Examples, however, are not arguments. Every barrel contains bad apples. One cannot condemn an entire group because of the offensive qualities of a few individuals. To justify a generalization one has to show that the bad apples are characteristic or representative of the group—for example, that exotic species are much more likely than native ones to cause ecological damage or economic harm.

In fact, native species can be every bit as harmful as non-native ones. Throughout the Chesapeake region, annoying mosquitoes have served as vectors of disease. Mosquitoes were active when Captain John Smith explored the area. A nasty jellyfish, ubiquitous in the Chesapeake Bay from June through September, stings anyone foolhardy enough to enter the water, which is the reason few swim in the Bay during the hot summer months. This horrid creature, albeit native, seems to have no important function, ecological or otherwise, other than stinging people. The dinoflagellate *Pfiesteria piscicida* metamorphoses into vegetative life forms, which spread toxins responsible for killing millions of fish. Then these strange plants again transform into large amoebae to eat the fish. Dubbed the “cell from Hell,” *Pfiesteria* do not hail from Dante’s Inferno but have lived for millennia at the bottoms of rivers such as Maryland’s Potomac.

While it is easy to accuse alien species of causing economic and ecological harm, it may be harder to make the case against them in comparison with native species that fill a similar niche. Mute swans, which are exotic to North America, may indeed destroy by over-

grazing wetland grasses in the spring and summer months. They overgraze these grasses, however, not because they are mutes but because they are non-migrating swans. Trumpeter swans, albeit native, pose much the same problems of overgrazing and territoriality when they are year-round residents of temperate environments. When the trumpeters introduced to the Bay by the ultralights failed to migrate in the spring—the first group back to Virginia and the second group back to western New York—wildlife authorities became concerned. These swans were all put on trucks and driven to these destinations.

Non-native species, like native ones, can be harmful, beneficial, or both. The most notorious invader, the zebra mussel, apparently immigrated in the 1980s to the United States by way of Europe from the Caspian Sea and now reproduces prodigiously in the shallower waters of Midwestern lakes, including the Great Lakes, and in tributaries of the Mississippi. Industries have to take expensive steps to keep these creatures from colonizing intake pipes used for water works and power plants. On the other side of the ledger, the zebra mussel, a filter feeder, is credited with clearing the water column of excess nutrients and associated algae resulting from municipal waste discharge and agricultural runoff. Lake Erie, which had once been given up as dead by eutrophication, is now clear of the organic matter that had been choking it, wholly because of the mussel.

Biologist Douglas Hunter notes that the mussel gathers these excess nutrients into particles it deposits at the bottom of lakes and rivers to form excellent habitat for insect larvae, leeches, snails, and other invertebrates that larger fish, such as yellow perch, feed upon. As a result, the charter fishery in Michigan’s Lake St. Claire, for example, saw the catch of yellow perch increase five-fold from 1990 to 1996. The work this mussel performs in clearing the water column and enhancing benthic invertebrate communities seems little less than miraculous. The benefits of zebra mussels are ignored, however, because it is an “alien” species.

Many fish, such as Pacific salmon in the Great Lakes, and several aquatic plants, such as purple loosestrife, were introduced into lakes and estuaries for ornamental and other economic purposes. (Loosestrife provides honeybees, which are also exotic species, with high-quality nectar for honey.) The common carp, released into the Chesapeake watershed by the Fish and Wildlife Service in 1876, now abounds in the tributaries. On a summer evening, you can join hundreds of residents of the District of Columbia fishing at Haines Point on the Potomac River. It is largely the carp that you will catch. Similarly, brown trout were successfully introduced to establish a sports fishery in the upper Bay and its tributaries. The Office of Technology

Assessment reports that the effects of a species can also vary with the eye of the beholder: "While many State fish and wildlife managers firmly support stocking with certain non-indigenous fish, some experts consider the practice detrimental."

Many alien—as well as native—species can be easily and cheaply controlled when a use is found for them and they are hunted or harvested for that use. Swans are valuable for their feathers. In Virginia, which does not list mute swans as a protected species, wildlife officials do not regard them as a problem. "Mutes that wander there probably get shot during the hunting

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season," Doug Forsell acknowledges. Hunters drove the trumpeter into local extinction in the eighteenth century. The rule in Maryland against hunting swans—more than their fecundity—may result in the need (or, for wildlife officials, the opportunity) to spend taxpayer money to control them in other ways, such as adding their eggs.

Uses could be found for other invasive aliens. Consider the recently arrived green crab that overflows lobster traps in New England. This creature is abundant in the Sea of Japan, where people harvest it as a delicacy, thus keeping its numbers in check. "The green crab isn't a pest in Japan, where they put it in miso soup," Armand Kuris, a zoologist at the University of California in Santa Barbara, points out. The problem with green crabs in New England is not necessarily that this species is alien to our ecosystem; the problem may be that it is alien to our cuisine.

The rapa whelk, also native to Japan, has been found in the saline Virginian waters of the Chesapeake, where it competes with local whelks—including the knobbed whelk, the lightning whelk (which is left-handed), and the channeled whelk—and may prey upon the remaining populations of native oysters. In Asia, the rapa whelk is hunted as a delicacy. "Rapa whelks are harvested for their meat and shells in Korea; indeed, they are considered overfished there," writes Scott Harper of the *Virginia-Pilot*. "While smaller, native whelks also are caught by Virginia fishermen, it remains unclear if . . . Americans would take to the larger species as a seafood." To control the green crab and the rapa whelk, executive orders may be less effective than recipes.

An Analogy with Human Immigration

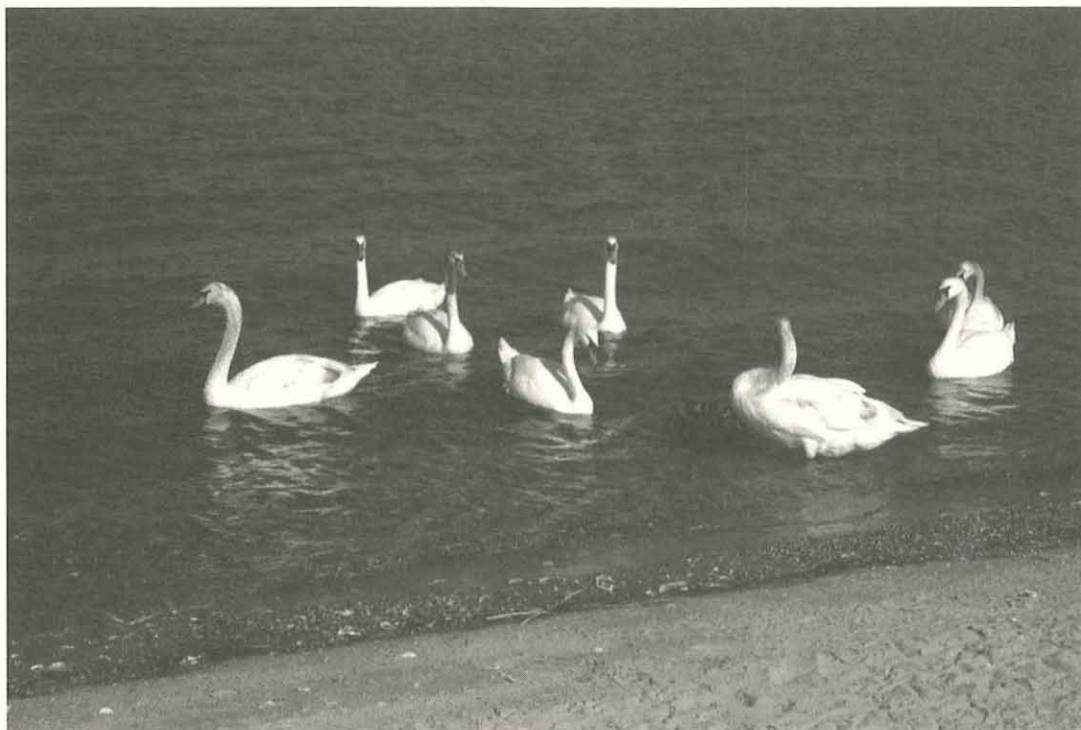
Throughout our history, nativists have sought to close the door on foreigners who wanted to migrate to the United States. Typically, nativist groups support their xenophobia with examples of individual immigrants who turned out to be criminals or who went on public welfare. The anti-immigrationists may tolerate migratory workers who do not become permanent residents and may also allow admission of a few newcomers with special talents and abilities who will assimilate into existing cultural and social systems. Xenophobes argue, however, that liberal immigration policies allow an influx of uncontrollable foreign elements that threaten the integrity of our American way of life.

One would reply to nativists that we are a nation of immigrants. Only Amerindians count as indigenous peoples—and even their ancestors, by some accounts, immigrated across the Bering Straits about 10,000 years ago, which is recent in evolutionary terms. One would also point out to the nativist that while a few members of Irish, Italian, Jewish, and other immigrant groups have been bad apples, the vast preponderance have contributed to the well-being—political, economic, and cultural—of this nation. One can hardly imagine what the United States would be like—or indeed, imagine it existing at all—without immigration.

Likewise, in many places one can hardly imagine the landscape without alien species. Virtually everything down on the farm is an exotic: of all crops, only sunflowers, cranberries, and Jerusalem artichokes evolved in North America. Corn, soybeans, wheat, and cotton have been imported from some other land. Cattle came from Europe. Rockfish—or striped bass as they are known outside Maryland—are native to the Bay but have been introduced up and down the Atlantic and Pacific coasts for sport and commercial fishing. More than 90 percent of all oysters sold in the world are produced by aquaculture, and almost the entire oyster industry on the West Coast is based on a species imported from Japan.

Our culture assimilates foreign influences—who would live in a community without pizza or a Chinese restaurant? Our landscape likewise has assimilated and benefited from foreign ecological influences. Kentucky identifies itself as the "Bluegrass State," for example, but bluegrass immigrated from England. On occasion, alien species outcompete and thus replace native ones, but in the vast majority of instances, newcomers contribute in the sense that they add to the species richness or diversity of local ecosystems.

Those of us who support liberal immigration policy concede that some newcomers have been undesirable, e.g., thieves, murderers, arsonists, or vagrants. However, from the premise that a person is no good *and* an immigrant, it does not follow that a person is no good *because* he or she is an immigrant. One still has to



*Mute swans swimming in the Chesapeake Bay off Hooper Island.
Photograph by Paul Fofonoff, Smithsonian Environmental Research Center. Used with permission.*

show a connection between the characteristic of being a foreigner and the characteristic of being a nuisance. To make this connection in the ecological context, those who seek funds to exclude or eradicate non-native species often attribute to them the same disreputable qualities that xenophobes have attributed to immigrant groups. These undesirable characteristics include sexual robustness, uncontrolled fecundity, low parental involvement with the young, tolerance for "degraded" or squalid conditions, aggressiveness, predatory behavior, and so on.

This kind of pejorative stereotyping may be no more true in the ecological than in the social context. The Pacific oyster, although better at fending off naturally occurring disease, does not differ from the native variety in tolerating more polluted conditions. The zebra mussel has spread widely, but this suggests only that it found a niche to occupy, not that it dispossessed other creatures. Ecologists worry that "weedy" species will dominate, but what is wrong with that as long as they rarely eliminate native creatures? What defines "weediness" other than that certain species succeed globally, like Taco Bell?

Immigration and Ecological Disintegration

About 40 years ago, Charles Elton, a British ecologist, published the influential book *The Ecology of Invasions by Animals and Plants*. There he argued that "we are living in a period of the world's history when the mingling of thousands of kinds of organisms from different parts of the world is setting up terrific dislocations in nature." This statement is true in the most literal sense: species that migrate are dislocated. Elton thought that this kind of dislocation produced disorder in the ecosystems in which "mingling" occurs. Ecologists following Elton have accused immigrant and invasive species of upsetting, disrupting, and destroying ecosystems. Biologist Michael Soule, for example, has said that invasive species may soon exceed habitat loss and fragmentation as the principal cause of "ecological disintegration." Three ecologists have recently written, "Symptoms of degrading ecosystem conditions include the prevalence of exotic species . . ."

If the presence of exotics constitutes a criterion of environmental degradation, then it is not surprising that they should be seen as its cause. But the statement that exotics cause degradation amounts to no more than a trivial tautology if "deteriorated" means

"infested by exotics." Similarly, ecosystems that have already become "degraded" may be more prone to be invaded. Once again, the presence of exotic species cannot be taken as a cause but only as a consequence (and perhaps a good consequence) of "deterioration." What is needed is a criterion for ecological degradation that allows one to test (rather than logically deduce) the general statement that colonization causes it. The science of ecology, as we shall see, cannot provide such a criterion because it cannot invoke a purpose or goal in terms of which to evaluate ecosystem structure or function.

Some scientists have suggested that ecosystems have a general purpose or goal, for example, to remain in balance—one species checking another—and will remain in equilibrium in the absence of invasions and other disruptions often caused by human activity. On a Web site about "Marine Bioinvaders," for example, the MIT Sea Grant Program declares of marine species, "In their home environments, these organisms live in balance with their predators, and are controlled by diseases and other ecosystem interactions." MIT warns that in their adopted ecosystems, "controls may not exist to keep populations in check." A "Fact Sheet" issued by the Maryland Sea Grant Program reiterates that species can "move out of their natural ecological fabric—where eons of evolution have established a

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balance, for example, between predator and prey—to an area where they may have no natural competitors or other controls, and may therefore reproduce unchecked."

However, the fear that a species, native or non-native, can "reproduce unchecked" is a false one. Even zebra mussels are controlled in some ways—such as the availability of clinging space. Drum and diving ducks feed on these newcomer bivalves. There are many native species—for example, the wild grapevine that gives Martha's Vineyard its name—that spread around a lot. It seems odd to include pervasive native species as part of the "balance" of local ecosystems while describing pervasive aliens, which may behave the same way, as reproducing "unchecked."

Many ecologists, in any case, scoff at the idea that nature has a "balance" exotics can upset. A new generation, having been unable to observe any pattern or design in nature but only a flux of organism and environment associations undergoing constant change, has become skeptical of any integrative concepts that may

be applied to the hodgepodge of creatures in an environment or ecosystem. Summing up the emerging view, a *New York Times* article carried the title, "New Eye on Nature: The Real Constant is Eternal Turmoil." The article quotes ecologist Steward Pickett, who argued that the balance-of-nature concept "makes nice poetry but it's not such great science." In its traditional formulation, the balance-of-nature theory contends that an ecosystem maintains a dynamic equilibrium to which it returns after being disturbed if it retains the resources for resilience. "We can say that's dead for most people in the scientific community," said Peter Chesson, a theoretical ecologist.

"Certainly, the idea that species live in integrated communities is a myth," Soule acknowledges, thus apparently contradicting his own thought that exotics cause "ecological disintegration." He writes, "So-called biotic communities, a misleading term, are constantly changing in membership. . . . Moreover, living nature is not equilibrial—at least not on a scale that is relevant to the persistence of species." Soule perceptively notes that

the science of ecology has been hoisted on its own petard by maintaining, as many did during the middle of this century, that natural communities tended toward equilibrium. Current ecological thinking argues that nature at the level of biotic assemblages has never been homeostatic. Therefore, any serious attempt to define the original state of a community or ecosystem leads to a logical or scientific maze.

A Test of the Value or Disvalue of Invasions

Do biological invasions damage ecological communities at particular sites? Do they cause the flora and fauna in particular places to deteriorate, for example, by becoming less productive or diverse? To ask this question is to suggest a way to test an answer. Take two marine sites—two estuaries, for example—one of which has been immune to invasions by alien species at least recently and relatively, while the other is a Mecca for them. Can ecologists tell which is which simply by examining the two systems and their species without knowledge of their history? Is there any biological, as distinct from historical, fact that would tip off the ecologist that he or she is studying a colonized and, in that way, corrupted or disrupted ecosystem?

Another test would be to compare descriptions of the same ecosystem before and after invasions, such as the Chesapeake with trumpeters and then with mute swans, for example, or with native whelks and then with the rapa whelk. Is there any way to tell from biological inspection which whelk is the invader and which is native, or which ecosystem has been colonized and which remains in a prelapsarian state? One could hypothesize that the ecosystem with more species is the one that has been colonized—but this

Alien Species and Altered Genes

While we Americans busily seek to keep exotic species from our shores—and to eradicate those already here—Europeans apply the same energy to excluding genetically modified (GM) crops, largely from America, from their fields and foods. European cosmopolitanism tolerates porous borders for the flora and fauna of different regions. The European Union, however, has a *de facto* moratorium on planting GM crops. Americans, in comparison, declare war on alien species but regard with near indifference the conversion of the nation's farmland to GM corn and soybeans. Efforts by activists like Jeremy Rifkin to lead a consumer revolt against "Frankenfoods," while largely successful in Europe, have had little effect in the United States.

Can we explain the different attitudes of the New and Old Worlds to exotic and to engineered species?

The two worlds—Old and New—differ in their images or archetypes of Nature. At first, Europeans who remained at home and those who came to America shared an antipathy toward the wild. When William Bradford stepped from the Mayflower into a "hideous and desolate wilderness," the attitude of the European settler in America was, to quote historian Roderick Nash, "hostile and his dominant criteria utilitarian. The conquest of wilderness was his major concern."

As pioneers, traders, and farmers subdued the wilderness, however, they began to think of it less in utilitarian than in aesthetic terms. As historian Perry Miller explains, "The more rapidly, the more voraciously, the primordial forests were felled, the more desperately poets and painters—and also preachers—strove to identify the personality of this republic with the virtues of pristine and untarnished, or 'romantic', Nature." Writers like James Fenimore Cooper made wilderness a romantic icon in the United States. The idea of wilderness, William Cronon observes, has become that of a pristine sanctuary where "still transcendent nature can for at least a little while longer be encountered without the contaminating taint of civilization."

In America, Cronon argues, the idea of wilderness, by placing the human outside the natural, leads environmentalists to abdicate responsibility for the nature that actually surrounds and sustains them. While Americans zealously protect indigenous species as part of pristine nature, they appear less concerned about the degradation of areas they do not consider natural, such as farms, cities, suburbs, and other places where people live.

In Europe, the idea of a pristine nature has little spiritual or cultural force. The European image of Nature encompasses Wordsworth's Lake District and Monet's garden at Giverny. This image presents a bucolic landscape in which farmers gently till their land and care for their livestock while living in peace with their surroundings. In this pastoral setting, wildflowers, trees, and shrubs grow harmoniously with crops; indeed, sheep graze upon and thus maintain "natural" pastures. The natural landscape is a worked landscape, but one not worked too hard; there is a respect for nature's own rhythms and a willingness to adapt to its spontaneous course.

For Americans, farms do not belong to Nature but to commerce and industry. Americans have sought to conquer—to control utterly—nature in the sense of natural resources, even while fairly worshipping Nature in the sense of the wild. The boundless domestication, indeed, industrialization of agriculture has been accompanied by the fervent protection of wilderness. Despite the lingering force of the Jeffersonian ideal of the "yeoman farmer" and the sentimental appeal of the family farm, Americans are now inured to the idea that agriculture is an industry as technologically driven as any other. American agronomists, infused with the idea of wilderness, wonder whether genetic engineering will so increase yields that agribusiness can feed the world with less acreage and so leave more land for "Nature."

The "technological treadmill" in agriculture, far from being accepted in Europe as business as usual, threatens the very idea of nature—the pastoral farm as depicted, say, in the paintings of Constable. The hatred of agrotechnology as an assault on nature is not new with genetic engineering. Over a century ago, John Stuart Mill condemned a landscape in which "every natural pasture is ploughed up, and scarcely a place left where a wild shrub or flower could grow without being eradicated as a weed in the name of improved agriculture."

Europeans regard GM crops as the last stage in this process: the eradication of nature, or everything lovely and worth protecting about it, in the name of improved agriculture. The same economic and technological forces that destroy Nature as wild and pristine landscape in the United States seem poised to destroy Nature as pastoral landscape in Europe. As Americans try to parry the threat exotic species pose to our image of Nature, so the Europeans respond to the threat GM crops pose to their conception of what is natural.

would suggest that colonization, by increasing diversity, improves ecosystems. The striped bass—introduced from the Chesapeake—is the most abundant game fish in the Sacramento-San Joaquin estuary. Is there anything about the striped bass that suggests its provenance; is there anything about its effects that indicates how long it has been there? Can one tell from inspecting these creatures or these systems whether the striped bass went east or west?

If we take seriously the suggestion that bioinvasions cause ecosystems to deteriorate or decline, then ecologists should have no difficulty telling which systems have been invaded; they can simply observe which have deteriorated or declined. Yet they cannot do this. Biologists cannot observe any differences—including

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signs of imbalance or deterioration—that tell them what proportion of species in an ecosystem have colonized it recently and what proportion have been there for a long time. Nor can they correlate invasion with any negative impact over time—such as loss of biodiversity—since invasions typically add to the richness or species diversity of ecosystems. To be sure, one is more likely to find alien species in disturbed areas, like those near harbors, than in undisturbed areas off unfrequented coasts. This shows only that disturbance leads to colonization, however, not that colonization causes disturbance. At most, ecologists may argue that new arrivals compete with those species that are already there, but they cannot tell us why competition of this sort is ecologically a bad thing. In economic life, competition is regarded as a good thing—even if Toyota sells a lot of cars in America.

Discrimination without Xenophobia

John Elton concludes his study *The Ecology of Invasions by Animals and Plants* with a chapter titled "The Reasons for Conservation." He gives three that he regards as grounds for excluding alien species: "The first, which is not usually put first, is really religious." Before Darwin, a religious argument for exclusion might have asserted that humans must not disturb the distribution of species present at creation. We now know that species had been evolving, dispersing, and commingling for billions of years—indeed, more than 99 percent of all species created had become extinct—before human beings arrived on the scene. In order to domesticate nature—to turn wilderness areas into

places where humans can comfortably live—we have had to rearrange Nature's course, including the distribution of plants and animals. The religious objection that seems most plausible today is one also lodged against genetic engineering—that our assertion of control over nature has become excessive. Rather than acting as stewards of creation, we usurp God's role as creator.

The second kind of reason, Elton writes, "can be called aesthetic and intellectual. You can say that nature—wild life of all kinds and its surroundings—is interesting, and usually exciting and beautiful as well." Native and indigenous species, which share a long and fascinating natural history with neighboring human communities, may reward study and appreciation. Moreover, many of us feel bound to particular places because of their unique characteristics, especially their flora and fauna. By coming to appreciate, care about, and conserve flora and fauna, we, too, become native to a place.

Aesthetic and intellectual values attach to species which have become associated with a place—part of its natural and human history. These species, however, need not have evolved *in situ*; they need only have settled in for a long enough time. Many of the alien species among us have become an integral part of our community and our cuisine—cattle, cotton, corn, and striped bass are surely as American as sunflower seeds, cranberries, and Jerusalem artichokes. The importance of shared history does not favor the native over the alien, but settled denizens of both types over the most recent arrivals. We need not be ashamed of our loyalty to the flora and fauna who have become our neighbors over those that aspire to do so; nothing compels us to treat newcomers on equal terms. But many or most of the once-alien species we encounter are not newcomers, and we have as much reason to be partial to the long-resident alien as to the truly native.

As a third reason for excluding or removing alien species, Elton mentions economic costs involving "crops, forests, water, sea fisheries, disease, and the like." These reasons are perhaps the most familiar, since they are invoked so often in the contemporary debate. Of course, just as economic reasons justify excluding some human immigrants—for example, those known to be criminals—so they justify efforts to exclude known pathogens and other disease organisms. It should be obvious by now, however, that economic reasons cannot sustain the generalizations about alien species that ecological nativists are wont to make. Indeed, many of the most highly regarded species are or were once aliens, and many of the worst nuisances are native residents.

In the Chesapeake, for example, many biologists argue for the introduction of a non-native oyster to restore the commercial oyster fishery, which has been

devastated by a locally occurring disease. A tasty and disease-resistant oyster native to Japan has been introduced successfully in bays across the world, from Australia to France to Washington State, where it supports profitable fisheries. This oyster as well as another from China seem suited to the temperature, salinity, sediment loads, and dissolved oxygen concentrations of the Bay. Why not introduce an exotic oyster to the Chesapeake, where it could assume the ecological and economic functions of the nearly defunct native oyster?

Typically, people worry that an exotic will "take over" or spread without control. "I'm afraid of the new oyster," said Larry Simms of the Maryland Watermen's Association. "What if it takes over everything?" It might be a good thing, however, if the oyster did "take over everything": Imagine how rich watermen might become—and how soon the Bay would return to its prelapsarian clarity—if the new oyster, a filter feeder like the zebra mussel, transformed the excess nutrients now choking the Bay into food for the invertebrates that feed fish.

If we decline to replace the native oyster with the Japanese or Chinese variety, we should recognize that we are making an ethical, aesthetic, or spiritual decision, not just an ecological one. We may wish to respect the attachment of Bay residents to the indigenous oyster, as an intrinsic part of their local historical and cultural heritage. We may fear that we would be "playing God" if we allowed the alien oyster to drive the native variety into extinction, and, perhaps, that we would offend God if we treated the Bay only as a resource for commercial exploitation. In any case, we should acknowledge the moral or religious reasons that may justify a decision to give up what could be the economic and even ecological advantages of a disease-resistant exotic oyster.

Biological and ecological science, to some extent, can describe what may happen if non-native oysters, swans, and so on are allowed to prosper in the Chesapeake Bay, but these sciences cannot evaluate the results. For example, biologists might tell us whether it is easier to teach mute swans or trumpeters to migrate, or whether they will coexist or even interbreed. We may then argue on aesthetic or historical grounds—E. B. White's wonderful book about a trumpeter swan might be relevant—for eradicating the mute and reintroducing the trumpeter. The argument, however, must be explicitly an aesthetic or historical one. Ecology should not attempt to become a normative science.

—Mark Sagoff

A longer version of this essay is forthcoming in Dorinda Dallmeyer, ed., *Values at Sea: Ethics for the Marine Environment* (University of Georgia Press). Sources: Ken Goldman and Bob Ferris, "Fly Away Home, Part II," news release from Defenders of Wildlife, June 30, 1997 (<http://198.240.72.81/pr063097.html>); Pat Durkin, "Big Immigrant Swans Drive Native Species from Feeding Grounds," *Buffalo News*, April 9, 1995 (quoting Doug Forsell); *The Birds of North America* (American Ornithologists' Union, 1992), no. 105 ("Trumpeter Swan") and no. 273 ("Mute Swan"); Karl Blankenship, "A Swan Song with a Happy Ending?" *Bay Journal* (published by the Alliance for the Chesapeake Bay), vol. 7, no. 6, September 1997 (www.bayjournal.com/97-09/swans.htm); The Trumpeter Swan Society Web site (<http://www.taiga.net/swans/>); "President Clinton Expands Federal Effort to Combat Invasive Species," February 3, 1999, White House news release (<http://www.whitehouse.gov/CEQ/020599.html>); Peter S. Goodman, "Pfiesteria Found in Two More Rivers," *Washington Post*, February 26, 1999; Lidija Milic, "Zebra Mussels Beneficial," *Oakland Post*, February 18, 1998 (<http://www.acs.oakland.edu/post/winter98/980218/n5.htm>); U.S. Congress, Office of Technology Assessment, "Harmful Non-Indigenous Species in the United States" (OTA-F-565), 1993; Lori Valigra, "Alien Marine Life Eats Locals for Lunch," *Christian Science Monitor*, February 11, 1999 (quoting Armand Kuris); Scott Harper, "Predators are Breeding in the Bay," *Virginian Pilot*, September 22, 1998 (<http://www.fishingnj.org/artrapawhbk.htm>); Yvonne Baskin, "Winners and Losers in a Changing World," *BioScience*, vol. 48, no. 10, 1998 (quoting David Lodge, a biologist at the University of Notre Dame, who attributes to alien species such qualities as higher fecundity, less parental care, and greater tolerance of degraded conditions); Gordon Orians, "Site Characteristics Favoring Invasions," in *Ecology of Biological Invasions of North America and Hawaii*, edited by Harold A. Mooney and James Drake (Ecological Studies No. 58. Springer-Verlag, New York, 1986) (criticizing the stereotype of alien species); David Quammen, "The Weeds Shall Inherit the Earth," *The Independent*, November 22, 1998 (quoting Michael Soule on "ecological disintegration"); D. J. Rapport, R. Costanza, and A. J. McMichael, "Assessing Ecosystem Health," *Trends in Ecology and Evolution*, vol. 13, 1998 (on symptoms of ecosystem degradation); MIT Web site (<http://massbay.mit.edu/exotic-species/invaders/index.html>); Maryland Sea Grant Fact Sheets (<http://www.mdsg.umd.edu/exotics/index.html>); William K. Stevens, "New Eye on Nature: The Real Constant Is Eternal Turmoil," *New York Times*, July 31, 1990 at C1 (quoting Steward Pickett); Donald Worster, "The Ecology of Order and Chaos," *Environmental History and Review*, vol. 14, no. 1–2, Spring/Summer 1990; Michael Soule, "The Social Siege of Nature," in *Reinventing Nature: Responses to Postmodern Deconstruction*, edited by Michael Soule and Gary Lease (Island Press, 1995); Beth Baker, "Botcher of the Bay or Economic Boon?" *BioScience*, vol. 42, no. 10, Nov. 1992 (quoting Larry Simms).

Stigma without Impairment: Broadening the Scope of Disability Discrimination Law

During oral argument in *Murphy v. U.P.S.*, a case in which the Supreme Court was asked to decide whether the Americans with Disabilities Act covers individuals whose impairments are mitigated by corrective devices or medication, Justice Antonin Scalia removed his glasses and waved them in the air. He was making the point that if mitigation were ignored, he, along with millions of other Americans, would be swept into the category of "disabled," swelling its ranks far beyond the 43 million recognized by Congress when it adopted the statute a decade ago.

Some commentators fear that restricting the ADA to severe disability excludes many who are also subject to invidious discrimination.

Scalia's gesture nicely evokes a broader dispute about the scope of the ADA: between those who see it as protecting "a discrete and insular minority," comprising the relatively small proportion of the population marked by their functional limitations, material privation, and social exclusion, and those who see the statute as applying to a broad and loosely bounded range of people stigmatized by physical and mental differences. The former believe that a narrow definition of disability is critical for preserving the moral urgency and popular support of the ADA; the latter fear that restricting the ADA to severe disability excludes many who are also subject to invidious discrimination.

The narrower view of the ADA prevailed in *Murphy* and in a related case, *Sutton v. United Airlines*, where the Court held that "disability" does not include impairments that are substantially limiting only in the absence of corrective devices or medication. For a majority of the Court, people who can achieve normal functioning simply by putting on glasses or taking a pill do not belong to the highly vulnerable and disadvantaged group the ADA was intended to protect. As

Justice Ruth Bader Ginsberg observed in her concurrence, "Persons whose uncorrected eyesight is poor, or who rely on daily medication for their well-being, can be found in every social and economic class; they do not cluster among the politically powerless, nor do they coalesce as historical victims of discrimination."

Justice Stevens, in dissent, did not deny Ginsberg's claim that people with correctable impairments are generally less vulnerable and disadvantaged than those with severe disabilities. Nonetheless, he argued that this difference provides no reason to deny them protection from discrimination:

When faced with classes of individuals or types of discrimination that fall outside the core prohibitions of antidiscrimination statutes, we have consistently construed those statutes to include comparable evils beyond Congress' immediate concern in passing the legislation. Congress, for instance, focused almost entirely on the problem of discrimination against African-Americans when it enacted Title VII of the Civil Rights Act of 1964.... But that narrow focus could not possibly justify a construction of the statute that excluded Hispanic-Americans or Asian-Americans from its protections—or as we later decided ..., Caucasians.

It may, however, be more difficult in the case of disability than race to decide what classes of individuals face evils comparable to those addressed by the statute's "core prohibitions." Construing the 1964 Civil Rights Act to include Hispanic-Americans, Asian-Americans, or Caucasians appears (at least in retrospect) straightforward, because it is clear that people of any racial, ethnic, or national-origin group can be treated as moral inferiors by virtue of their membership in that group. In contrast, the justices in *Sutton* disagreed about whether discrimination against individuals with minor and correctable impairments was an evil comparable to discrimination against individuals with more severe, less tractable impairments. For the majority it was not, because the former, unlike the latter, are not a discrete and insular minority, left poor and powerless by a long history of exclusion and neglect. Because of this difference, the majority held an employer was "free to decide that physical characteristics or medical conditions that do not rise to the level

of an impairment—such as one's height, build, or singing voice—are preferable to others, just as it is free to decide that some limiting, but not *substantially* limiting impairments make individuals less than ideally suited for a job." The dissent, however, saw in such preferences precisely the kind of "stereotypic assumptions" about competence that confront people with more severe impairments and that the ADA was intended to overcome.

Before *Sutton* and *Murphy*, several commentators had argued that the ADA should cover a variety of conditions less limiting than paradigm cases of disability. Not only should correctable impairments be included, but also impairments that are substantially limiting only in

*A revised statute should protect anyone
with a disfavored physical or
mental variation.*

a narrow range of activity, such as a specialized kind of work, or that are substantially limiting only by virtue of the discriminatory response they elicit, such as the denial of a job or service. And at least one commentator took the argument a step further, proposing the outright elimination of the "substantial limitation" requirement. If, as Justice Stevens argued in his *Sutton* dissent, "the purpose of the ADA is to dismantle . . . barriers based on society's accumulated myths and fears," it should protect all people with impairments, since those myths and fears are not confined to impairments that are, or are perceived to be, substantially limiting.

After *Sutton* and *Murphy*, these arguments for enlarging the scope of the ADA can no longer be made within the confines of the existing statute. Whether or not they were correct as statutory interpretation, I believe they are correct in articulating what the central purpose of the ADA *should* be: to challenge discrimination based on physical or mental difference, not to protect a vulnerable class of people bearing the most salient or substantial differences.

By the same token, however, I believe that these arguments require a more extensive revision of the ADA than their proponents acknowledge. The reasons for extending the protection of the ADA to persons whose impairments are not "substantially limiting" also justify extending these protections to persons with atypical physical or mental conditions that are not (or are not regarded as) impairments at all. A revised statute, I shall argue, should protect anyone with a disfavored physical or mental variation: It should apply to those who are overweight but not morbidly obese, short but not achondroplastic, unattractive but not disfigured, and "dull-witted" but not mentally retarded.

The expansion of the ADA to include all disfavored physical and mental variations would treat people with index impairments and substantial limitations not as a discrete and insular minority, but as some of the most salient and aggrieved victims of prejudice and stereotyping that adversely affect most Americans at some point in their lives. In extending protection to people with minor impairments and "normal" deficiencies, the statute would not assume that the discrimination they face is as severe as that faced by people with substantially limiting impairments, but merely that it is a "comparable evil." Perhaps the class protected by this extended statute should no longer be referred to as "Americans with Disabilities," reserving the term "disability" for those who have, or are regarded as having, functionally significant impairments. On the other hand, retaining the name would be a useful reminder that people with normal structural and functional imperfections can be "disabled" by aversion, contempt, and stereotyping. I am less concerned with the statute's name than with its scope.

This further extension of the ADA would doubtless be opposed by many who favor the liberal interpretation or outright elimination of the "substantial limitation" requirement. Justice Stevens himself, in arguing for the inclusion of mitigated impairments, made it clear that he did not "mean to suggest, of course, that the ADA should be read to prohibit discrimination on the basis of, say, blue eyes, deformed fingernails, or heights of less than six feet. Those conditions, to the extent that they are even 'impairments,' do not substantially limit individuals . . . and thus are different in kind from the [substantial but mitigated] impairment in the case before us." My first task, then, is to show that a variety of minor imperfections, from short stature to slight deformities, are not necessarily "different in kind" from substantially limiting impairments, and that the discrimination faced by people with these conditions is sufficiently similar to that faced by people with major impairments and substantial limitations to be covered by the same statute.

The Experience of Stigma

The similarity between discrimination for minor imperfections and major impairments seems fairly obvious in the case of some deficiencies, like obesity and extreme homeliness. Consider the case of Deborah Birdwell, as described by Ruth Colker, an opponent of narrow eligibility requirements in antidiscrimination law.

Birdwell is obese and had wanted to see a movie with her niece. Knowing that she could not fit into a movie theater seat, she called ahead to ask if she could bring her own chair and use it in the wheelchair section. She was told that she could. But when she went to the theater with her chair, she was rudely informed that she would not be able to use it.

Clearly, Birdwell was discriminated against on the basis of a disfavored physical difference; it is unlikely that someone who needed extra space because he was seven feet tall would have met with such a rude response. Fat people, unlike tall people (at least tall men), are stigmatized. And this is true *whether or not* they are impaired, or substantially impaired, under the definitions laid down in the ADA. Indeed, discrimination against fat people often involves an implicit contrast between their conditions and "true disabilities." Fat people do not receive the accommodation accorded to wheelchair users because their inconvenience is seen as transient and voluntary, resulting from their (presumed) gluttony and self-indulgence. The myths and stereotypes they face are arguably no less invidious than those faced by people in wheelchairs. The challenge for disability discrimination law is to recognize how far beyond the impairment category such stigmatization extends.

Erving Goffman, who introduced the term "stigma" into the discourse of modern social science, maintained that a person is stigmatized by "his possessing an attribute that makes him different from others . . . and of a less desirable kind." This attribute can be a physical deformity, character flaw, or membership in a particular racial, ethnic, national, or religious group. Although he recognized the pervasive effects of stigma on routine social interaction, Goffman declined to restrict the notion to "those who possess a flaw that uneases almost all their social situations." Rather, he regarded stigmatization as a threat to almost all people some of the time: "The most fortunate of normals is likely to have his half-hidden failing, and for every hidden failing there is a social occasion for which it will loom large. . . . Therefore, the occasionally precarious and constantly precarious form a single continuum." For Goffman, this continuity reflects the nature of the prevailing norms:

While some of these norms, such as sightedness and literacy, may be commonly sustained with complete adequacy by most persons in the society, there are other norms, such as those associated with physical comeliness, which take the form of ideals and constitute standards against which almost everyone falls short at some stage in his life. And even where widely attained norms are involved, their multiplicity has the effect of disqualifying many persons. For example, in an important sense there is only one completely unblushing male in America: a young, married, white, urban, northern, heterosexual Protestant father of college education, fully employed, of good complexion, weight, and height, and a recent record in sports. . . . Any male who fails to qualify in any of these ways is likely to view himself—during moments at least—as unworthy, incomplete, and inferior.

On this view, stigma is not the defining characteristic of a discrete and insular minority, but a universal condition. The breadth and elasticity of the process of stigmatization make it morally arbitrary to single out some physical and mental differences for legal protection.

Now, it may be that in emphasizing the "precariousness" of the normal, Goffman understated the disparity in social attitudes toward the normal deviant and the significantly impaired. There may well be differences, in kind as well as degree, in attitudes towards different kinds of deviance—differences which, for some purposes, eclipse the underlying commonalities that Goffman found. Those deviating from an ideal "which almost everyone falls short of at some stage in his life" may be stigmatized far less severely or pervasively than those displaying a rare and conspicuous physical or mental abnormality. The stigma associated with striking cosmetic anomalies, serious limb deformities and neuromuscular disorders, profound retardation, and the impairment of multiple senses may be distinct from, and worse than, any stigma associated with physical and mental variations not regarded as impairments.

Not all substantially limiting impairments, however, are severely stigmatized. The impairments covered by the ADA elicit a broad range of social responses, from the intense aversion and anxiety provoked by leprosy, epilepsy, AIDS, and schizophrenia to the constricting solicitude and overprotectiveness triggered by cardiovascular and lower-back problems. The ADA recognizes that even the more "benign" responses to impairment, involving the exaggeration of frailty and dysfunction, contribute to the exclusion and devaluation of the people who have those impairments. At the

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same time, many physical and mental differences not classified as impairments elicit contemptuous, dismissive, patronizing, or oversolicitous responses that can be equally handicapping. People with normal imperfections are often relegated to inferior roles and places, if not excluded outright, by false assumptions about their suitability for various jobs or activities. A large body of research, for example, finds that people perceived as unattractive are also regarded as less competent and intelligent.

There may, though, be a more general reservation about eliminating the impairment requirement in disability discrimination law. Although that requirement may exclude some highly stigmatized people and conditions, it lays down a reasonably clear boundary for the protected class. If we cannot restrict the class in that way, how can we restrict it at all? How do we decide whether a person falls sufficiently below a standard "against which almost everyone falls short"



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to be “truly stigmatized”? How unattractive must he be to be stigmatized as ugly, how overweight to be stigmatized as fat, how uncoordinated or ill-proportioned to be stigmatized as ungainly? It would be difficult to draw, let alone justify, any line on the continuum from the occasionally to the constantly precarious. But without such a line, we are left with a statute protecting us all from unwarranted and exaggerated responses to our minor imperfections. The defender of an impairment requirement would argue that such a statute would indeed trivialize disability discrimination, because discrimination on the basis of minor imperfections is far more benign than discrimination on the basis of impairments—it is simply not a comparable evil.

I think this concern has some force, but much less than may initially appear. There is no reason to assume that the contempt and devaluation that most people

One concern about extending the ADA is that any such change would limit the resources available for those who most need the statute's protections.

face at some point in their lives will be significantly more benign than the contempt and devaluation that a few people face throughout their lives. Our attitudes toward older people—consistently found to be among the most stigmatized individuals in our society—should suggest that we are quite capable of despising

what we are, or are likely to become. Leslie Fiedler has argued that the “cults of slimness and eternal youth” are profoundly demeaning and oppressive to the vast majority of Americans. Even if we are not quite as suffused with self-loathing as Fiedler imagines, a preference for the young and beautiful can be unfair and cruel, denying older and less attractive people meaningful work and rewarding social experience. Moreover, a preference for the young and beautiful may reinforce, or evolve into, an aversion to the old and ugly. For these reasons, the law would not trivialize its condemnation of discrimination against the constantly precarious by banning discrimination against the occasionally precarious as well.

Distributive Implications

A distinct concern about extending the ADA to people without substantially limiting impairments is that any such change would have perverse distributive effects, limiting the resources available for those who most need the statute's protection. Shortly after the *Sutton* decision was handed down, a quadriplegic man wrote in a letter to the *New York Times*, “the effect of diluting the definition of disability by including nearly half of the population would ultimately have hurt those who need accommodation the most.” For instance, the statutory exception holding that accommodation needn't be provided if it imposes “undue hardship” may be more frequently available if the class of people who can claim accommodation is expanded. Because there are limits on the costs an employer or

Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy

Anita Silvers, David Wasserman, and
Mary B. Mahowald,

with an afterword by Lawrence C. Becker

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Anita Silvers is professor of philosophy at San Francisco State University and the author of many publications on ethics and medical ethics, aesthetics, disability studies, feminism, higher education, and public policy. David Wasserman is a research scholar at the Institute for Philosophy and Public Policy, University of Maryland. He is a practicing attorney who works on philosophical issues that arise in public policy and law related to disability. Mary Mahowald is professor at the Pritzker School of Medicine, University of Chicago. Her books include *Women and Children in Health Care*.

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provider will be required to bear, it may be more appropriate to impose costs for the benefit of those who, as a result of the social consequences of severe impairment, are among the worst-off members of society.

To the extent that these concerns about scarce resources for accommodation are realistic, however, they will be raised by any statute that, like the present ADA, covers individuals who vary widely in the severity of their impairments and the magnitude of

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expansion of the ADA would significantly
increase either the frequency or
the cost of accommodation.*

their disadvantage. If the burdens of accommodation accumulate, it is possible that employers and facilities will find themselves exempted under any such statute from accommodating more severely impaired individuals because they have already accommodated less severely impaired ones.

But in fact, there are several reasons for doubting that the proposed expansion of the ADA would significantly increase either the frequency or the cost of accommodation. First, the barriers faced by people with many normal deficiencies, such as unattractiveness and short stature, will be predominantly attitudinal rather than structural. People with slightly deviant shapes and sizes do face some structural inconveniences, e.g., in reaching switches and ordering clothes, but the more substantial barriers they face arise without structural mediation, from the attitudes and assumptions of other people. Further, the site improvements that people with normal deficiencies may require, such as lower electrical switches, will for the most part already have been mandated for people with substantially limiting impairments. Finally, any individual accommodations that might be required, such as an adjustable chair or a more flexible work schedule, would probably be less expensive on average than the individual accommodations required for people with index impairments.

Still, the cost of accommodating an individual will not always be proportionate to the magnitude of his physical or mental differences, and the accommodation of people with normal deficiencies or minor impairments will sometimes limit the resources that are available for accommodating people with more severe impairments. It would be naive to expect that the extension of the ADA would have no adverse effects on some of those who now enjoy its protection.

A legal ban on discrimination against all disfavored or stigmatized physical and mental differences may

also impose less tangible costs. These range from the administrative burdens imposed on a judicial system required to field a vast array of new complaints arising from a broad and vaguely formulated proscription, to the erosion of public support that may result from extending protection against disability discrimination to people who are not in fact disabled. Critics who regard the United States as litigation-crazed and rights-obsessed will raise the specter of short, fat, and homely people clogging the courts with petty complaints that reveal nothing more than the increasing incidence of the "disability" of thin skin. More ominously, they will see an oblique assault on the very idea of merit; on practices and institutions that celebrate beauty, strength, and intelligence. I shall address these complaints in turn, arguing that they are greatly exaggerated but not entirely baseless. The ultimate question is whether the risk of additional expense, litigation, and public hostility is justified by the moral and practical value of extending the statute's protections.

Effects on Litigation

However credible the threat of exploding litigation may be in general, that specter seems especially remote in this area. As Justice Stevens remarked in his *Sutton* dissent, "it is hard to believe that providing individuals with one more antidiscrimination protection will make any more of them file baseless or vexatious lawsuits." The awkwardness of raising claims of

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discrimination on the basis of obesity, very short stature, or extreme unattractiveness would serve as a powerful deterrent to anyone lacking a strong grievance, as would the formidable difficulty of proving discrimination on the basis of less striking departures from aesthetic and other social ideals. Moreover, the removal of the substantial limitation requirement would eliminate one of the most litigated issues under the present ADA.

Research on ADA claims suggests that much current litigation is attributable to disputes about whether an impairment is substantially limiting. Those disputes would arise less frequently under the revised statute, which would focus not on the severity of the condition but on the social response to it, e.g., did the reassignment of a worker with a lower-back or heart problem reflect myths and fears about her frailty or weakness,

or a prudent avoidance of risk? Of course, questions about the severity of such conditions would continue to arise in considering such issues as the reasonableness of a proposed accommodation or the existence of a safety threat. However, it would no longer be necessary to establish the severity of the condition as a prerequisite for claiming accommodation.

The revision of the statute would also reduce the incentive for the kind of fraud that has preoccupied disability policy makers. The pressure to obtain false medical evidence arises from the need to establish impairment and substantial limitation, a need that the proposed revision largely eliminates. The corrupting pressure to "diagnose disability down" would be relieved by a statute that demanded no medical evidence of impairment or substantial limitation. It is possible, of course, to imagine litigants fattening up to claim weight discrimination, or putting on unflattering makeup and clothes to claim unattractiveness discrimination, but such stratagems would hardly be more deceptive than much routine trial preparation. And they would be of no avail in satisfying the most difficult element of proof for all such claims: not that of establishing a disfavored difference, but of establishing that discrimination occurred on the basis of that difference.

Admittedly, litigation would arise over the scope of the expanded statute, about whether a particular type of physical or mental difference is actually subject to social prejudice or stigma, and about whether it should be covered by the statute if it is not. For example, while left-handed people may once have been subject to a variety of myths, fears, and stereotypes, they do not appear to face them in turn-of-millennium America. It is doubtful that any current or residual stereotyping or animus explains the absence of left-handed mail-sorting devices or "crossover" training complained of by Daniel de la Torres, a discharged mail sorter whose claim of disability discrimination was dismissed for want of an impairment. The court may have reached the right result in that case, not because left-handedness is not an impairment, but because it is not stigmatized. Then again, the lack of accommodation for left-handed people might well create a risk of stigmatization, by making them appear incompetent as they struggle in a world of right-handed equipment.

It may seem that my proposal would compel courts to make awkward threshold judgments about such matters as physical appearance—deciding, for instance, whether a plaintiff was sufficiently unattractive to have experienced appearance discrimination. But because a revised statute would not limit itself to differences that fell below some vaguely defined social benchmark for an "acceptable" appearance or physique, this issue would not arise. To be discriminated against on the basis of physical appearance, a

person need not be unattractive, just insufficiently attractive to satisfy the job-irrelevant preferences of an employer. If an employee of average appearance could actually show that he was denied a promotion because he did not meet his employer's high aesthetic standards, he would have a discrimination complaint under the revised statute. The claim that "I would have been promoted if I were better-looking" would state a cause of action, because an employer who places an unwarranted premium on beauty devalues the plain-looking as well as the homely.

Although this expansive view would, in theory, open the courthouse door to virtually anyone with an adverse employment outcome and a physical or mental imperfection, I do not think a flood of "baseless and vexatious lawsuits" would result. Admittedly, it would be less awkward to raise a claim of discrimination on the basis of a minor than a major departure from an aesthetic or other social ideal. But it would be that

much harder to prove such a claim—a plaintiff would be likely to prevail only against an employer who was remarkably indiscreet or emphatic about his illicit preferences. The great majority of counterfactuals of the sort "I would have been promoted if I were better-looking" will be unprovable even if true, and the obvious difficulty of proving them should keep the floodgates closed against all but the most serious grievances.

It may seem a dubious recommendation for the proposed extension of the ADA that it would be virtually unusable by those it was intended to protect. But this overlooks the fact that a few cases can have a major impact on social practice. A judicial decision that Deborah Birdwell had a right to reasonable accommodation would have both symbolic and practical value, condemning the indignities visited on people with ordinary physical differences (as well as making life easier for overweight moviegoers). A single administrative ruling that a law or advertising firm could not defer to its clients' preferences for good looks in hiring its professional staff would increase employment opportunities for homely and plain-looking professionals, although it would hardly eliminate all the advantages of physical attractiveness. As many commentators have noted, the law casts a broad shadow, and the benefits to people with ordinary imperfections would be more likely to arise from preemptive measures than from specific judicial or administrative orders.

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A Quixotic Statute?

Nevertheless, the very difficulty of proving specific instances of a kind of discrimination we believe to be ubiquitous may suggest that there is something quixotic about the revised statute. Precisely because physical appearance has such a pervasive impact on social judgment, and because norms of beauty are so deeply enmeshed in social practice, it might be argued that a law against discrimination on the basis of physical appearance would either be wildly impractical or unreasonably demanding. We are willing to accept the sometimes awkward formalities imposed on job searches by affirmative action guidelines as an acceptable price to pay for purging the great evils of race and sex discrimination. Similarly, we may accept the relentless institutional self-scrutiny and small monetary expense involved in making jobs and activities more broadly accessible, to end the wholesale exclusion and isolation of people who are blind, deaf, or paraplegic. But the effort to purge ourselves of "lookism" may seem to require greater sacrifice and contortion for a less urgent objective. As Robert Post argues, it raises the specter of denatured transactions between disembodied individuals. Disability discrimination law

would indeed demand too much of us if it sought to eliminate, rather than control, the impact of physical appearance.

But disability discrimination law has always had more modest ambitions—it is more pragmatic than the “dominant conception” of discrimination law described by Post. As many commentators have noted, the ADA does not demand “blindness” about physical and mental impairments; not only does it recognize that impairments are sometimes relevant to eligibility or qualification, but it also requires a reasonable

we are all susceptible to impairment and limitation, as proponents of a universal model of disability have long insisted, we are all vulnerable to stigmatization. The Americans with Disabilities Act should be for “us,” not for “them.” It should command broad popular support not only because it seeks to protect some of the least advantaged and most stigmatized members of society—its capacity to do so will not, I have argued, be significantly diminished by its extension—but because it seeks to protect all of us from disabling attitudes and social practices.

—David Wasserman

The law would seek to limit the sway of powerful aesthetic preferences, but not aspire to eliminate them entirely.

attempt to accommodate relevant impairments. This pragmatism can be preserved in the extension of disability law to normal imperfections. For example, the law (or its accompanying regulations) might require that face-to-face interviews be deferred until the final stage of the hiring process. At the same time, it might decline to bar face-to-face interviews altogether, recognizing that it would be unduly burdensome to forgo the information such interviews could yield. In a pragmatic spirit, then, the law would seek to limit the sway of powerful aesthetic preferences, but not aspire to eliminate them entirely.

I am optimistic that we can reform social practices to reduce the importance of physical and mental differences, as we have reduced the importance of race and gender. Over the past three decades, we have learned that much of what we value in our public as well as private lives, such as humor, spontaneity, and gentility, can survive within the strictures of antidiscrimination law. I believe that, with experience and goodwill, we can endow the now alien, and alienating, procedures for limiting the sway of aesthetic preferences with a patina of familiarity and grace.

The core virtue of a broadly inclusive statute, focused on stigma rather than impairment, is that it would not rely on biomedical classification to determine who should be protected from discrimination. It would challenge, rather than reinforce, the sharp dichotomy between the disabled and able-bodied. If

This essay has been adapted from an essay in the forthcoming *Americans with Disabilities: Implications of the Law for Institutions and Individuals*, edited by Leslie Francis and Anita Silvers (Routledge, 2000); reprinted with permission. Sources: *Murphy v. United Parcel Service*, 119 S. Ct. 2133, 1999; Linda Greenhouse, “Justices Wrestle With the Definition of Disability: Is It Glasses? False Teeth?,” *New York Times* (April 28, 1999); *Sutton v. United Air Lines, Inc.* 119 S. Ct. 2139, 1999; John Tringo, “The Hierarchy of Preference toward Disability Groups,” *Journal of Special Education*, vol. 4 (1970); Gary Albrecht, Vivian Walker, and Judith Levy, “Social Distance from the Stigmatized: A Test of Two Theories,” *Social Science and Medicine*, vol. 16 (1992); Robert Burgdorf, “‘Substantially Limited’ Protection,” *Villanova Law Review*, vol. 42 (1997); Lisa Eichhorn, “Major Litigation Activities Regarding Major Life Activities: The Failure of the ‘Disability’ Definition in the Americans With Disabilities Act of 1990,” *North Carolina Law Review*, vol. 77 (1999); Ruth Colker, *Hybrid: Bisexuals, Multiracials, and Other Misfits under American Law* (New York University Press, 1996); Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Prentice-Hall, 1963); Leslie Fiedler, *Tyranny of the Normal: Essays on Bioethics, Theology and Myth* (David R. Godine, 1996); Linda Jackson, John Hunter, and Carole Hodge, “Physical Attractiveness and Intellectual Competence: A Meta-Analytic Review,” *Social Psychology Quarterly*, vol. 58, no. 2 (1995); Marc Sorani, “Are the Rights of the Disabled in Jeopardy?,” *New York Times* (June 23, 1999); Sue Krennek, “Beyond Reasonable Accommodation,” *Texas Law Review*, vol. 72 (1994); John McNeil, “Americans with Disabilities: 1991–1992,” *Current Population Reports* 70–33 (1993); Jerome Bickenbach, “Voluntary Disabilities and Everyday Illnesses,” in *Disability Is Not Measles: New Research Paradigms in Disability*, edited by Marcia Rouix and Michael Bach (Roehrer Institute, 1994); *Torres v. Bolger*, 610 F. Supp. 593 (1985); Robert Post, “Judicial Appearances: The Logic of American Antidiscrimination Law,” Brennan Center Lecture (ms., 1998); Note “Facial Discrimination: Extending Handicap Law to Employment Discrimination on the Basis of Physical Appearance,” *Harvard Law Review* vol. 100 (1987).



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