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The Case for Reparations

Robert K. Fullinwider

Because of its visibility, Randall Robinson's new book, *The Debt: What America Owes to Blacks*, may rekindle a broad public debate on reparations. The issue is not new, nor is public debate about it. In 1969, the civil rights leader James Forman presented the *Black Manifesto* to American churches, demanding that they pay blacks five hundred million dollars in reparations. The *Manifesto* argued that for three and a half centuries blacks in America had been "exploited and degraded, brutalized, killed and persecuted" by whites. This treatment was part of a persistent institutional pattern of, first, legal slavery and, later, legal discrimination and forced segregation. Through slavery and discrimination, the *Manifesto* went on to contend, whites have extracted enormous wealth from black labor with little return to blacks themselves. These facts constitute grounds for reparations on a massive scale. American churches were but the first institutions asked by Forman to discharge this great debt.

The *Manifesto* achieved immediate notoriety and stimulated debate in newspapers and magazines. Within a short period, however, public excitement died away.

The issue of reparations has always found favor within the African American community itself, taking root not long after the freeing of the slaves during the Civil War. It flourished around World War I with the Marcus Garvey movement and later found voice in Forman's *Black Manifesto*. It has recently regained vitality, given new life by a recent precedent, the Civil Liberties Act of 1988, in which Congress authorized payment of reparations to Japanese American citizens who had been interned during World War II. In each

session of Congress since 1989, Representative John Conyers has introduced a bill to create a commission to study reparations for slavery and segregation. Although the bill has made no legislative headway, the publication now of Randall Robinson's new book reflects the growing sense among many African

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Americans that the time is right to push reparations back onto the public agenda.

If public debate is to prove fruitful, however, both proponents and opponents of reparations will have to sidestep certain common but toxic confusions. In a long article in *The Washington Post* last December, these confusions were much on display. The article's lead questions—"Should the U.S. pay reparations to the descendants of slaves?" and "[W]hy shouldn't the great grandchildren of those who worked for free and were deprived of education and were kept in bondage be compensated?"—were countered by another—"Why should Americans who never owned slaves pay for the sins of ancestors they don't even know?" The article quoted Congressman Henry Hyde's firm answer to the last question: "The notion of collective guilt for what people did [200-plus] years ago, that this generation should pay a debt for that generation, is an idea whose time has gone. I never owned a slave. I never oppressed anybody. I don't know that I should have to pay for someone who did [own slaves] generations before I was born." His response didn't satisfy at least one African American, whose letter-to-the-editor noted, "Henry Hyde, like many whites, is quick to say, 'I never owned a slave' . . . Why should I pay . . . for something my ancestors did? . . . Well, because some people are descendants of slave owners and have profited from the labor of blacks who were never paid for their labor."

Personal versus Civil Liability

The demand for reparations to African Americans cannot be casually dismissed. It is grounded in a basic moral norm, a norm presupposed, for example, in the Biblical injunction at Exodus 22: "If a man steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep." *You must make good the wrongs you do.* This principle in one form or another underlies every mature moral and legal system in the world. At the same time, however, Henry Hyde's distaste for collective guilt seems equally well-founded: "The father shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin" (Deuteronomy 24:16). *We must not penalize one person for another's misdeeds.* Does, then, the demand for reparations pose a conflict between two distinct and equally basic moral principles? Not if the demand is properly understood.

Henry Hyde echoes a common but confused sentiment. If *personal* liability for slavery or past racial oppression were being imputed to him, then the Congressman's response would be appropriate. He denies personal responsibility for the wrongs to be made good. But personal responsibility and liability are not at stake. The real issues are *corporate* responsi-

bility—the responsibility of the nation as a whole—and *civic* responsibility—the responsibility of each citizen to do his fair part in honoring the nation's obligations. When Congress passed the Civil Liberties Act of 1988, no one assumed that individual Americans were being held accountable for personal wrongdoing. The internment of Japanese Americans was an act of the United States government and its agents. At the time, the government acted for putatively good reasons. Following the Japanese attack on Pearl Harbor, American officials were concerned about the security of the West Coast from similar attack or sabotage. Whether the government actually acted for honorable motives or not, the point remains that with the passage of time thoughtful Americans—and the government itself—have come to view the internment as an unjustified response to the war with Japan, and one that wronged its victims. The Civil Liberties Act, and

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the token reparations it paid (\$20,000 to each interned Japanese American or to his or her surviving spouse or children), represented an official apology and a small step toward making whole the material losses incurred by the internees. The reparations were appropriated out of general revenues. Consequently, Henry Hyde, as taxpayer, contributed a small portion, not because he had any *personal* responsibility for the internment but because as a *citizen* he is required to bear his share of the government's necessary expenditures.

One can make a parallel argument for reparations to African Americans. Although countless individual Americans throughout our history exploited their power or standing to oppress African Americans, that power and standing itself derived from law—first from the latitude of the English Crown, then from the Constitution of 1787 (which accepted slavery in the states where it was established), and finally from the tissue of post-Civil War "Jim Crow" laws, rules, and social conventions that enforced *de jure* and *de facto* racial segregation. The chief wrongs done to African Americans, thus, were not simply the sum of many individual oppressions added together but were the corporate acts of a nation that imposed or tolerated regimes of slavery, apartheid, peonage, and disenfranchisement. Just as it was the nation that owed Japanese Americans reparations, so it is the nation that owes reparations to African Americans. And so it is that Americans not as *individuals* but as *citizens* owe support for the nation's debt.



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Confusions about Liability

The foregoing seems simple and plain enough. Why then do so many opponents of reparations confuse the matter? We might content ourselves to speculate unflatteringly about their motives, were it not for the fact that the proponents of reparations often fall into the same and worse confusions. A recent spate of articles in law reviews demonstrates that the distinctions among corporate, civic, and personal liability prove elusive. These

We need to give up the assumption...that all liability is personal.

articles try to make the case for reparations and answer objections to it. To accept the reasonableness of reparations, they contend, we have to abandon the "individualistic" models characteristic of American law and think in terms of group rights and group wrongs. "The guiding paradigm of traditional remedies law," writes Rhonda Magee in the *Virginia Law Review*, "is the one plaintiff, one defendant lawsuit in which the plaintiff seeks the position she would have occupied 'but for' the wrong committed by the defendant." Within this paradigm, the demand by blacks for reparations seems unsustainable, since we can no longer identify individual successors to slave owners or state agents who promulgated legal oppression of blacks, nor separate out the respective harms to the successors of those who lived under slavery and Jim Crow.

However, at least with respect to the matter of liability, it is not the "individualism" of American law that we need to give up but the assumption, implicitly at

work here, that all liability is personal. The argument for reparations fits comfortably enough within the traditional paradigm when we make sure the focus is on corporate liability, for the corporate actor in question, the United States, is an "individual" under law. Indeed, precisely because it is an "individual" that doesn't die, it can acquire and retain debts over many generations, though individual Americans come and go. That is why Henry Hyde can indeed owe something as a result of his ancestors' actions.

Nevertheless, Magee and others insist on the indispensability of "group" conceptions of victims and wrongdoers. In the words of Mari Matsuda, victims of racial oppression "necessarily think of themselves as a group, because they are treated and survive as a group. [Even] [t]he wealthy Black person still comes up against the color line." The "group damage engendered by past wrongs ties victim group members together, satisfying the horizontal unity sought by the legal mind." Similarly, a "horizontal connection exists as well within the perpetrator group." Members of the latter—whites—continue to benefit from past wrongs and from the contemporary privilege their skin-color confers upon them. Finally, a horizontal relation of moral causality obtains between the two groups. The relationship might be represented in this way:

B ← W

where the arrow represents liability, indicating that W owes reparations to B, and where the respective entitlements and liabilities *distribute* within each group to its *individual* members, who are all tied to one another by the "victim"/"victimizer" attributes.

Magee, Matsuda, and other defenders of reparations labor to establish that the harms of slavery and dis-

crimination affect *each and every* African American (even the wealthy black runs up against the color line) and the culpability for the harms extends to *each and every* white (every white unjustly benefits from white-skin privilege). This picture, in fact, does not represent some new "group" paradigm at all, but an individualism run rampant, the product of failing to keep distinct personal and civic liability.

The real lines of liability, I contend, run this way:



where it is G (the government) that owes B (the victims) and where members of C (citizens) are duty-bound to underwrite government debts. The connection of citizens to the creditor "group" B is indirect and vertical, not direct and horizontal. Thus Henry Hyde owes something not because he is white or a member of the perpetrator "group" but because he is a citizen. The various "horizontal" connections among citizens are irrelevant. Indeed, included in the citizen "group" are African Americans themselves. They too will contribute in support of the government's reparations.

This outcome strikes the writers I am discussing here as an anomaly that needs explaining. In fact, it is no anomaly at all once we appreciate that blacks are citizens as well as victims and that their equal citizenship is reflected in their *civic* obligation to support government reparations—whether those reparations are paid to Japanese Americans or even to themselves in their capacity as wronged individuals.

Unfortunately, the ghost of personal responsibility is not so easily exorcised from these legal essays. This is especially true in the case of Vincene Verdun, writing in the *Tulane Law Review*. Although self-consciously rejecting "individualistic" thinking in favor of "group" thinking, she nevertheless edges close to the proper conclusion when she observes that the "wrongdoer" owing reparations is American "society." However, her failure fully to grasp the *corporate* nature of "society" is betrayed by her next move. "Treating society as the wrongdoer," she observes, "necessarily includes the injured parties in the classification of wrongdoer. If society pays, it will do so at least in part with tax dollars, and African Americans pay taxes." Nevertheless, "[t]here is a ring of propriety in having African Americans share in the . . . burdens," observes Verdun. Why? Here we expect Verdun to note that African Americans are citizens like everyone else. Instead, she locates the propriety in their own guilt!

Opponents of reparations are quick to point out that Africans participated in the slave trade and [some] African Americans owned slaves. The truth in these statements cannot be rebutted. Vincent Verdun [the author's father, introduced in a

prologue], is an injured party, because he was deprived of his rightful inheritance because his great-great-great grandmother was a slave. On the other hand, his great-great-great grandfather [the offspring of a French plantation owner and his black slave, and who was later emancipated and given land] was a slave owner.

Now, aside from the fact that the situation Verdun describes was fairly rare, what possible connection could there exist between Vincent Verdun, who lived his life as a black man, and his slave-owning great-great-great-grandfather that would visit on him the sins of his ancestor? Indeed, what connection between this ancestor and Vincene Verdun herself could lead her to confess, as she later does, that her "heritage,"

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deriving from both "master and slave," makes her not only a victim but one of the "wrongdoers," the group that owes reparations? No connection exists between these two Verduns and their long-ago ancestor except one, blood. Evidently, guilt travels through blood, since neither Vincene nor her father derived any lasting benefit or privilege from the their ancestor—indeed, their only significant inheritance was the color of their skin.

The racist assumption embedded in Verdun's "confession" speaks for itself. What would prompt a level-headed legal scholar to step into such a malodorous swamp? The explanation lies in Verdun's failure, despite her ostensible attachment to "group" thinking over "individualistic" thinking, fully to appreciate the various ontologies of groups and the difference between collective and corporate liability, a failure Magee and Matsuda share with her. She seems to assume that any property that characterizes "society" must characterize each of its members. If "society" is a "wrongdoer," then each member of society must be a wrongdoer. It is easy enough for her to view every white as a "wrongdoer" but she is forced to stretch to include blacks themselves as part of the "wrongdoers" since they, too, are part of "society": they are taxpayers.

When "society" is understood *corporately*, however, the "wrongdoing" of society does not distribute to each of its members. Individual citizens may be blameless for the wrongs of their nation. That the burden of payment for national wrongdoing falls on them simply reflects their *civic* roles and not anything about their *persons*. In making the case for reparations, it is a mistake to go looking for *personal complicity* on the part of those who must pay. And worse yet, it is a mistake to turn the putative personal complicity into guilt-by-blood.

Randall Robinson himself is less than careful in this regard. Sometimes in his book it is "white society" that must pay reparations, sometimes the "whole society." At one place, the debtors are characterized as those—"nations, individuals, *whites as a racial entity*"—who benefited from slavery and segregation. Finally,

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Robinson, too, appeals to blood: the value of the labor stolen from slaves, he says, has been compounding "through the blood lines" of slave owners. Just how blood transmits and compounds debt he does not say.

The imprecision and neo-racialist overtones in *The Debt* evidently caused Robinson some second thoughts. He recently wrote in *The Nation* that "individual Americans need not feel defensive or under attack" as a result of the call for reparations. "No one holds any living person responsible" for slavery or its successor regime of Jim Crow. We must all, "as a nation," address reparations, he writes. That is the right focus.

Making the Case for Reparations

Avoiding the confusion about corporate, civic, and personal liability clears the way to explore more fruitfully the positive case for reparations. How should that case go? The argument mounted by Robinson, Verdun, Magee, and other African Americans bases reparations on the great wrong of slavery as well as the more recent wrongs of legally sanctioned discrimination. Further, the argument stresses the purported benefits that whites over the centuries have extracted from slavery, Jim Crow, and a general social system of white supremacy.

However, basing reparations on slavery and on the great benefits accrued to whites invites complication and controversy. I suggest the case is actually strengthened by dropping both slavery and the benefits reaped by whites as grounds for reparations. Let me explain.

First, although the proposition that whites as a whole have benefited enormously from past racial oppression might seem self-evident, and remains an article of faith among the reparationists, whether slavery and segregation in fact yielded *net* positive economic benefits to this country and to whom those *net* benefits flowed (to all or only some whites) are difficult questions to answer. More importantly, trying to answer them is diversionary and unnecessary. A sufficient basis for reparations lies in the *wrong* done

African Americans by the nation, whether or not anyone really benefited from it. After all, the basis of the Civil Liberties Act of 1988 was not some putative benefit Americans had extracted from the internment of Japanese Americans in 1942–45. The basis was the *wrong* done to the internees.

What wrong to African Americans, then, should current reparations address? Making slavery the basis for reparations is unwise for two reasons. First, doing so invites the retort that America has already paid for the wrong of slavery, not with money but with the blood shed in the Civil War. The attempt successfully to parry this retort leads to complications, since whether to reckon the blood sacrifice of the Civil War as expiation for the sins of the past and how to weigh that sacrifice against any unpaid debt to the newly liberated slaves are questions that invite calculations prone to sophistical quibbling on either side.

A second reason it is unwise to base reparations on the fact of slavery is that the passage of time since abolition has now itself become a morally significant factor. Whatever condition they find themselves in, people have the responsibility to make the best of their circumstances, to provide for themselves even if they start with the most meager resources. For example, between 1865 and 1965, millions of immigrants came

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to America penniless and with little to offer but their physical labor. By dint of hard work, they and their successor generations eventually blended into the larger American fabric.

Over time one might have expected a similar process to play itself out for the newly liberated slaves, especially since their numbers would have allowed them to possess considerable political power in several states. Yet this process didn't occur. Why not? Because, after having made the newly freed slaves citizens, the federal government abandoned them. It allowed southern whites, through terror and law, to recapture control of state governments, disenfranchise African Americans, and, through the apparatus of Jim Crow, reduce them to virtual peonage. Indeed, America's highest court put its official stamp on state apartheid in its 1896 ruling, *Plessy v. Ferguson*, a ruling that Justice Harlan, in dissent, accurately predicted would one day be viewed by Americans as no less pernicious than the Court's fateful decision in *Dred Scott*.

In sum, governments—state and federal—made no effort to vindicate the rights to full and equal citizen-

Civil Society, Democracy, and Civic Renewal

Robert K. Fullinwider, editor

Civic society is receiving renewed attention from academics, politicians, journalists, community leaders, and participants in the voluntary sector. *Civil Society, Democracy, and Civic Renewal* brings together several of America's leading scholars—of history, sociology, political science, and philosophy—to explore the meaning of civil society, its positive and negative effects, its relation to government, and its contribution to democracy.

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ship the Civil War Amendments extended to blacks, a failure that prevented African Americans from successfully following the immigrant model. That failure persisted into recent times. The U. S. began to expend real effort toward defending the basic rights of blacks only after the 1954 Supreme Court ruling in *Brown v. Board of Education*, an effort far from complete today.

Had the federal government done nothing after 1865 except vigorously protect the civil and voting rights of blacks, the legacy of slavery would have faded consid-

erably if not wholly by now through the industry of blacks themselves. That the legacy still persists owes much, if not all, to the post-Civil War oppression of African Americans and it is *this* wrong that offers the most direct and salient basis for reparations.

Answering Objections

Some may object that the post-Civil War oppression of African Americans still leaves the case for reparations unpersuasive. They might insist that reparations are not possible or, alternatively, that they are not necessary.

Consider the first, that reparations are not possible because we can't now really identify who should get what. I argued earlier that the individualist legal paradigm creates no real difficulties in dealing with liability for reparations. However, doesn't it generate problems about *entitlement* to reparations? To whom should reparations be paid? Should *every* individual black person receive reparations? Quite obviously, different blacks have fared very differently under past segregation. Most of those affected worst are long dead. How was the legacy of their wrongful deprivations diffused to their descendants down to the present moment? How do we trace the damages?

Most living African Americans have incurred their own indignities and damages under discrimination, but how do we match reparations to losses? Do we pay the same to the child of middle class blacks who immigrated to the United States from the West Indies twenty years ago that we pay to an elderly retiree who spent half his life as a field hand in Mississippi? Mari Matsudi says that even the wealthy black person comes up against the color line. True enough. But the damage to him has not been the same as the damage to others. A scheme of reparations like the program for Japanese American internees that pays a flat sum to every black, whatever his background and economic condition, does not seem very attractive. So might the opponent of reparations argue.

This objection would carry more force if justice forbade paying reparations unless we could identify the exact victims and the exact degree of their victimization. However, while justice requires that we take special care to identify the proper "wrongdoers" from whom to extract compensation, it is less insistent that we scrupulously avoid compensating "victims" who weren't real victims, especially if such avoidance would mean not compensating anyone at all. Because the effects of a hundred years of racial oppression have been dispersed so widely throughout the African American community, it makes sense to adopt some scheme of reparations that *morally approximates* rather than actually effects the restoration of victims to their "rightful places"—the positions they would have occupied but

for the past history of oppression. Congress could follow the precedent of post-World War II Germany. Apart from paying compensation to some identifiable individual victims of its war crimes, Germany made reparation payments to organizations that represented European and world Jewry, including to the State of Israel, on the reasonable assumption that these organizations in the course of their efforts to resettle displaced Jews would benefit many of the victims of the Nazi regime. Similarly, Congress could fashion a reparations plan to fund specially designated organizations who would act on behalf of the African American community. A reparations program need not involve government indiscriminately writing checks to individual African Americans.

Even if the first objection is not telling, what about the second? Are reparations actually necessary? The opponent of reparations might argue that the country did enough when it passed the civil rights laws of the

A reparations program need not involve government indiscriminately writing checks to individual African Americans.

1960s. In the words of Jonathan Yardley, these laws "are concrete, purposeful and immensely significant attempts to eliminate the vestiges of slavery, to make the country equally free to all its citizens." Moreover, their "effect has been incalculable." Actually, it might be better to say that their effect is quite calculable. We can easily measure, for example, the growth of the black middle class since 1960, the near-parity between black and white high school graduation rates, and the upsurge in black public officials and legislators. We can also count the growth of African Americans on campus over the last forty years, and calculate the narrowed gap in earnings between similarly skilled black and white workers. Surely, then, we can extrapolate from these improvements to even further progress for African Americans in the near future. What would reparations add?

The answer is that reparations would add something quite important. Although the gains from the civil rights laws of the 1960s are undeniable, they should not be overstated. In particular, the narrowing income gap between whites and blacks masks a tremendous *wealth* gap. As Dalton Conley points out in an important new study, "At all income, occupational, and education levels, black families on average have drastically lower levels of wealth than similar white families." Moreover, he argues, it is the wealth rather than income of parents that proves pivotal to a child's ascending the academic and economic ladders to the middle class and beyond.

The black-white wealth gap is large, enduring, and damaging. Moreover, it is for the most part a direct legacy of official and unofficial discrimination lasting into the 1960s. Consequently, reparations at this late date would not be gratuitous; there is real work for them to do. A properly structured reparations program enacted by Congress could funnel substantial resources over three or four decades into organizations specifically designed and monitored to *create wealth* among African Americans—organizations that would assist development of neighborhoods, ownership of homes, creation of businesses, and expansion of human capital. These organizations could direct their energies and investments toward local and small-scale interventions to interrupt the cycle of poverty and hopelessness that traps the black underclass and toward broad-based efforts to secure the growing middle class in its economic purchase on the American dream. Such investments in infrastructure and wealth-creation would go some distance toward repairing for African Americans as a whole the damages occasioned by a hundred years of legal oppression.

The Limits of Reparations

The foregoing represents barely the sketch of a case for reparations. But it does suggest the contours of a specific, "lean" strategy: reparations (i) based on the wrongs done African Americans by the legal regime of racial discrimination that lasted until thirty-some years ago, and (ii) designed to stimulate creation of wealth, broadly conceived, in the African American community. It is "lean" because it omits elements many African Americans embrace, particularly the argument about slavery and the wealth that was purportedly extracted from it. Thirty years ago, in discussing a proposal put forward by Yale law professor Boris Bittker that the "post-Civil War wrongs are more than sufficient to support" a claim for reparations, the African American legal scholar Derrick Bell conceded that "the legal argument for reparations improves with the exclusion of the slavery period." Nevertheless, such exclusion, he thought, represents a "tactical loss." It "sacrifices much of the emotional component that provides moral leverage for black reparations demands." To the contrary, excluding slavery not only improves the legal case for reparations, it strengthens both the tactical and the moral cases as well by stripping them of diversionary complications.

It is true, however, that excluding slavery may sacrifice for African Americans some of the *emotional* resonance of the reparations argument, and this aspect may turn out, in the eyes of some, to be the most vital part of all. Although Randall Robinson's *The Debt* seems on its face to be addressed to a larger public, its real audience is other African Americans. It is a book

less about the details of reparations (they receive little more than a nod in the next-to-last chapter) than about Robinson's unrequited anger at slavery and the "staggering breadth of America's crime" against blacks. The real crime of slavery for Robinson? It has "maliciously shorn" African Americans of their "natural identity" and destroyed their self-esteem, leaving a people riven by self-hatred, self-doubt, and self-rejection. The real and continuing injury has been psychic. (Similarly for Vincene Verdun: "It is emotional injury, stemming from the badge of inferiority and from the stigma attached to race which marks every African American, that composes the most significant injury of slavery.")

Thus, for Robinson the emotional resonance of slavery for African Americans is not some unnecessary complicating factor to be trimmed away from a clean argument for reparations, it is the centerpiece for an aggressive, collective demand for redress. By pressuring "white society" to confess its sin of slavery and by "implacably demand[ing]" their full due, African Americans will "find" their own "voice." Fighting the fight for reparations on the basis of slavery will bring "catharsis." African Americans will rediscover their identity and know themselves to be a worthy people, win or lose.

Robinson's vision starkly poses a crucial question: what do African Americans take to be the real stakes in a reparations argument? Is the goal to succeed (with as many allies as possible) against high odds in achieving a reparations enactment by Congress that will bring some limited but vital wealth-creation to African American communities? Or is the goal of reparations to force a debate on their terms, as a vehicle of self-discovery and emotional self-renewal, however socially divisive it becomes and however remote it makes actual enactment of reparations? Readers of *The Debt* will not find a clear rendering of the trade-offs between these goals that Robinson is willing to countenance; but they cannot fail to see his passion for staking out the "sin" of slavery as the field on which to do battle. If this passion is unyielding, however, the debate about reparations may never really engage Americans at large. This would be too bad. A real public debate, stripped of disabling confusions while sharply focused on manageable grounds and practical results, could do every citizen a service.

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The Legacy of Hiroshima: A Half-Century Without Nuclear War

Thomas C. Schelling

It has already been more than five decades since the first, and the last, use of nuclear weapons in warfare. Who could have believed it fifty years ago? These five-plus decades of nonuse are a stunning achievement. They may also represent some stunning good luck.

There has never been any doubt about the military effectiveness or the potential for terror of nuclear weapons, and a large part of the credit for their not having been used must be due to the "taboo" that John Foster Dulles, Secretary of State in the Eisenhower administration, perceived to have attached itself to these weapons as early as 1953—a taboo that he deplored.

The weapons remain under a curse, now a much heavier curse than the one that bothered Dulles in the early 1950s. These weapons are unique, and a large part of their uniqueness derives from their being *perceived* as unique. We call most of the other weapons *conventional*, in the sense of something that arises as if by compact, by agreement, by *convention*. It is an established convention that nuclear weapons are different.

This convention, which took root and grew over the past decades, is an asset. It is not guaranteed to survive; some potential possessors of nuclear weapons may not share the convention. How the inhibition arose, whether it was inevitable, whether it was the result of careful design, luck, or both, and whether we should assess it as robust or vulnerable in the coming decades—these are the issues to be examined here.

Origins of the Taboo

The first occasion when these weapons might have been used was the Korean War. By September 10, 1950, American and South Korean troops had retreated to a

perimeter around the southern coastal city of Pusan and appeared to be in danger of expulsion from the peninsula. The nuclear-weapons issue arose in public discussion in this country and in the British parliament. Prime Minister Clement Attlee flew to

Washington to beseech President Truman not to use nuclear weapons in Korea. The visit and its purpose were openly acknowledged. The House of Commons, which viewed its government as having been a partner in the enterprise that produced nuclear weapons, believed that Britain should have a voice in the American decision.

Several days later, a dramatically successful counteroffensive, which began with the landing at Inchon, made moot the question whether nuclear weapons might have been used if the situation in the Pusan perimeter had become desperate. But at least the question of nuclear use had come up. I

know of no evidence that apprehension by the government of the United States or by the American public of the consequences of demonstrating that nuclear weapons were "usable" played an important role in Truman's deliberations.

Nuclear weapons again went unused in the debacle following the entry of Chinese armies into Korea, and were still unused during the bloody war of attrition that accompanied the Panmunjom negotiations, which led to the end of the Korean War. Whether the threat of nuclear weapons influenced the truce negotiations remains unclear. But the ambiguity in the "role" of nuclear weapons became evident at that time, and during the ensuing years they clearly remained a threat and a deterrent.

McGeorge Bundy, one of the architects of United States foreign policy in the Kennedy and Johnson



administrations, documented the fascinating story of President Eisenhower and Secretary of State Dulles and nuclear weapons in his book *Danger and Survival: Choices About the Bomb in the First Fifty Years*. At the National Security Council on February 11, 1953, Dulles discussed "the moral problem in the inhibitions on the use of the A-bomb," and it was his opinion that "we should break down this false distinction." Evidently the secretary believed that the restraint was real even if the distinction was false, and that the restraint was not to be welcomed.

Again, on October 7, 1953, Dulles said, "Somehow or other we must manage to remove the taboo from the use of these weapons." Just a few weeks later the President approved, in a Basic National Security Document, the statement, "In the event of hostilities, the United States will consider nuclear weapons to be as available for use as other munitions." This statement surely has to be read as more rhetorical than factual, even if the National Security Council considered itself to constitute "the United States."

We should consider the literal meaning
of "no such thing as a conventional
nuclear weapon."

Taboos are not easily dispelled by pronouncing them extinct. Six months later, at a restricted NATO meeting, the United States position was that nuclear weapons "must now be treated as in fact having become conventional." But tacit conventions are sometimes harder to destroy than explicit ones, existing in potentially recalcitrant minds rather than on destructible paper.

According to Bundy, the last public statement in this progress of nuclear weapons toward conventional status occurred during the Quemoy crisis, during which the People's Republic of China repeatedly launched attacks on the island of Quemoy to regain control from Taiwan and the Nationalist forces of Chiang Kai-shek. On March 12, 1955, Eisenhower said, in answer to a question, "In any combat where these things can be used on strictly military targets and for strictly military purposes, I see no reason why they shouldn't be used just exactly as you would use a bullet or anything else."

Was Eisenhower really ready to use nuclear weapons to defend Quemoy, or Taiwan itself? The conspicuous shipment of nuclear artillery to Taiwan was surely intended as a threat. Bluffing would have been risky from Dulles's point of view, and leaving nuclear weapons unused while the Chinese conquered Taiwan would have engraved the taboo in granite.

At the same time, Quemoy would have appeared to Dulles as a superb opportunity to dispel the taboo.

Using short-range nuclear weapons in a purely defensive mode, solely against offensive troops, especially at sea or on beachheads devoid of civilians, might have been something that Eisenhower would have been willing to authorize, and nuclear weapons might have proved that they could be used "just exactly as you would use a bullet or anything else." The Chinese did not offer the opportunity.

Kennedy-Johnson Policy Shift

The contrast between the Eisenhower and the Kennedy-Johnson attitudes toward nuclear weapons is summarized in a public statement of President Johnson's in September 1964:

Make no mistake. There is no such thing as a conventional nuclear weapon. For 19 peril-filled years no nation has loosed the atom against another. To do so now is a political decision of the highest order.

That statement disposed of the notion that nuclear weapons were to be judged by their military effectiveness. Compare "a political decision of the highest order" with "as available for use as other munitions."

Johnson implied that for nineteen years the United States had resisted any temptation to do what Dulles had wanted the United States to be free to do where nuclear weapons were concerned. Johnson implied that we had an investment, accumulated over nineteen years, in the nonuse of nuclear weapons, and that those nineteen years of quarantine were part of what would make any decision to use those weapons a political decision of the highest order.

We should consider the literal meaning of "no such thing as a conventional nuclear weapon." Specifically, why couldn't a nuclear bomb no larger in energy yield than the largest blockbuster of World War II be considered conventional? Two answers were offered to this question, one mainly instinctive and the other somewhat analytical, but both resting on a belief or a feeling—a feeling somewhat beyond reach by analysis—that nuclear weapons are generically different. The more intuitive response could be formulated, "If you have to ask that question you wouldn't understand the answer." The deplorable character of everything nuclear had simply become axiomatic, and analysis was futile.

The other, more analytical, response took its argument from legal reasoning, diplomacy, bargaining theory, and theory of training and discipline, including self-discipline. This argument emphasized bright lines, slippery slopes, well defined boundaries, and the stuff of which traditions and implicit conventions are made.

The "neutron bomb" is illustrative. The neutron bomb was designed to emit "prompt neutrons" that can be lethal at a distance at which blast and thermal radiation are comparatively moderate. As advertised,

it can kill people without great damage to structures. The issue of producing and deploying this kind of weapon arose during the Carter administration, evoking an antinuclear reaction that caused it to be left on the drawing board.

But the same bomb—at least, the same idea—had been the subject of even more intense debate 15 years earlier, and it was then that the arguments were honed before being used again in the 1970s. The arguments were simple, and surely valid, whether or not they deserved to be decisive: (1) that it was important not to blur the distinction—the firebreak, as it was called—between nuclear and conventional weapons; (2) that either because of its low yield or because of its “benign” kind of lethality, there would be a strong temptation to use this weapon where types of nuclear weapons were otherwise not allowed; and (3) that the use of neutron weapons would pave the way for nuclear escalation.

These arguments are not altogether different from those against so-called peaceful nuclear explosions (or PNEs). The decisive argument against PNEs was that they would accustom the world to nuclear explosions, undermining the belief that nuclear explosions were inherently evil and reducing the inhibitions on nuclear weapons. The prospect of blasting new river beds in northern Russia, a bypass canal for the waters of the Nile, or harbors in developing countries generated concern about “legitimizing” nuclear explosions.

A revealing demonstration of this antipathy was in the virtually universal rejection by American arms controllers and energy policy analysts of the prospect of an ecologically clean source of electrical energy, proposed in the 1970s, that would have detonated tiny “clean” thermonuclear bombs in underground caverns

The aversion to nuclear weapons
can grow in strength and become locked in
military doctrine.

to generate steam. I have seen this idea dismissed without argument, as if the objections were too obvious to require amplification. As far as I could tell, the objection was that even “good” thermonuclear explosions were bad and should be kept that way.

All-or-none thresholds can be susceptible to undermining. A Dulles who wishes the taboo were not there might not only attempt to get around it when using the bomb seems important, but might apply ingenuity to dissolving the barrier on occasions when it might not matter much, in anticipation of later opportunities when the barrier would be a genuine embarrassment. Bundy suggested that in discussing the possibility of

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using atomic bombs in defense of Dien Bien Phu. (The site of a French military base in North Vietnam, near the border with Laos, in 1954 Dien Bien Phu became the scene of the last great battle between the French and the Viet Minh forces of Ho Chi Minh. After a nearly two-month siege, one in which requests for United States intervention were unheeded, the French positions fell. This defeat signaled the end of French power in Indochina.) In considering the use of atomic bombs to defend Dien Bien Phu, Dulles had in mind not only the local value of such weapons in Indochina but also their broader effect in "making the use of atomic bombs internationally acceptable."

Soviet Policy

The aversion to nuclear weapons—one might even say the abhorrence of them—can grow in strength and become locked into military doctrine without being fully appreciated or even acknowledged. The Kennedy administration launched an aggressive campaign for conventional defenses in Europe on the ground that nuclear weapons certainly should not be used, and probably would not be used, in the event of a war in Europe. Throughout the 1960s the official Soviet line was to deny the possibility of a non-nuclear engagement in Europe. Yet the Soviets spent great amounts of money developing non-nuclear capabilities in Europe, especially aircraft capable of delivering conventional bombs. This expensive capability would have been of limited value in a nuclear engagement. Deployment of these weapons reflected a tacit Soviet acknowledgment that both sides might be capable of non-nuclear war and that both sides had an interest in keeping war non-nuclear by having the capability of fighting a non-nuclear war.

Arms control is so often identified with limitations on the possession or deployment of weapons that people often overlook the fact that an investment in non-nuclear weapons constitutes a form of arms control. That the Soviets had absorbed this nuclear inhibition was dramatically demonstrated during their protracted campaign in Afghanistan. I never read or heard public discussion about the possibility that the Soviet Union might shatter the tradition of nonuse to avoid a costly and humiliating defeat in that primitive country. The inhibitions on use of nuclear weapons are such common knowledge, the attitude is so confidently shared, that the use of nuclear weapons in Afghanistan would have been almost universally deplored.

Such a reaction would reflect appreciation that Washington's nineteen-year nuclear silence had stretched into a fourth and then a fifth decade, and everyone in responsibility was aware that that unbroken tradition was a treasure we held in common. Could that tradition, once broken, have mended itself?

If Truman had used nuclear weapons during the Chinese onslaught in Korea, would Johnson have been so inhibited in 1964? And if Nixon had used nuclear weapons, even ever so sparingly, in Vietnam, would the Soviets have eschewed their use in Afghanistan, and would the Israelis have resisted the temptation of use against the Egyptian beachheads north of the Suez Canal in 1973?

We do not know. One possibility is that the horror of Hiroshima and Nagasaki would have repeated itself, and the curse would have descended again with even

The nonproliferation effort has been more successful than most authorities can claim to have anticipated.

more weight. The other possibility is that, the long silence broken, nuclear weapons would have emerged as standard weaponry against an adversary who had none. Much might have depended on the care with which weapons were confined to military targets or used in demonstrably "defensive" modes.

Extension of the Taboo

I have devoted this much attention to the nuclear taboo in the belief that the evolution of that status has been as important as the development of nuclear arsenals. The nonproliferation effort has been more successful than most authorities can claim to have anticipated; the accumulating weight of tradition against nuclear use is no less impressive and no less valuable. We depend on nonproliferation efforts to restrain the production and deployment of weapons by more and more countries; we may depend even more on universally shared inhibitions on nuclear use. Preserving those inhibitions and extending them, if we know how, to cultures and national interests that may not currently share those inhibitions will be a crucial part of our nuclear policy.

On the 40th anniversary of Hiroshima and Nagasaki, Alvin M. Weinberg wrote an editorial in the *Bulletin of Atomic Scientists* (December 1985). In 1941, Weinberg had joined the University of Chicago group that developed the first chain reactor which produced the plutonium ultimately used in the atomic bomb dropped on Nagasaki. In his editorial, Weinberg expressed his conviction that both American and Japanese lives were saved by the use of the bomb in Japan, and that long-term good might result from the Hiroshima bomb:

Are we witnessing a gradual sanctification of Hiroshima—that is, the elevation of the Hiroshima event to the status of a profoundly mystical event, an event ultimately of the same religious force as biblical events? I cannot prove it, but I am convinced that the 40th Anniversary of Hiroshima, with its vast outpouring of concern, its huge demonstrations, its wide media coverage, bears resemblance to the observance of major religious holidays. . . . This sanctification of Hiroshima is one of the most hopeful developments of the nuclear era.

A crucial question is whether the antinuclear instinct so well expressed by Weinberg is confined to Christian or "Western" culture. As we look to North Korea, Pakistan, Iran, India, or Iraq as potential wielders of nuclear weapons, we cannot be sure that they inherit this tradition with any great force.

Forty years ago, however, we might have thought that the Soviet leadership would be immune to the spirit of Hiroshima as expressed by Weinberg—immune to the popular revulsion toward nuclear weapons, immune to the overhang of all those peril-filled years that awed President Johnson. In any attempt to extrapolate Western nuclear attitudes toward the areas of the world where nuclear proliferation begins to frighten us, the remarkable conformity of Soviet and Western ideology is a reassuring point of departure.

I know of no argument in favor of the Comprehensive Test Ban Treaty, which the Senate rejected in 1999, more powerful than the potential of that treaty to enhance the nearly universal revulsion against nuclear weapons. The symbolic effect of 140 or more nations ratifying this treaty, which is nominally only about testing, would add enormously to the convention that nuclear weapons are not to be used, and that any nation that does use nuclear weapons will be judged the violator of the legacy of Hiroshima. I have never heard that argument made on either side of the debate over the treaty. When the treaty again comes before the Senate, as it certainly will do, this major potential benefit must not go unrecognized.

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The Nuclear Taboo

Verna V. Gehring

Nothing that is vast enters into the life of mortals without a curse.

—Sophocles, *Antigone*

More than a half century has passed since the first and last use of nuclear weapons in warfare. Thomas C. Schelling suggests that over the years a convention has arisen, one which provides strong evidence that nuclear weapons are under a "curse." Schelling is hopeful that, because the nuclear arsenal is perceived as unique—in some way different from *conventional* weapons—a "nuclear taboo" has taken root over the decades and can remain secure.

It is remarkable that nuclear weapons have not been used for so long. But is it true that there exists a *taboo* on their use? Taboos may be as old as humankind itself, but some taboos are less enduring than others. It is not clear that avoidance of the use of nuclear weapons has risen to the level of a taboo or that refraining from nuclear warfare can withstand the challenges of the coming decades.

Local Taboos versus Universal Taboos

One reason to doubt the existence of a "nuclear taboo" is that it is unclear how strong the prohibition against the use of nuclear weapons actually is. Most taboos reflect local values and serve practical ends. Forbidden forms of dress or kinds of food, for example, tend to be specific to a particular place or culture. Often one can find sensible practical reasons for the prohibitions these taboos impose—to reduce the possibility of food poisoning, or to discriminate easily between sexes, for instance. Such local, culturally particular taboos also help identify and knit together the social fabric of a kin, clan, or country, distinguishing one group from all others and providing identity through exclusion.

Local taboos tend to erode over time until they become quaint vestiges of a culture's social history. The most striking example of the ephemeral nature of this sort of taboo comes from the case of Captain Cook, whose outrageous behavior occasioned importing the Polynesian word *taboo* (or, among variations, *tapu*) into

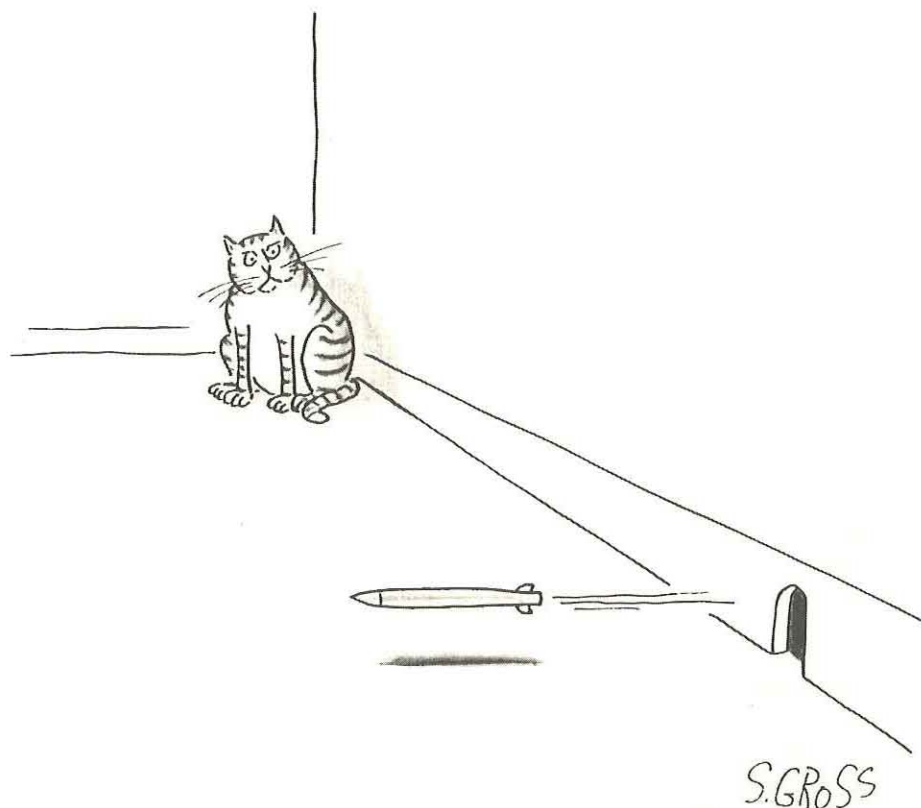
the European languages. According to one account, while in Hawaii Cook and his men dismantled several rails of a temple to use as fuel. This so appalled their hosts that they pronounced Cook, his crew, and their actions "tapu." Although the actions of Cook and his men violated local custom, one could reasonably suppose that they were unaware that their behavior was disrespectful. Further, today we can only speculate about precisely *what* transgression Cook and his men were guilty of (although one could presume that the violation was the desecration of a holy place).

Not all taboos are local, however. Some seem stronger, are applied more uniformly, and are less open to revision. While dress or dietary taboos may be local and mutable, other taboos—those against incest, public elimination of bodily waste, and disrespect or

Taboos may be as old as humankind itself, but some taboos are less enduring than others.

neglect of a human corpse, for example—seem more universal and less likely to be abandoned. As with culturally particular taboos, these more generally accepted taboos also tend to have a practical dimension. Prohibitions against incest, public elimination, and thoughtless treatment of corpses all contribute to the physical health of a community. But these more universally accepted taboos knit the fabric not just of a local community, of a kin or clan, but of humanity itself. *Human beings* are not to commit incest, relieve themselves indiscriminately in front of other people (as other animals do among themselves), or ignore or molest a human corpse. Culturally specific taboos contribute to the identity of an individual as a member of a group, but the generalized taboo unites the individual to the entire human family and helps define humanity.

These more universally recognized taboos seem self-evident and depend for their authority on individuals *not thinking in detail* about them. We are discouraged from considering whether a particular taboo is sensi-



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ble, or whether it is outmoded. We certainly are not to imagine whether the forbidden practice may be satisfying or pleasurable. People follow ordinary social proscriptions because they have thought about the inconvenient, embarrassing, or costly consequences of breaking them. But it would seem bizarre for someone to claim that he adheres to an incest taboo, for example, only after deep reflection on the consequences of its violation, or following thoughtful consideration of

Perhaps the increasing effectiveness of conventional weapons has allowed us to avoid the desperate consideration of nuclear use.

its gratifying aspects. The strength of taboos depends not on considered reflection, but on revulsion. Unlike weaker, local taboos, then, a universal taboo forbids the performance of a particular action and also restricts full consideration of the prohibition generally. If nuclear warfare is under a "curse," as Professor Schelling suggests, then one hopes the prohibition expresses a

strong, more universally recognized taboo rather than the weak, local variety.

The Nuclear Taboo and Its Doubters

The destruction of Hiroshima and Nagasaki represents the first and *last* uses of atomic weapons. Does this provide credible evidence of a prohibition that now rises to the level of a "nuclear taboo?" Obviously, this initial use did not violate any sort of longstanding taboo against atomic weapons and, consequently, one cannot find—nor would one expect to find at the time—widespread condemnation of President Truman or others responsible for those acts. Condemnation has arisen in subsequent decades.

One might say that we have no satisfying answer to the speculation that the prohibition against nuclear warfare has risen to the level of a taboo. Certainly, conventional weapons have improved over this past half century and the means to victory via the disabling of the opposition are far more effective. Paul Nitze, for one, has argued that "smart" conventional weapons can now achieve many of the military purposes that only a nuclear warhead could have achieved twenty

years ago. Further, advances in satellite surveillance technology has made fighting a nuclear war more difficult, since they lessen the element of surprise and the possibility of a timely return strike. Perhaps the increasing effectiveness of conventional weapons has allowed us to avoid the desperate consideration of nuclear use.

If attitudes are better measured by actions not words, then nuclear policy makers have accepted no taboo on nuclear warfare. *In toto*, nuclear policies address the questions of deterrence, how it works and what makes it effective, and how to prepare for its failure. Since the 1950s, American strategists have worried not just about ensuring command and control of their nuclear arsenals, but about ensuring that the U. S. preserves its ability to retaliate after a nuclear attack. The resulting series of policies led President Eisenhower to lament, in his 1961 farewell address, that the U.S. had become a "military-industrial complex." The doctrine of Mutual Assured Destruction (MAD, which relied not just on restraint but also on perfect control of the nuclear arsenal by the U.S. and the U.S.S.R.) was developed in the

The events at Hiroshima and Nagasaki have taken on greater significance with the passage of time and even have achieved a form of sanctification.

1960s, as was the first serious effort (undertaken by President Kennedy's Secretary of Defense, Robert McNamara) to answer the question "How much is enough?" in building a nuclear arsenal. A decade later Secretary of Defense James Schlesinger explored the notion of "flexible" responses in nuclear warfare, and the administrations of Nixon, Reagan, and Carter developed "selected nuclear operations," which included the possibility of waging regional wars.

Finally, policy makers also exploit the purposes the *possession* of nuclear arms can serve. For example, political science professor Peter Beckman and his colleagues argue that the possession of nuclear arms declares one's status as a player on the world stage. Brandishing nuclear weapons also signals that one's vital interests have been engaged, or that one is resolute and cannot be driven from one's position. Finally, nuclear powers threaten use of their arsenals as bargaining chips and as a means to bolster alliances. As Professor Schelling points out, nuclear policies have been crafted from pragmatic considerations.

Granted, ordinary citizens *do* treat nuclear weapons as taboo, which reflects their emotional revulsion at such indiscriminately destructive power. However, Cold War policy planners adopted the language that described nuclear weapons as "different"—separate

from the "conventional" arsenal—but not because nuclear use was taboo, as the ordinary citizen might accept. Instead, policy makers recognized that, in the scenario they feared most—the crisis of a military confrontation pitting NATO allies against the Soviet-led Warsaw Pact—crossing the threshold to employ nuclear weapons would secure NATO's goals in war, but with catastrophic results. Since in this scenario even the "winner" loses, policy makers concluded that it was better not to step onto the "nuclear escalator" in the first place. Consequently, they rejected the option of first use.

Ordinary citizens may well consider nuclear weapons taboo, their "no use" stance resulting from their emotional revulsion at the prospect of nuclear warfare. But policy makers do not operate on this emotional plane. Perhaps mutual intimidation explains all the effects we now associate with those of a "nuclear taboo." The ban against nuclear warfare is based on a calculated reasoning of the costs and benefits of nuclear warfare, and at present this rational calculus has not tipped in favor of lifting the ban.

The Sanctification of Hiroshima and Nagasaki

If this is true, then it seems hope that a "nuclear taboo" belongs to the class of strong, widely held taboos must be abandoned. The nuclear taboo seems merely a weak prohibition based on pragmatic considerations. But does this mean that *no other* reasons—reasons based on principle rather than on pragmatics—have shaped and help secure the restraint against the use of nuclear weapons?

Professor Schelling asks why we should *not* consider "conventional" the nuclear bomb of no greater power than ordnance in current use. One answer he gives is of the form, "If you have to ask that question you wouldn't understand the answer," suggesting an emotional or intuitive attitude stands apart from—and is as adequate as—any rational, analytic response one would expect from a nuclear strategist.

In this intuitive acceptance of nuclear weapons as "unconventional" or "different," Professor Schelling looks for an ethical justification for the refraining from nuclear warfare, and which would warrant his optimism for a continued ban. Schelling cites Alvin M. Weinberg's 1985 editorial, written on the occasion of the fortieth anniversary of the destruction of Hiroshima and Nagasaki. In 1941, Weinberg had joined the University of Chicago team whose work led to the eventual extraction of the plutonium used in the atomic bomb dropped on Nagasaki. Weinberg sees a "gradual sanctification of Hiroshima" following the nuclear destruction of the cities. He believes that the passage of forty years has elevated those events to the "status of a profoundly mystical event," and Weinberg

concludes that, "although I cannot prove it . . . the sanctification of Hiroshima is one of the most hopeful developments of the nuclear era."

Weinberg is right that the events at Hiroshima and Nagasaki have taken on greater significance with the passage of time and even have achieved a form of sanctification. Making holy, appreciating the value of something not properly valued before, memorializing—these are among the elements involved in sanctification.

The reason the only use of atomic weapons in warfare must be a sanctified event has everything to do with the idea of a nuclear taboo. Most understand the notion of a nuclear taboo as tantamount to agreement that nuclear warfare is prohibited. But this need not be the case. Not all taboos, whether culturally specific or more universally held—concern actions or objects that are strictly prohibited. Some actions and objects under taboo are permitted expression and use, but only in extraordinary circumstances and with a conscious—perhaps even ritualized or stylized—manner of treatment. South Sea Islanders possessed this additional sense of *taboo*, using the word to describe an object or practice that is "devoted," dedicated to a special purpose. This second understanding of a taboo commonly applies to religious practices and objects. A chalice, scroll, a fragment of black stone are used only in specific, ritualized ways by an initiated group. This small group represents the human community as it takes part in a larger (usually understood as divine) power.

There is good reason to believe that atomic weapons are taboo in this second sense. That is, some taboos reserve actions and objects for devoted use, and reflect generally shared human values. If this is so, then the "curse" of nuclear warfare could be understood as an example of a widely held (possibly universal) taboo.

Reflection on the unprecedented nuclear events of Hiroshima and Nagasaki have allowed us to appreciate the overwhelming power loosed over a population and a place. No one has succeeded better than John Hersey in chronicling the destruction of Hiroshima—which began with an ordinary, "cool and pleasant morning," with "no sound of planes" until the "noiseless flash"—and in showing the finality of an act done with so little understanding of its full consequences. Generations' long reflection on the release of such vast power without full regard to the consequences has led to the respectful memorialization of all that perished and a proper awe of the destructive capability of atomic weapons.

Part of the sanctification of the events of Hiroshima and Nagasaki also may express a reaffirmation of values people want to believe all human beings share but which this particular event seemed at the time—at least momentarily—to have tossed aside. Fifty years' reflection and restriction on the use of atomic weapons

allows a measure of optimism because it seems important values have been reaffirmed, and the dedication to them strengthened.

The Nuclear Missile Defense Program

One recent strategic debate supports this notion of a taboo as the "devoted" use of power, but at the same time signals the end of the long-term stability the two Cold War superpowers crafted by their nuclear stand-off. This past July, the United States unsuccessfully tested a device that was to augur the eventual success of a \$60 billion Nuclear Missile Defense Program (NMD). The U.S. argues that the intent of its program—which relies on the coordinated efforts of a network of satellite sensors, radar-tracking devices, and missile interceptors—is to defend the continental U.S. from attack by Intercontinental Ballistic Missiles (ICBMs) armed with nuclear warheads. The U.S. has argued that its program is "limited." Its defensive weapon arsenal would number one hundred when the program is completed—according to recent estimates, in the year 2005. Deputy Secretary of State Strobe Talbot and National Security Advisor "Sandy" Berger, among other negotiators, have argued strenuously, particularly to other nuclear powers, that the proposed program is not directed at them. Instead, the Clinton Administration insists, the defense program is designed to thwart those "states of concern" (the term "rogue states" is out of fashion) such as Iran, Iraq, and North Korea, which have increased the range of their ICBM missiles.

These reassurances have not soothed the nuclear powers. China suggests that a nuclear missile defense program will necessitate expansion of its nuclear

Some actions and objects under taboo are permitted expression and use, but only in extraordinary circumstances.

weapons program and the possible arming of its ICBMs with multiple nuclear warheads. China also darkly hints that it might be driven to share its nuclear weapons technology with others who ally themselves more closely with Chinese interests. Russia also strongly opposes the U.S. pursuit of a Nuclear Missile Defense program. It argues, moreover, that the U.S. plan would destabilize mutual deterrence and undermine security. The U.S. and Russia have been working toward ratification of a second Strategic Arms Reduction Treaty (START II), leading to an eventual START III agreement, which would further reduce arms to approximately twenty percent of the number

held at the height of the Cold War buildup. Russia maintains that, were the U.S. to undertake plans for a Missile Defense Program, Russia would abandon START II negotiations. Without it, the possibility of a START III agreement perishes, and a new arms race could begin.

Of course, conversations among the nuclear powers concerning the possibility of a Nuclear Missile Defense system are affected by considerations of self-interest and the search for strategic advantage. Russia and China worry that successful defensive measures devalue their own nuclear arsenals and upset the balance of power established by MAD. The claim that the Nuclear Missile Defense system is "defensive" also has been contested. The U.S. insists that its interceptors would be deployed only in response to a first strike, while opposing powers point out that the program's capabilities easily can be put to offensive use.

One final worry underlies the protests against the U.S. Nuclear Missile Defense program. If it is true that the nuclear powers have accepted the "devoted" status of nuclear arms developed over the decades, then defensive measures such as the Nuclear Missile Defense program would erode the "nuclear taboo." Such initiatives take the attitude that nuclear superpowers, terrorists, and autocrats are to be treated alike. A defensive program designed to respond in the same way to an accidental launch by Russia as it would the launch of a crude device by a madman or an autocrat simply trivializes the awesome gravity of nuclear power. Such a program also seems to signal that the U.S. has resigned itself to a future in which bad actors do not accept the "devoted" nature of nuclear weapons. Finally, the U.S. itself seems willing to relax its efforts to maintain a "nuclear taboo," which was shaped over the decades as superpowers created their tense standoffs.

Conclusion

The weight of fifty years' avoidance of nuclear warfare provides good evidence that a "nuclear taboo" has indeed arisen and taken root. But it is not a taboo that prohibits use of nuclear means because atomic weapons are evil, because the possibility of nuclear warfare is inconceivable, or because the authority that decides on their deployment surely must be mad. The "nuclear taboo" exists today because possessors of atomic weapons—and their general populations—condemn those who would consider their use on any but

the most extreme occasion. Those wary of the United Nuclear Missile Defense Program may believe that it is the latest example of a policy that accepts nuclear devices as part of any nation's "conventional" arsenal and their acquisition the ambition of any madman. Critics also worry that, in initiating a nuclear missile defense program, the U.S. will simply invite all comers—who likely will have little to lose and a reputation to gain—to develop their power and maybe one day take their best shot.

The "nuclear taboo" depends for its longevity on respect, restraint and, most importantly, reflection. These days, there is much to think and talk about—the nuclear programs of states of concern, the tests conducted by India and Pakistan, and how the next president of the U.S. will approach the nuclear missile defense initiative. Much has changed in the world since the time that two nuclear superpowers maintained the tense stability that allowed the decades to pass and optimism in a "nuclear taboo" to grow.

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Thanks go to members of the Institute for Philosophy and Public Policy for helpful discussion on this topic and for their suggestions on earlier drafts of the article. Sources: For useful information concerning the nature of taboos, see the seminal work of Mary Douglas, *Purity and Danger* (Penguin Books, 1966), articles in the *Oxford English Dictionary*, *The Encyclopedia Mythica*, and the *Columbia Encyclopedia*. Concerning nuclear proliferation and the nuclear taboo generally: *The Nuclear Predicament: Nuclear Weapons in the Twenty-First Century*, edited by Peter R. Beckman, Paul W. Crumlish, et al. (Prentice Hall, 2000); Peter Gizewski, "Managed Proliferation in South Asia: Implications for Regional Security and the Non-Proliferation Regime," *International Journal*, vol. 54 (Spring 1999); Ben Sanders, "A Short History of Nuclear Non-Proliferation," *Nuclear Law Bulletin*, vol. 62 (December 1998); Nina Tannenwald, "The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use," *International Organization*, vol. 53 (Summer 1999); Paul Nitze: "Is It Time to Junk Our Nukes?" *Washington Quarterly*, vol. 20 (Summer 1997); John Hersey, *Hiroshima* (Alfred A. Knopf, 1946). For timely information concerning the United States Missile Defense Program and reaction to plans of the initiative, I relied on a number of newspaper articles, and on the four-part radio series presented by National Public Radio, aired July 10–14, 2000 (and available in its archives at www.npr.org).



Lessons from the Brooklyn Museum Controversy

Peter Levine

How many art exhibitions are accompanied by a "Health Warning"? Visitors to the Brooklyn Museum's recent "Sensation" show were told: "The contents of this exhibition may cause shock, vomiting, confusion, panic, euphoria, and anxiety. If you suffer from high blood pressure, a nervous disorder, or palpitations, you should consult your doctor before viewing this exhibition."

Those brave (and hip) enough to enter were exposed to paintings, sculptures, videos, and installations by a group called The Young British Artists. The works that had the best chance of causing shock and vomiting included Marcus Harvey's portrait of the child-killer Myra Hindley, painted with real children's handprints; Damien Hirst's "A Thousand Years," composed of a decaying cow's head with live flies and maggots; and Chris Ofili's "Holy Virgin Mary," which incorporates elephant dung and photographs of genitalia.

As the predictable uproar about the exhibition erupted, New York Mayor Rudolph Giuliani tried to slash the Museum's funding. He claimed that the decision not to admit unaccompanied children to "Sensation" put the Museum in violation of its city lease and subjected it to eviction. He also argued that the government may not finance blasphemous art, because to do so breaches the separation of church and state.

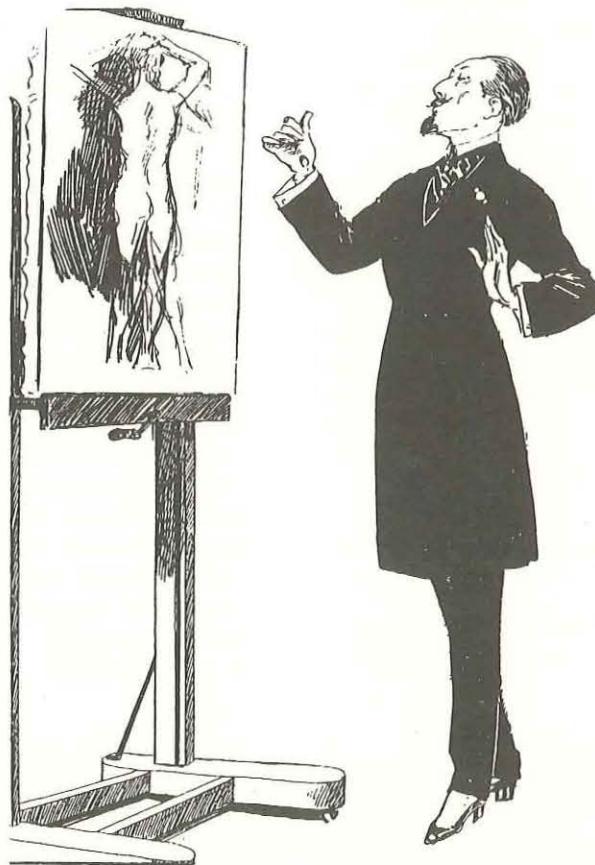
These arguments were rejected in federal court; the city was compelled to refund the money it had withheld. The Mayor did score points, however, by alleging (with some plausibility) that "Sensation" was a

"scam": a conspiracy involving Christie's auction house, the Brooklyn Museum, and the owner of the art, Charles Saatchi, to raise the market value of his collection. Meanwhile, the Mayor's opponents accused him of using a cultural controversy to score points with conservative voters as he prepared to compete with Hillary Clinton for New York's open Senate seat.

Behind all the ritualistic name-calling and litigation was a serious issue: the relationship between art and democracy. This relationship has been troubled and unproductive for several decades. I think that politicians and artists must share the blame.

Imagine that we were debating welfare reform or zoning instead of elephant dung on "The Holy Virgin Mary." In these more ordinary cases, we would want elected officials

to supervise decisions that involved public money, but we would expect them to act only after reasonable public deliberation. We would ask everyone involved to heed multiple perspectives, respect facts, achieve as much common ground as possible, and examine arguments rather than assault their opponents' characters.



This is the *deliberative* approach to democratic politics. I will argue that artists and politicians ought to behave more deliberatively than they have in their recent skirmishes. But deliberation is only relevant if arts policy belongs within the normal give-and-take of politics. Both sides in the Brooklyn Museum controversy claimed—in contrast—that a high constitutional principle settled the question of arts funding. If they were right, then neither the public nor elected officials had any business deliberating about particular works of art or about arts policy in general.

Charges of "Censorship"

One group, civil libertarians, detected unconstitutional censorship in New York City's treatment of the Brooklyn Museum. According to the American Civil Liberties Union, the Museum was an institution "devoted to discourse and expression." Once the government had decided to fund such an institution, it could not use its money to influence decisions about what images were exhibited. According to the ACLU:

Just as academic judgments are left to the academics, curatorial judgments must be left to the curators. Just as a state cannot use its funding authority to micro-manage the content of a professor's lectures, the First Amendment also bars Mayor Giuliani from using City funding to dictate the content of a curated art exhibition.

In its brief, the ACLU explicitly charged the Mayor with censorship. Some people have gone further and seen a reduction in the overall level of government support for the arts as "a de facto form of censorship."

U.S. District Judge Nina Gershon resolved the case in the Museum's favor but on narrower grounds, concluding that:

The issue is not whether the City could have been required to provide funding for the Sensations exhibit, but whether the Museum, having been allocated a general operating subsidy, can now be penalized with the loss of that subsidy, and ejection from a City-owned building, because of the perceived viewpoint of the works in that exhibit. The answer to that question is no.

With this ruling, civil libertarians won a battle in the war over arts policy. But the Constitution cannot compel governments to subsidize art in the first place. When the Supreme Court ruled in 1998 that individual artists may not be denied federal grants because of the content of their work, Congress simply canceled all support for individual artists. If democratic leaders are given the choice either to fund everything that curators call "art," or to support no exhibitions at all, many will choose the latter option. In New York City, museums are powerful and will probably continue to receive tax money no matter what the Mayor thinks. (However, some observers fear that he will punish the particular institutions that sued him.) In other communities where the arts have far less political clout, com-

plete denial of funding is a likely response to adverse court rulings.

I am not arguing that courts should never strike down state arts policies that violate the First Amendment. For example, the City of New York probably acted unconstitutionally when it made an unrestricted grant to a museum and then withdrew the money *ex post facto* because of the content of the exhibited art. How *much* flexibility the government enjoys under the First Amendment is a matter of ongoing legal controversy. But regardless of the proper answer to this question, broader issues remain that will never be settled in court, because only the public has the right to decide them. Do the arts need and deserve public subsidies? If so, what are the best priorities for

Before the larger jury of public opinion, the avant-garde may have a difficult case to make, but it cannot hide behind charges of "censorship."

our arts budget? For instance, should more money go to museums, schools, or artists? Should the public fund amateurs, students, or professionals? Should we subsidize big-city artists, or regional institutions? Should we exhibit contemporary works, or Old Masters? Should our arts budget promote video installations, or novels, or public monuments?

These matters should not and will not be settled by judges. Before the larger jury of public opinion, the avant-garde may have a difficult case to make, but it cannot hide behind charges of "censorship." Arts programs and subsidies are never entirely different from appropriations for schools or homeless shelters; inevitably, they are matters to be settled by some combination of majority rule, horse-trading, delegation to professional experts, and (if we're lucky) constructive public deliberation.

Sinful and Tyrannical Subsidies?

In court, Mayor Giuliani argued just the reverse of the civil libertarian position. Whereas the Museum's lawyers wanted to prevent elected officials from refusing to fund controversial art under almost any circumstances, the Mayor claimed that the state may never *support* such expression. It is always wrong, he said, to use public money to finance "vicious attacks on religion."

But if the state must be neutral about matters of faith, then it cannot discriminate against irreligious expression. (This has been the Supreme Court's view since a 1952 case, *Joseph Burstyn, Inc. v. Wilson*.) Perhaps the Mayor's real position was that public

funds should never support anything that causes very deep offense to some. "If you are a government subsidized enterprise," he said, "then you can't do things that desecrate the most deeply held and personal views of the people in society." In the preamble to the Virginia Bill for Establishing Religious Freedom, Thomas Jefferson wrote, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

Although this "Jeffersonian Principle" is not explicit in the U.S. Constitution, it is often invoked in First Amendment cases. For example, some people argue that it precludes unions from lobbying the government with their members' dues, student governments from using mandatory activity fees for controversial purposes, and Congress from funding political campaigns with tax money.

The Jeffersonian Principle has something going for it. The fact that some citizens "abhor" the Confederate flag seems a sufficient reason not to fly it over a state-house, because doing so expresses official disrespect for their views. However, if we apply the Jeffersonian Principle literally and comprehensively, there can be

Sometimes offense should be given—either because those who take umbrage are morally wrong, or because discord is the price we must pay for equitable public debate.

no democracy. As the Supreme Court noted in 1984, "virtually every congressional appropriation will to some extent involve a use of public money . . . to which some taxpayers may object." This applies to state acts of *expression* as well as to other governmental activities.

For instance, the Secretary of State's latest pronouncements on Africa may enrage me, yet I have helped to pay her salary. Every day, public school teachers propound before tender ears ideas that would make some of us cringe. For that matter, think of the portraits in City Hall's Blue Room, where the Mayor meets the press. They show an array of dead white males, including Jefferson (who owned slaves) and Edward Livingston (who served as an antebellum Louisiana senator after leaving New York in a hurry). I happen to think that Jefferson's portrait is a worthy symbol, but not everyone would agree. As Hugh Field, a freshman at Pratt Institute, told *The New York Times*, "I find the Mayor offensive, but that doesn't mean I'm going to stop paying my taxes."

It seems to me that citizens and elected officials ought to pay some attention to the Jeffersonian Principle and try to avoid decisions that will offend

Truth v. Justice: The Morality of Truth Commissions

Robert I. Rotberg and Dennis Thompson, Editors

The truth commission is an increasingly common fixture of newly democratic states with repressive or strife-ridden pasts. From South Africa to Haiti, truth commissions are at work with varying degrees of support and success. To many, they are the best—or only—way to achieve a full accounting of crimes committed against fellow citizens and to prevent future conflict. Others question whether a restorative justice that sets the guilty free, that cleanses society by words alone, can deter future abuses and allow victims and their families to heal. Here, leading philosophers, lawyers, social scientists, and activists representing several perspectives look at the process of truth commissioning in general and in post-apartheid South Africa. They ask whether the truth commission, as a method of seeking justice after conflict, is fair, moral, and effective in bringing about reconciliation.

"This book discusses the vast and complex range of choices in between blanket amnesty and total accountability through criminal justice, and does so with engaged and critical sympathy."

—Albie Sachs, Justice of the Constitutional Court of South Africa

"The case for truth commissions is strongly and persuasively presented in these essays, which bring together a remarkable group of lawyers, political theorists, and historians, all of them intelligently engaged with each other's concerns."

—Michael Walzer

In addition to the editors, the contributors are Amy Gutmann, Rajeev Bhargava, Elizabeth Kiss, David A. Crocker, André du Toit, Alex Boraine, Dumisa Ntsebeza, Lisa Kois, Ronald C. Slye, Kent Greenawalt, Sanford Levinson, Martha Minow, Charles S. Maier, Charles Villa-Vicencio, and Wilhelm Verwoerd.

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people's deepest convictions. But sometimes offense should be given—either because those who take umbrage are morally wrong, or because discord is the price we must pay for having a robust, diverse, and equitable public debate. Mayor Giuliani claimed that the offense taken by some Catholics automatically made "Sensation" an inappropriate use of tax money. He thereby sought to end (or circumvent) the public debate about the particular works exhibited at the Brooklyn Museum—just as civil libertarians hoped to evade the debate by charging "censorship" in federal court.

A More Constructive Approach

Let's assume, instead, that democratic institutions may and will decide whether to fund art. It would be useful for the public and elected leaders to deliberate, rather than leave the results to brute majority rule or logrolling. In deliberation, a wide range of relevant considerations can be aired, stereotypes and hasty judgments can be debunked, and satisfactory compromises can be devised. In debates about arts policy, deliberation has a further advantage. Whether the state

It would be useful for the public and elected leaders to deliberate, rather than leave the results to brute majority rule or logrolling.

chooses to fund controversial art or to shun it, some are offended by what the government seems to be *expressing* on their behalf and with their money. It is a consolation to be able to articulate the contrary view during a public debate.

In *Democracy and Disagreement*, political philosophers Amy Gutmann and Dennis Thompson set high (and perhaps unrealistic) standards for "deliberation." Every argument must appeal to reasons or principles that could be accepted by other people who are also deliberating. Every empirical claim must be testable by reliable, non-private methods. All reasons and arguments must be offered in public. All participants (including ordinary citizens) owe explanations to everyone else whom their decisions may affect. As they deliberate, they are supposed to be open-minded, to acknowledge that their opponents' positions are also motivated by moral beliefs, and to explain their views in terms that minimize their disapproval of others.

By the Gutmann-and-Thompson standard, the public debate about "Sensation" was not deliberative. Many in the Art World (a loose network of established artists, agents, curators, critics, and patrons) attacked

Mayor Giuliani's allegedly selfish motivations. But even if his only goal was to gain votes, his position could still be correct, his judgment sound. The lowest personal insult was delivered by Glenn Scott Wright, Chris Ofili's London agent. Wright told *The Washington Post* that Mayor Giuliani's behavior "is both totalitarian and fascist, a reprisal of the Nazi regime's censorship." This kind of remark makes a decaying cow's head look like a subtle and perceptive statement.

A half dozen editorials implied that it was a mistake for the public to deliberate about whether to support

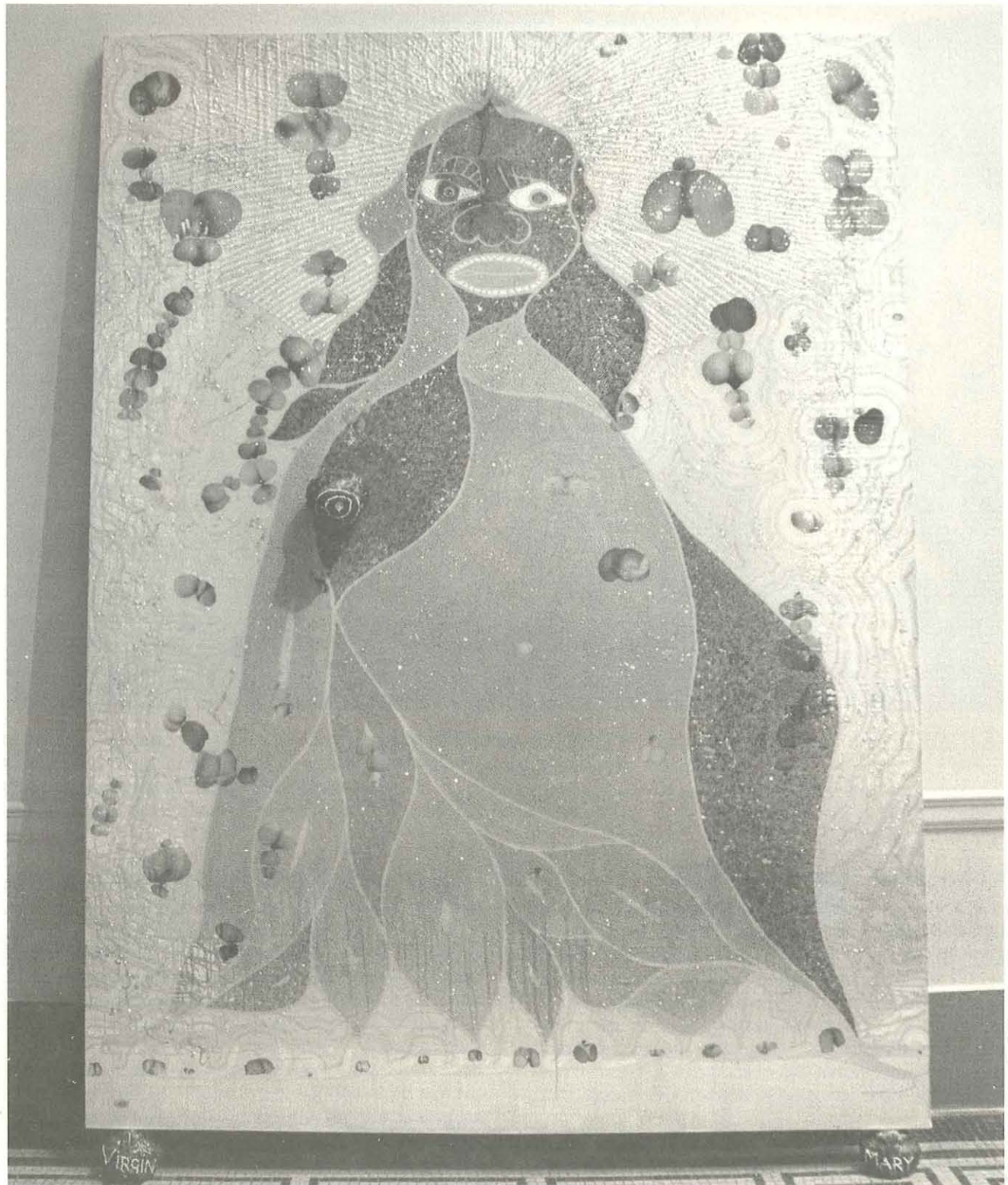
Even the most offensive works might later turn out to be great—weren't Shakespeare and Joyce controversial in their times?

contemporary art. Even the most offensive works might later turn out to be great—weren't Shakespeare and Joyce controversial in their times? According to these observers, the public was not entitled to make the critical judgment that some work is *bad*.

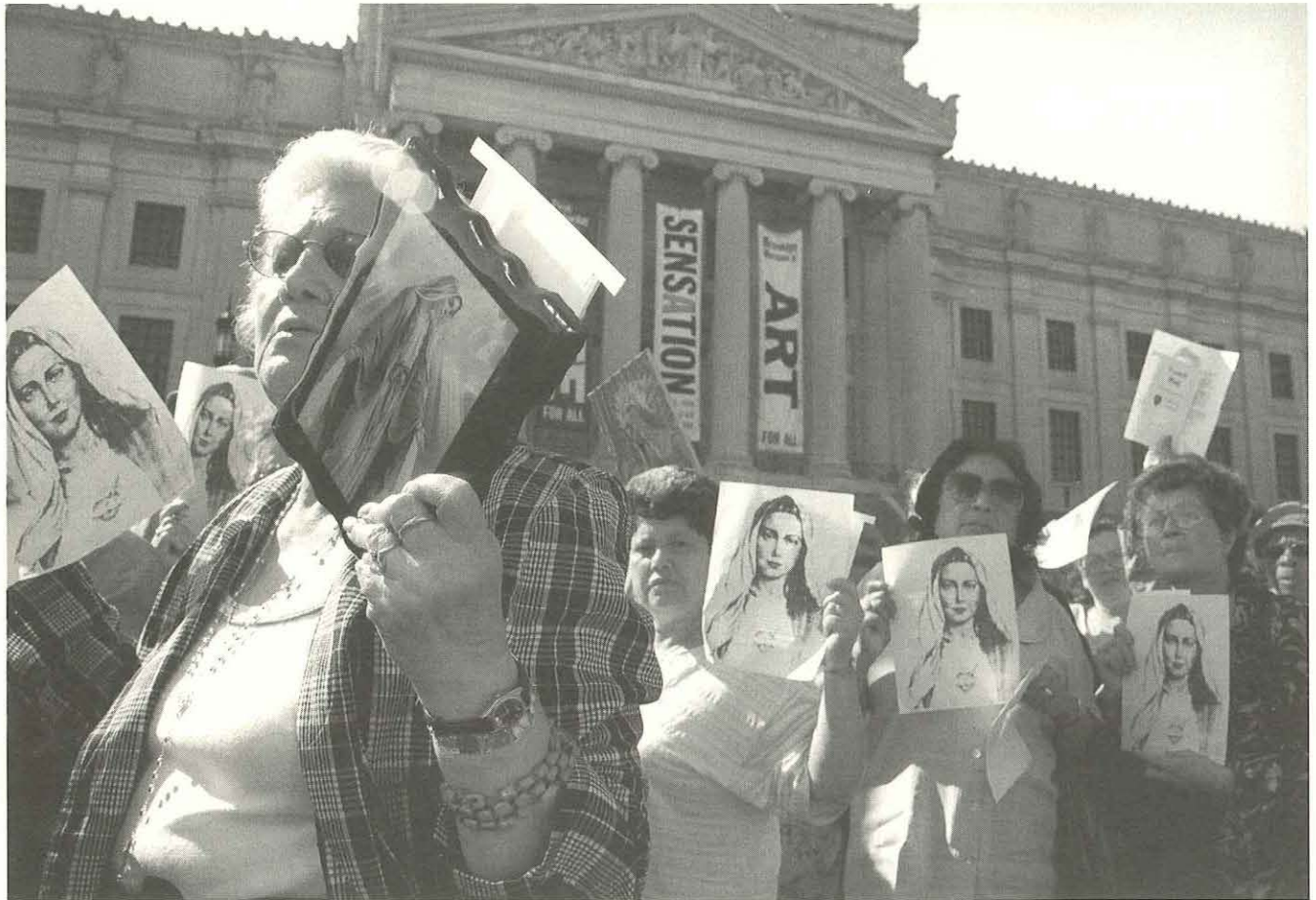
The controversial art itself had an in-your-face, shock-the-bourgeoisie attitude; it was not calculated to persuade people on the other side of a cultural debate. Ofili told *The New York Times*: "I don't feel as though I have to defend [my work]. You never know what's going to offend people, and I don't feel it's my place to say any more." Maybe it's not a painter's job to justify his art in words. But if the Brooklyn curators had expected their show to provoke careful thought and dialogue, then they wouldn't have boasted that the "contents of this exhibition may cause shock, vomiting, confusion." Still, the art in "Sensation" *can* be defended. *The New York Times* critic Michael Kimmelman praised Ofili's "lightness of spirit." In the *Nation*, Arthur Danto argued that the elephant dung on the Virgin couldn't be derogatory, because Ofili (who was born in Nigeria) used the same material in *Afrobuff*, an image of African slaves. This is the kind of relevant fact that surfaces when people deliberate.

Indeed, Danto's review of "Sensation" was packed with arguments that could persuade open-minded readers to support the show. For instance, against those who claim that any fool can submerge a shark in formaldehyde, Danto insisted:

But *imagining* doing it requires a degree of artistic intuition of a very rare order, since one would have to anticipate what it would look like and what effect it would have on the viewer. The work in fact has the power, sobriety and majesty of a cathedral, some of which, of course, must be credited to the shark itself.



Chris Ofili's "The Holy Virgin Mary," a controversial painting of the Virgin Mary embellished with a clump of elephant dung and two dozen cutouts of buttocks from pornographic magazines, shown at the Brooklyn Museum of Art as part of the "Sensation: Young British Artists From the Saatchi Collection" exhibit. (AP Wide World Photo/Diane Bondareff)



Demonstrators carry pictures of the Virgin Mary during a Catholic protest of the controversial British exhibition "Sensation" on opening day at the Brooklyn Museum of Art in New York, October 2, 1999.
(AP Wide World Photo/Diane Bondareff)

Deliberation and the Avant-Garde

Danto's review exemplifies deliberation; but *how* deliberative must critics, artists, curators, patrons, and agents be? All of Gutmann and Thompson's examples involve matters that public officials debate: laws, appropriations, court rulings, and administrative decisions. It seems philistine and misguided to ask artists and their interpreters to become policy analysts. Nevertheless, I believe that avant-garde artists can and should pay more attention to deliberative values than they do.

Consider an example of politically motivated or *engagé* art that fails as rhetoric because the artist does not know how to persuade average Americans who disagree with him. On the wall of the Whitney Museum, Hans Haacke has printed Mayor Giuliani's remarks about the "Sensation" show in *Fraktur*, Hitler's preferred script. The sound of marching boots emerges from nearby trash cans, while newspaper

clippings and the text of the First Amendment lie on the floor, apparently ready to be trampled.

This installation, entitled "Sanitation," criticizes a public policy (the revocation of the Brooklyn Museum's funding). It offers reasons for its conclusion and may promote serious thinking—although perhaps not exactly the thoughts that Haacke had intended. On these grounds, "Sanitation" qualifies as an exercise in deliberation, but it is an extremely clumsy example. It invites the response that its artist has trivialized the Holocaust and misunderstood the present political situation. Rudy Giuliani is no Adolf Hitler; besides, the Mayor's office lacks dictatorial powers. Perhaps Haacke feels that he dwells among the complacent subjects of a police state, so that he must issue shocking statements in order to provoke dialogue and resistance. However, this view is false. The fact that "Sanitation" poses as "art" is no excuse for its bad arguments and *ad hominem* attacks.

Unlike Haacke's "Sanitation," the works in "Sensation" do not directly engage policy questions. Often they challenge the traditional limits of art by combining a cool, museum-style presentation with appalling materials, such as human blood. But even these works can be germane to policy decisions. The public (and public officials) must consider the definitions, purposes, and limits of "art" whenever the question of cultural subsidies arises. If post-modern artists successfully undermine the distinction between art and despised objects such as cows' heads, then the case for

Avant-garde artists can and should
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values than they do.

arts subsidies will weaken. More generally, shocking the bourgeoisie is no way to persuade them to pay for art. Representative Brian Bilbray is a moderate California Republican who votes to fund the National Endowment for the Arts. "You can't expect public funds to be used on the cutting edge," he told the *San Diego Union-Tribune*, "because artists have to be responsible to the people who pay the bills, just like Michelangelo had to answer to the pope."

Another class of works in "Sensation" invites us to change our ways of observing other people, perhaps for moral reasons. For instance, Danto argues that Jenny Saville's cropped painting of a naked woman with contour lines like those in a topographical map ("Trace") challenges our tendency to objectify the female body. Saville is heir to a long tradition of artists who seek to shock us out of our visual habits and assumptions. Consider a famously controversial American work, Andres Serrano's photograph of an old woman with withered breasts about to perform oral sex on a young man ("The Kiss," 1996). The purpose of this image is surely to make men question their desire for images of nubile female bodies.

In principle, such works could change social norms for the better, with implications for public policy. But it is unlikely that many men who happily employ the "male gaze" when they look at real women are going to view images by Saville and Serrano. Except when there is a controversy about public money, the Art World mostly talks to itself. Avant-garde artists could once command a large audience merely by crossing boundaries of taste and propriety, but now the public is not so easily shocked, and only pop culture frequently achieves *succès de scandale*. The *Daily News'* Michael Daly wrote: "As viewed in the catalogue, 'Sensation' is now about as sensational as Beanie Babies." Ofili's "Holy Virgin Mary" still managed to

attract headlines by appalling the Catholic Church, but the only people who seemed to notice Jenny Saville's paintings were respectful art critics who already opposed sexism and the male gaze.

Therefore, instead of trying to astound the bourgeoisie, engagé artists might employ more deliberative techniques. It need not be burdensome to have to persuade average citizens by using reasons that they can share and by listening carefully to their responses. These are democratic skills that can inspire the fine arts, as the long tradition of American public art testifies. One high point was the New Deal, when artists employed by the Works Progress (later Projects) Administration's Federal Art Project (WPA/FAP) generated hundreds of thousands of murals, posters, and statues in consultation with "co-operating sponsors"—usually local governments. Even today, Christo saves all the correspondence, plans, environmental-impact statements, and petitions that he needs before he gets permission to "wrap" a building. These objects (which are often beautiful) become part of the art; they celebrate his respectful engagement with democratic communities.

To engage the public in dialogue does not require behaving in the civil, courteous, and reasonable fashion that we would prefer in the U.S. Senate or the Supreme Court. When the circumstances demand it,

An artist can contribute to an important
democratic conversation even if her
rhetoric is not itself civil.

the artist and philosopher Adrian Piper distributes small cards with the following text: "Dear Friend. I am black. I am sure you did not realize this when you made/laughed at/agreed with that racist remark." This is effective political performance art. It challenges not only the recipient but also Piper's whole audience to examine their consciences in ways that could change social norms and ultimately affect public policy decisions. Perhaps Piper's cards do not exemplify "deliberation," as Gutmann and Thompson define it. For example, when she appears to acknowledge the good faith of others ("Dear Friend, I'm sure you did not realize ..."), she may be bitingly sarcastic rather than sincere. But an artist can contribute to an important democratic conversation even if her rhetoric is not itself civil.

The Politics of Art

More so than artists, elected officials and political commentators have a duty both to deliberate and to

foster reasonable public discussion. To be sure, politicians sometimes face a dilemma. If they behave civilly and thoughtfully, they may lose elections to opponents who hold what they consider pernicious views and methods. The competitive nature of politics excuses some lapses from the Gutmann-and-Thompson norms. But that does not mean that everything that powerful politicians say is acceptable from the public's point of view. Similarly, newspapers must sell copies in a competitive marketplace. But they do not have to discard civility and reasonableness in order to capture market share.

One of the worst effects of the "wars" over arts funding is that we have not been able to deliberate about such issues as a public or in Congress.

During the "Sensation" debate, New York City looked for technical excuses to penalize the Museum, rather than advance a cogent critique of the art. (I leave aside the conflict-of-interest allegation, which raised important but complex questions about museum practices generally.) The Mayor never addressed the arguments that Danto and others made in defense of the Young British Artists; indeed, he never attended the show.

Meanwhile, in the *New York Post*, columnist Rod Dreher called the exhibition's organizers "Prospect Park Poo Peddlers" and accused them of "intellectual mountebankery and self-righteous leftie mewling." This was extreme, but more respectable voices repeatedly accused Ofili of being an anti-Catholic bigot, even though the artist denied the charge and explained that his use of elephant dung symbolized "regeneration." Mike Barnicle of the *New York Daily News* presented a particularly caustic analogy:

Ofili, himself a Catholic, is black as night. Imagine for a moment if a guy named Kelly sat down at an easel, produced a painting of a black man being dragged behind a pickup truck driven by a laughing rabbi with a smiling Billy Graham standing on the bumper, urinating on the victim's battered corpse and decided to call it art.

Liberal museum goers, Barnicle concluded, would be the first to demand that "Kelly's" work be banned. But it's hard to see how the wicked and cartoonish painting in Barnicle's story could resemble "The Blessed Virgin Mary."

The Mayor denounced any and all art that (as a factual matter) offends some citizens. Instead, he could have explained why the particular works in dispute were not worth exhibiting and then listened to any serious replies. At the same time, he could have con-

sidered his own authority to evaluate works of art. As a general rule, should elected officials intervene in specific decisions by museums, or should they give curators (or public administrators, or independent experts, or committees of artists) a free hand to decide what works to exhibit? Under what circumstances is political intervention appropriate? A well-organized debate about arts funding would open with such procedural questions.

One of the worst effects of the "wars" over arts funding is that we have not been able to deliberate about such issues as a public or in Congress. We might also ask: Is the occasional scandal a necessary price to pay for subsidizing art that is mostly innocuous? Can we avoid such scandals through skillful vetting procedures? Or should we actually be happiest when tax money pays for unpopular ideas, thereby broadening the debate? In general, is state support for the arts necessary, or would the private sector finance art adequately? Would a different system for paying artists produce better or worse works? What kind of art do we need, anyway?

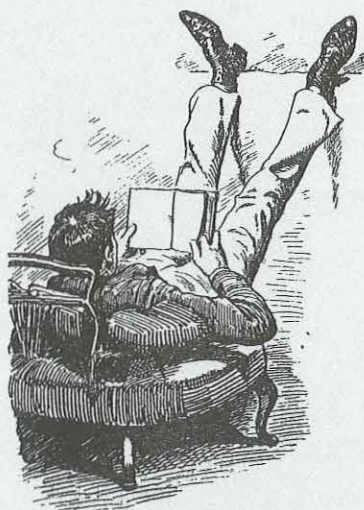
In this discussion, it is worth considering the WPA example, which shows that state support can encourage artists to begin constructive dialogues with the broad public without sacrificing their independence. In contrast, the Young British Artists got their start in the late 1980's, when state funding was at its low ebb in Britain. They began making scandalous artistic "statements" partly in order to attract attention and sales, since there were few grants to be had. All the works in "Sensation" are now owned by Margaret Thatcher's former advertising guru, an entrepreneur who has made considerable profit in the art business. In this case, at least, the market rewarded scandal. The best way to encourage more responsible art may be to subsidize it publicly, but that's not going to happen if elected leaders feel they must second-guess each curator's decision.

It seems to me that if you dislike the values that are reflected in contemporary art, then you should make overtures to artists, not just threaten to cut off their financing. For their part, artists who dislike conventional beliefs and values need ways to communicate with average Americans, not just other members of the Art World. But the encounter between politics and art is not likely to be illuminating until we have a different kind of political leadership—and a different avant-garde.

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Sources: Brooklyn Museum of Art web site at www.brooklynart.org (visited in September 1999); David M. Herszenhorn, "Brooklyn Museum Accused of Trying to Lift Art Value," *The New York Times* (September 30, 1999); *Brooklyn Institute of Arts & Sciences v. Giuliani*, Memorandum of Law Submitted on Behalf of the New York Civil Liberties Union, et al. as *amicus curiae*, 64 F. Supp.2d 184 (1999); Tim Miller paraphrased in Joe Williams, "Performance Artist Miller Just Can't Stop Acting Up," *St. Louis Post-Dispatch* (November 20, 1998); *The Brooklyn Institute of Arts and Sciences v. The City of New York*, 64 F. Supp. 2d 184 (1999); David M. Herszenhorn, "With Art Battle in Spotlight, Mayor Revels in the Glare," *The New York Times* (October 4, 1999); Dan Barry and Carol Vogel, "Giuliani Vows To Cut Subsidy Over 'Sick' Art," *The New York Times* (September 23, 1999); Thomas Jefferson, preamble to the Virginia Bill for Establishing Religious Freedom, reproduced in *The Papers of Thomas Jefferson*, edited by Julian P. Boyd (Princeton, 1950); *Federal Communications Commission v. League of Women Voters of California*, 468 U.S. 364 (1984); David M. Herszenhorn, "Giuliani's Threats to Museum Make Exhibit a Hot Topic," *The New York Times* (September 27, 1999); Amy

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Announcement— The *Report* to have a new name!

Beginning with the first issue of 2001 (Volume 21, Number 1), the quarterly publication, *Report from the Institute for Philosophy and Public Policy*, will have a new name:

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