



RECLAIMING PATRIOTISM



AMITAI ETZIONI



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*For all those who have served their country honorably,
including four generations of Etzionis*

Patriotism is when love of your country comes first; nationalism, when hate for people other than your own comes first.

—CHARLES DE GAULLE

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RECLAIMING PATRIOTISM

INTRODUCTION

“GOOD” NATIONALISM—SAVING DEMOCRACY THROUGH NATIONAL COMMUNITY BUILDING

How to Cope with Polarization

Democratic governments, from the US to Israel, from Hungary to Venezuela, from Turkey to Indonesia are in crisis—although some are much more challenged than others. If democracy is to be saved, more will be required than political actions such as changing the agendas of the parties (e.g., making them more “populist”) or forming new parties or coalitions.¹ A major social transformation is called for—the rebuilding of the national community on which all democracies rely. This book spells out the reasons this transformation is essential and the ways it can be brought about. Polarization involves people who are divided from one another by more than whom they vote for. They also are divided by whom they socialize, talk, and work with, by whom they befriend and even marry.²

In the US, 77 percent of self-identified Republicans and Democrats are married to or living with someone who identifies as a member of the same political party. Fewer than 10 percent of people who identify as either a Republican or a Democrat have spouses or partners from the opposing political party.³ Fifty-five percent of Republicans say they have just a few or no friends who are Democrats, while 65 percent of Democrats say they have just a few or no Republican friends.⁴ One out of five millennials (22 percent) has broken up with someone over political differences.⁵ Michael Bloomberg reports: “In 1960, only 4 to 5 percent of Democrats and Republicans said they would be upset if a member of their family married someone from the opposing party. In 2010, one in three Democrats and one in two Republicans said they would disapprove of such a marriage.”⁶ In other democracies polarization is also rising.⁷

Because polarization has become so widespread and encompassing,⁸ it is no longer contained by a shared understanding of the common good, which could limit the paralyzing effects of social polarization on politics and provide the underpinning for shared action among oppos-

ing parties. A major social development that bedevils democracies is the loss of the commitment to the common good, a commitment that can help to balance particularistic interests, needs, and values.

I am often asked, How can one have a major effect on society, indeed on history? When I respond by suggesting that this is a rather easy question because there is only one answer, this tends to surprise people. As I see it, the one and only way to achieve truly transformative social change is to launch or join a social movement.⁹

Key examples include movements on behalf of civil rights, gender equality, economic fairness, environmental protection, national liberation, and religious freedom. These movements differ greatly from one another, especially in their values and strategies for achieving their goals. They share, however, an underlying sociological feature: they withdraw legitimacy and support from a declining regime while laying foundations for a new one. To give but one illustration: The American civil rights movement challenged the legitimacy of discriminatory laws in such basic social practices as voting, working, education, and housing. It provided for *de jure* and *de facto* voting rights, made racial discrimination illegal and uncouth, elected thousands of African American officials, and increased interracial marriages. (The percentage of African Americans married to people of other races has increased dramatically since 1980. In 1980, only 5 percent of African Americans were in interracial marriages; that figure climbed to 18 percent by 2015.)¹⁰ To be sure, the movement has far from eliminated racism, but it did introduce major social and political changes.

Many Americans, as well as citizens of other democracies, are concerned that the guardrails of democracy—the institutions and laws on which it relies—are being weakened. To restore them requires a new social mandate. A mere change in the composition of the legislature will not suffice. One should recall that even when the Democrats controlled both houses of Congress and the presidency, from 2009 to 2011, the GOP and Red State Democrats blocked major reforms.

For the kind of sweeping changes now called for to save democratic regimes and make governments functional again, a major social movement will have to provide a mandate that will cut across party lines and force both sides to work together. This is what the environmental movement achieved when it led President Richard Nixon to form the Environmental Protection Agency and Congress to pass a whole list of environmental protection laws. This is what the civil rights movement

achieved in the early 1960s. No such mandate is now available. Only a sweeping patriotic movement can bring about a wide-reaching democratic rebuilding.

The Model of Marital Conflict

To argue that democracies now need a social movement that formulates core values that a strong majority can embrace is a call not to eradicate differences and divisions but, rather, to contain them. An analogy from family life may help. Studies show that stable and happy marriages are not strangers to conflict. Couples fight, seeking changes (e.g., in the division of labor between the spouses) but also to maintain the union. There are rules for such contained conflicts, those that seek to maintain the common good, that include not demonizing the other side, validated communication, not going for the “pound of flesh,” and focusing on the future rather than recriminating the past. In politics, these rules have sometimes been described as those followed by the “loyal opposition.”

“Loyal opposition” refers to a minority party whose opposition to the party in power is constrained by loyalty to the fundamental interests and values governing the state¹¹ while continuing to offer plans and policies that claim to better serve the interests of the state and the people.¹² The US Senate used to be such a “club” but has largely lost its common ground as partisanship, reflecting swelling social divisions, carries the day. To move forward, we need new social formations—chapters of a patriotic movement yet to be fashioned—that will include people of different political persuasions, backgrounds, and parties all committed to consenting on and advancing the common good. For a more extensive discussion on the marital conflict model, please refer to chapter 2.

Incorporating the White Minority

In recent years many whites in the US have come to see themselves as a persecuted, excluded minority.¹³ This sentiment has arisen in the wake of large demographic changes. Reports claim that the nation will have a majority of minorities by 2044. Increases in minority populations and a decline in the white majority in the US have driven several African American leaders, including Jesse Jackson and former New York City mayor David Dinkins, along with a few Hispanics, such as Fernando Ferrer, a candidate for the 2002 mayoral election in New York City, and

some on the white left to champion a coalition of minorities to unseat the “white establishment” and become the power-holders and shapers of America’s future.¹⁴ When Jesse Jackson launched his Rainbow Coalition, I teased him a bit, pointing out that the colors of the rainbow do not include white. He shrugged his shoulders, suggesting that leaving out whites was not necessarily detrimental. Calls for minority governing coalitions that exclude white Americans—intentionally or otherwise—have resulted in many whites seeing themselves as a persecuted minority group.¹⁵

Arlie Russell Hochschild spent five years interviewing and living with whites in Louisiana, most of whom later voted for Trump, documenting their perception shift. She found that many of them felt abused by a world in which they see themselves as climbing a steep hill only for “others” (minorities and immigrants, most of whom are not white) to cut ahead of them in line.

Both sides are allowing one identity to trump all others rather than building on the fact that we all have multiple identities.¹⁶ Many vote their race, and their race affects their views on most issues, overriding other identities.¹⁷ Above all, they ignore that whatever their race, they are also Americans, or French, or Danes, and so on—in essence “they are citizens of somewhere.”¹⁸

Minorities and whites can come together under the big tent of the patriotic movement if they come to see that they often suffer from common maladies, such as the actions of narrowly based interest groups. Thus, when banks sold millions of Americans mortgages that the banks knew people could not afford and hence were able to evict many people from their homes, both whites and black suffered, not equally, but all to great personal loss. When Americans pay many times more for medications, a major source of health expenditures, than people pay in other countries, because lobbyists got Congress to enact laws that prohibit Americans from purchasing medications overseas, the pocketbooks of people of all colors are squeezed. When millions of Americans consume vitamins that have not been tested for safety—because the industry pressured Congress to exempt vitamins from FDA regulations—people of all backgrounds are endangered. When Chlorpyrifos, a common insecticide, continues to be used in agriculture across the globe even though it has been clearly linked to defective alterations in brain structure and in the cognition of children, all kinds of children are hurt.¹⁹

A major example: Purdue Pharma—the company that invented the

highly addictive painkiller OxyContin—claimed until 2007 that it was not addictive, although a Department of Justice report shows Purdue’s awareness of significant OxyContin abuse shortly after the drug was introduced to the market in 1996 and that this information was intentionally concealed.²⁰ Moreover, Purdue employed an aggressive marketing campaign that paid substantial bonuses to sales representatives who worked with physicians prescribing high volumes of OxyContin, as well as a promotional campaign that included providing health-care professionals with all-expenses-paid trips to Purdue Pharma symposia at luxury resorts and widely distributing OxyContin-branded gifts.²¹ The campaign led many physicians to prescribe OxyContin even when it was not needed.²² As a result, 52,000 Americans died of opiate-related causes in 2016,²³ a number five times greater than in 1999.²⁴

Narrowly based special interest groups (more about them in chapter 9) have become so powerful that they pose a great threat to people of all backgrounds. This is particularly evident when observing what happens after their wrongdoings are uncovered—in most cases, no substantial penalty or reform follows.

We learned that if one citizen forges one check, he may well end up in jail for ten years. When banks hired staff to forge signatures on thousands of mortgages, not a single banker went to jail. During the late 1990s and early 2000s, nineteen major Wall Street firms were found to have committed fifty-one cases of antifraud law violations. The SEC got them to promise not to violate the law in the future—and when they did violate it again, the SEC asked them again to behave better.²⁵ No wonder they were not impressed. Indeed, some violated the law time and again and again.

When *60 Minutes* reported that a hospital chain automatically orders a whole slew of tests for anybody who walks into its ER rooms, whether they need them or not, and pressures its doctors to admit at least half of these visitors to fill hospital beds, the chain suffered no pain. These and countless other examples make clear that people from all walks of life have much to gain if they join together to curb special interests.

The fact that times call for a social movement that will rebuild the common ground, the bonds that contain conflict, and the foundations on which public policies with strong majorities’ support will rest is the central thesis of the book. One may well ask, But what about overcoming inequality, eliminating poverty, protecting the environment, providing affordable health care, and many other such worthy social goals?

I suggest that making major progress on any and all of these fronts presumes a strong sense of community without which it will not be possible to form the kind of strong majorities that support major reforms.

And, it is worth reiterating, there is no reason for various groups fighting for progress on any of these fronts to cease promoting their agendas—as long as they do so while supporting rather than undermining the communal bonds. Last, many books and articles have been written on how to tackle the various specific policy issues that challenge democracies. This book need not add to these volumes other than to stress that their agendas will not be advanced far unless people are willing to make sacrifices for each other and the common good, find middle ground, and yes, even compromise. To advance specific agendas, people must see each other as members of one overarching community, one with shared values and, for better or worse, a shared destiny.

No Ending of Identity Politics

When I refer to community, I am not thinking about some kind of “kumbaya,” a love fest in which all differences disappear, but about the realization that we are members of one overarching community with a shared set of core values and interests and, ultimately, a shared future. For the same reason, the quest to redefine and recommit to the common good is not a quest to end identity politics; rather, it’s a call to those who see one particularistic identity as defining them to make room for a more complex combination of shared and particularistic identities.²⁶

This is not a case of being against individual or group rights but a recognition that rights need to be accompanied by a strong sense of social responsibility to the other, and above all to the common good. Preparing for my classes at the Harvard Business School, I read a report showing that though young Americans felt strongly about their right to be tried by a jury of their peers, they were exceedingly reluctant to serve on a jury. I argued in class and later in my book *The Spirit of Community* that it is morally obscene to take and not to give, that strong rights presumed strong responsibilities, and that if young people did not serve on juries, then there would obviously be no juries of their peers.²⁷ Many Americans demand more government services while raging against raising taxes, or advocate a stronger army while counseling their children against military service. In line with a popular sentiment expressed by President John F. Kennedy, the times call for asking what you are willing

to do for the common good, to protect the environment, to help those unable to help themselves, to secure us from terrorist attacks.

To put it differently, all societies experience centrifugal forces that pull them apart. In many societies these have been especially strong in recent years. We cannot, and need not, eradicate these forces, though they can be mitigated. What is needed are centripetal forces to balance the centrifugal ones, that is, nation building. To use a still different metaphor, we do not need a melting pot but a mosaic, in which the pieces—though different in color and size—are held together by a framework.

The Nation Is a Community Invested in a State

The term “community” applies to many different kinds of sociological entities, including groups defining their common life around ethnicity and culture (e.g., Jewish community), sexual orientation (e.g., gay community), religion (e.g., Muslim community), vocation (e.g., scientific community), international security and cooperation (international community), among many others. This book is focused on a particular one, *a community that is invested in a state, the proper definition of a nation*. Summoning loyalties to a nation evokes intense passions. I realize when I call for renewed patriotism, when I write about commitment to the good of one’s nation, about love of country, that patriotism is a highly contentious idea. Many associate it with xenophobia and jingoism.

At its core, patriotism points to passionate concern for one’s fellow citizens and the community they share, a resolve to love one’s nation despite its defects and to work for its flourishing. This is what I mean by “good” nationalism.²⁸ Several political commentators have mentioned the need to distinguish between “bad” and “good” nationalism (without going into the weeds to sort out what this entails), including Lawrence Summers, who has issued a call to “responsible nationalism,”²⁹ and David Brooks, who has extolled “civic nationalism.”³⁰ These conceptions of nationalism are offered in contrast to toxic forms of ethnonationalism, blood-and-soil nationalism, or outright tribalism. Yascha Mounk is reported to have suggested that “liberals can counter Trump’s ‘ethnocentric’ nationalism with a nationalism of their own. The trouble, as he puts it, is that American liberals are ‘increasingly directed toward a radical rejection of the nation and all its trappings.’”³¹ Patriots do not overlook their country’s flaws and darker periods but seek to address them rather than allow them to undermine their commitment to the

country's common fate, history, and future. And they do not diminish other communities, let alone seek to lord over them, but appreciate that those in those communities, too, love their country.

William Galston distinguishes between patriotism and nationalism in the following terms: "*Patriotism* denotes a special attachment to a particular political community, although not necessarily to its existing form of government. *Nationalism*, with which patriotism is often confused, stands for a very different phenomenon—the fusion, actual or aspirational, between shared ethnicity and state sovereignty." He adds, "It is perfectly possible to love one's own without becoming morally narrow, or unreasonable, let alone irrational."³² George Orwell differentiates nationalism, as a position "inseparable from the desire for power," from patriotism, which is "devotion to a particular place and a particular way of life, which one believes to be the best in the world but has no wish to force on other people."³³

Devotion to one's country can be fully separated from aggressive foreign policies, a mark of nationalism, and can be fully reconciled with commitment to foreign aid and humanitarian contributions and providing peace-keeping forces. No country maintains this distinction perfectly, though Canada, the Scandinavian countries, Costa Rica, and Uruguay come close. Germany and Japan paid a very heavy price before they learned the difference but showed in the decades that followed World War II that a nation can forego nationalism and still exhibit patriotism.

The Communitarian Bases of Democracy

The following discussion applies to all democracies. They all need to contend with populism, polarization, alienation, dysfunctional governments, and pernicious forms of nationalism. Democratic societies differ in the extent to which they are challenged, but not in the basic nature of these challenges. While many of the examples in the following chapters are drawn from the American experience, readers will have no trouble finding parallels in their nation, with one notable exception. The intrusion of private interest groups into the public realm is much more severe in the US than in most democracies.

Some view democracy as based on free and open elections, a political system that requires a free press, contending parties, and a civic-minded citizenship.³⁴ All this is true, but one should not ignore that ultimately

democracy presumes a set of communal commitments. Citizens are willing to abide by decisions of the majority not merely because they believe in the legitimacy of the democratic process but also because they see others as members of the same community and hence are willing to make some sacrifices for them and for maintaining the community.

Above all, they share the values of the community that provide the normative criteria upon which elected officials need to draw if their decisions are to be accepted by the populace. Émile Durkheim pointed out that all contracts are based on precontractual commitments. Democracy is a contract that assumes communal commitments, and when those are lacking, democracy suffers. Charles Taylor observed, along the same lines: “A citizen democracy can only work if most of its members are convinced that their political society is a common venture of considerable moment, and believe it to be of vital importance that they participate in the ways they must to keep it functioning as a democracy. This means not only a commitment to the common project, but also a special sense of bonding among people working together in this project.”³⁵ (I return to this point in chapter 7, in which I explore which values new members of a national community, immigrants, must embrace—and which they must not—and how these values may be transformed to accommodate the newcomers and other historical changes. See especially the discussion of national ethos.)

The core of shared values and bonds that nations need has been weakening in democratic societies under the impact of globalization, sluggish economic growth, polarization, concentration of power, and reaction to large-scale immigration. In some countries, such as Poland and Hungary, the response has been nationalistic rather than patriotic. In some, the polity has nearly unraveled, as in Turkey and Venezuela. One can see most clearly the results of very weak national loyalties in many nondemocratic countries, in which national bonds and shared values are even weaker, much weaker, than in democracies. The result is often civil war. Thus in Afghanistan, in which the primary loyalty is to one’s tribe and not nation, the war is not so much between the government and some insurgents, as the war is often depicted, but to a considerable extent between Pashtuns and other tribes. In Iraq, it is between Shia and Sunnis, among other groups. These are countries in which the model of marriage conflict was not followed; in effect the various sides are fighting as if they are seeking divorce or to kill the other partner. Lacking patrio-

tism, they developed instead aggressive forms of tribalism. This is what happens when national loyalties weaken beyond the level one finds in democracies, a warning to all of them.

The Outline of the Book

I turn next to outline the processes through which the members of the patriotic movement can form new shared moral understandings—the values to which they are going to dedicate themselves—by studying the ways other social movements have achieved such shared understandings. The historical examples in chapter 1 provide “how-to guidelines” for national moral dialogues of the patriotic movement.

Both libertarians and liberals—many on the right and on the left—view individuals as the key actors who shape history.³⁶ I cite evidence that in order to be effective actors, most individuals need to be members of communities and hence that communities play a cardinal role in shaping history. Communities, we shall see in chapter 2, provide the best antidote not just to polarization but also to the populism that appeals to people who lose their communities and to those who feel that their communities are being threatened. For reasons spelled out below, the most relevant community for the issues at hand is the nation, not local nor global ones.

I next explore topics on which moral dialogues, led by the patriotic movement, may focus. These dialogues may well reveal that there is more common ground, or at least overlapping policy consensus, than is widely believed. (Overlapping policy consensus refers to agreements among people who have profound value differences but agree on one or more policies. For instance, pro-life and pro-choice groups worked together in St. Louis for better childcare.) Topics for moral dialogues—trade, immigration, and rights—are discussed in chapter 3.

A key concept that underlies much of the following discussion is the thesis that people have moral commitments and obligations to take action not only for themselves and their loved ones but also to advance the common good, often that of their country.³⁷ Given that this is an often maligned concept, I try to show in chapter 4 what it entails and argue that it is well grounded. In the same vein, I point out that a good society cannot be centered only on liberty and individual rights but also must attend to the common good, expressed in terms of social responsibilities to others and to one’s communities.

The tensions between individual rights and the common good, and the ways they may be worked out, are examined in two case studies. The first, in chapter 5, deals with new regulations that seek to treat personal information as private property, hence requiring an individual's consent for all usages of personal information. I show that such a conception conflicts with the common good and ask how these two may be reconciled. In chapter 6, the second case study provides a key example of where the needed balance between rights and responsibilities has not been reached and details the dire consequences for national security that follow.

Chapter 7 offers a sociological design that defines the grounds and scope for social diversity and clarifies boundaries that must be respected if the national community is to thrive. Chapter 8 examines a particular form of fighting with one hand tied behind one's back and how to advance the agenda of various groups without undermining the national community. It illustrates a way for members of communities to vie with one another.

Any narrative of our condition has to answer the question, Who are the "bad" players who undermine democracy, prevent effective governing, and stand in the way of progress? It is widely agreed that polarization has led various communities to view other communities as the enemy. Often these divisions fall along racial lines or between immigrants and old-timers. Actually, the main enemy lies elsewhere; chapter 9 identifies the greatest threat to the common good and the national community as the capture of shared assets by special interests. How to curb these interests without running afoul of the Supreme Court rulings that, in the name of protecting free speech, have allowed those with deep pockets to funnel large amounts of money to politicians is the subject of chapter 9.

For a social movement to be able to redesign society, the local communities and chapters of the movement must be combined into a community of communities, which makes for the national community. The reasons the community of local communities needs to be, for the foreseeable future, national rather than global are spelled out in chapter 10. It reveals that while nationalism is to be condemned, patriotism ought to be rehabilitated and reembraced. On the international level, we need global governance backed up by a global community, because many of our problems are global. However, the sociological conditions for extending national communities into a global one (or even regional ones)

or adding a global layer on top of the national ones are not in place. Hence much trouble arises when international organizations and their champions try to advance various forms of postnational government without first forging the essential communal foundations.

The closing chapter of the book suggests that a patriotic movement will need to challenge the legitimacy of affluence and points to core values that serve best to shore up democracy and provide for human flourishing.

The ideas laid out in the following pages apply to all democracies. Granted, they are not all equally challenged. However, globalization, automation, populism, dysfunctional government, polarization, and the rising inequity of assets and power are evident in varying degrees in all of them. Although most of my examples are drawn from the American experience (and the EU), I believe readers will have no difficulty in applying the ideas to their particular society and government.

NATIONAL MORAL DIALOGUES

Democracies should not be led by individual charismatic leaders who capture the following of the masses and override the decisions made by deliberative bodies and courts. Instead, individual citizens need to come together and decide among each other which direction their country is to follow and what values are to be advanced.

One can readily see how dialogues can unite citizens in common purpose and goals within a small group, maybe even in groups as large as those that come together in town hall meetings.¹ However, much of public policy these days must be addressed on the national level. Pollution does not heed state lines. Immigrants flow from one community to another. Defense is a national business. To achieve genuine, lasting change, dialogues about pressing values must be national. I will show that they can be, indeed often are. Moreover, although observers often point to unresolved conflicts—say, about abortion—new shared moral understandings frequently do arise.

Members of the patriotic movement must face the fact that the values that people of many nations used to share with their compatriots have lost their legitimacy, their compelling power. True, these values—say, those that united the American people in the 1950s—included many normative positions few find compelling today. However, there is no denying that at the time they were widely endorsed, even by many of those they excluded. The fact that these values have been largely discarded is a major sign of progress. The problem is that they have not been replaced with a new set of national unifying values. Hence, the agenda of the patriotic movement is not to move back to the old, discarded values but to form new normative content for nationally shared values.

A new dialogue about core values hence is essential, in effect a prerequisite for any future effective social movement that will rebuild democracy and the national community.² One may well wonder how a nation could hold a moral dialogue that would help opposing groups find a common ground—without the dialogue devolving into ideolog-

ical opponents screaming at each other, adhering to party lines, and reinforcing political differences. Critics may well say that the culture wars illustrate the futility of national moral dialogues. This chapter looks at previous national dialogues to show they have led to major new shared moral understandings and unpacks which processes they employed to cultivate success. It turns out that such dialogues follow a fairly clear design, a design that the patriotic movement should employ in sorting out a new core of shared values for the nation to embrace.

Moral Dialogues Defined

Moral dialogues are social processes through which people form new shared moral understandings. These dialogues typically are passionate, disorderly, and without a clear starting point or conclusion (in contrast to elections or debates in a legislature). However, moral dialogues often do lead to profound changes in the moral positions of those who engage in them. Although moral dialogues never change the values of all involved, they often, as we shall see, change the moral positions of a sufficient number of people so that actions and policies that previously had little support (e.g., environmental protection) and actions and policies considered morally inappropriate by many (e.g., same-sex marriage) gain widespread moral approval.

Moreover, we shall see that when moral dialogues mature, the new shared moral understandings that arise have profound sociological effects well beyond changes in values, norms, and attitudes. These new or changed moral understandings lead to new laws or significant changes in law and, more importantly, to major changes in voluntary behavior. For instance, the shared understanding that we have a moral obligation to be stewards of the environment led to the founding of a new government agency (the Environmental Protection Agency); scores of new laws and regulations; construction of walkable neighborhoods and bicycle lanes; improved public transit; and considerable changes in voluntary personal behavior, including recycling, preferences for sustainable sources of energy (a factor in purchasing cars, appliances, and solar panels), donations, and voting. True, these changes were also affected by other factors, especially changes in economic incentives. However, the restructuring of these incentives reflects in part changes in a shared moral understanding. This chapter focuses on the dynamics and effects

of moral dialogues that lead to significant changes in shared moral understandings (SMUs).

The analysis combines two methods. It follows historians by studying the development of various moral dialogues over time in a particular community or nation, in a given period. It follows sociologists in that it seeks to identify the recurring social factors on which moral dialogues draw to bring about new SMUs. These elements are next listed and then analyzed.

To study moral dialogues one needs to start with a *baseline*, to show where the shared moral understandings were before the moral dialogues changed them. Next the chapter examines the *sociological dialogue starters* that lead to the initiation of moral dialogues (and their differences from historical “firsts”). The next section deals with the attributes and dynamics of moral dialogues. These include a review of intensive, inter-linked multiple group discussions—which we shall call *megalogues*—that are required for moral dialogues to take place on a large scale; the *distinct attributes* of moral dialogues as compared to rational deliberations and culture wars; and the crucial role of *dramatization*. The chapter then turns to show that moral dialogues that reach *closure* have significant sociological consequences. These are revealed in changes in shared values, laws, and behavior when one compares the end state to the baseline.

Following these sections, a case study illustrates the various elements in one specific historical development, the change in the SMU about same-sex marriage. The importance of moral dialogues for community building is briefly discussed. The chapter closes by pointing to a particularly challenging question: How is one to determine whether socially shared moral understandings, which basically reflect moral consensus, are indeed moral?

This chapter leaves for future discussion the study of the effects of external structural factors on moral dialogues, such as differences in political and economic power, social inequality, race, and gender. The chapter seeks to introduce moral dialogues as distinct from reasoned deliberations, expressions of emotions, and culture wars and leaves to a separate examination the important effects of structural factors on moral dialogues, a major subject all by itself.

One can readily envision moral dialogues within a family or a small community but may well wonder if a society that encompasses many

millions of people can engage in a moral dialogue. We shall see below that such society-wide dialogues take place by linking millions of local conversations (between couples, in neighborhood bars, in coffeehouses, during carpooling, next to water coolers at work, and so on) into a society-wide moral give-and-take.

Moral dialogues tend to follow a set pattern. I choose my words carefully. Not all moral dialogues follow all the stages next outlined. The pattern next unveiled should hence be viewed as an ideal type.³ It serves as an analytic matrix for the study of various specific dialogues and the comparison of one to others. In presenting the pattern (some would call it “natural history”), I draw on illustrations from the American experience, although its presence in other societies and transnational dialogues is self-evident.⁴

Baselines

To assess the effects of any given moral dialogue, one must establish what the shared moral understanding was before the dialogue took place. For instance, to assess the effects of moral dialogues on our moral obligations to “Mother Earth,” about our stewardship of the environment, one must start by noting that in the 1950s, there was no shared sense of such a moral responsibility. People dumped garbage in lakes and streams, drove cars that emitted large amounts of pollutants, and used coal as a major source of energy without any concern about the environmental implications of their actions. In the same period, racial segregation was legally enforced and widely supported. Women were expected to be homemakers and submissive. Gay people were considered sinners and deviants. Smoking in public raised no moral issues. People felt obligated to do “all they could” for their loved ones until their heart and lungs stopped functioning. Researchers can readily find some academics, clergy, or visionaries who made a moral case against any one of these established mores. However, they did not start moral dialogues and did not have a significant effect on the nationwide shared moral understanding.

Sociological Dialogue Starters

Moral dialogues often start with the articulation of what might be called a “moral brief,” akin to what lawyers file before they argue a case before the Supreme Court. It typically includes a criticism of the prevailing

moral culture and society and a substantive statement of what a new shared moral understanding should contain. One should note in this context that some protest movements and organizations mainly provide a criticism of the prevailing order but offer little content—or only exceedingly vague content—about the core values intended to replace those of the old order. These are more disruptive than transformative. Major changes in SMUs require that briefs also include statements about the new SMU to replace the old one (a point that was not fully taken into account by several groups that brought down old regimes during the Arab Spring).

Betty Friedan provided such a brief for a moral dialogue about women's rights and status in her 1963 book *The Feminine Mystique*. Rachel Carson provided such a brief for the environmental movement in her book *Silent Spring*, published in 1962. Ralph Nader did the same for the consumer protection drive in his book *Unsafe at Any Speed*, published in 1965. Other moral dialogues were started by a declaration, for instance Martin Luther's 95 *Theses*, which prompted the Protestant Reformation. A Harvard committee provided a brief for changing the definition of death to one that occurs when there is a "brain death." Sometimes moral dialogues are triggered by an event rather than a brief, such as the Three Mile Island accident, which started a dialogue about nuclear safety. However, in all the cases examined, a brief followed.

In examining moral briefs, it is important to distinguish between *historical antecedents* and *sociological takeoff points*. When a book or trial or event leads to a new moral dialogue, historians will often point out that rather similar ones have already been published or have taken place before. For instance, before *The Feminine Mystique*, other books on the topic had been published, including *The Second Sex* by Simone de Beauvoir in 1949. However, these previous developments were only precursors as they did not mobilize major moral dialogues that could lead to new SMUs. For the purpose of studying changes in SMUs, one must focus on those briefs and events that served to initiate the kind of dialogues and societal changes next described. We are after catalysts that spurred lasting systemic change rather than those that fizzled out.

Some studies refer to the selection of dialogue starters as "agenda setting," the process through which people attribute a higher importance to some issues as compared to others. According to H. Denis Wu and Renita Coleman, "For more than thirty years, the main concept in agenda setting theory has been the transfer of issue salience, or how

media emphasis of certain issues raises their importance for the public.”⁵ A common finding is that the media largely determines the issues on which the public focuses.

The content of the brief, how well it is argued and presented, or the nature of the starting events, is often not the most important factor determining whether it will serve merely as a historical first or will lead to a sociological takeoff. Much more important is whether or not the sociological conditions that would allow the changes to take off are in place. Thus, for instance, briefs for liberal democracy in societies of the kind the US found in Afghanistan in 2003 are unlikely to lead to a takeoff.⁶ In contrast, it seems that *The Feminine Mystique* led to takeoff not necessarily because it was better argued or had more evidence than previous books on the same subject, but because it was published after many women had worked in factories and some had participated in the military during World War II and were thus open to suggestions that they are able and entitled to play roles other than that of homemakers.

Finally, one should note that many moral dialogues take off but then lose altitude and need to be relaunched if they are to lead to a new SMU. For instance, dialogues about inequality in the US are following this pattern. Figure 1 presents Google Trends data showing the popularity (relative to other searches of the term on Google over time) of the term “social inequality.”⁸ Interest in inequality is lacking a definitive spike; instead it consistently wavers.

Moreover, some moral dialogues that do take off never produce a new or changed SMU. For instance, briefs that called for the formation of a global government, in particular the 1947 Montreux Declaration by the World Federalists as part of the World Movement for World Federal Government,⁹ initiated a measure of moral dialogues, but these petered out without gaining a new SMU.

Megalogues

For a starter brief or event to lead to a new SMU, it must be followed by processes that would lead a large number of people to reexamine their moral values, giving up on what they long believed was right, and accept a new set of values as morally valid.

Some advocates of moral causes believe that if the president were to make a powerful speech or conduct “fireside chats” as President Roosevelt did, this would lead to a new SMU and change the direction of the nation.

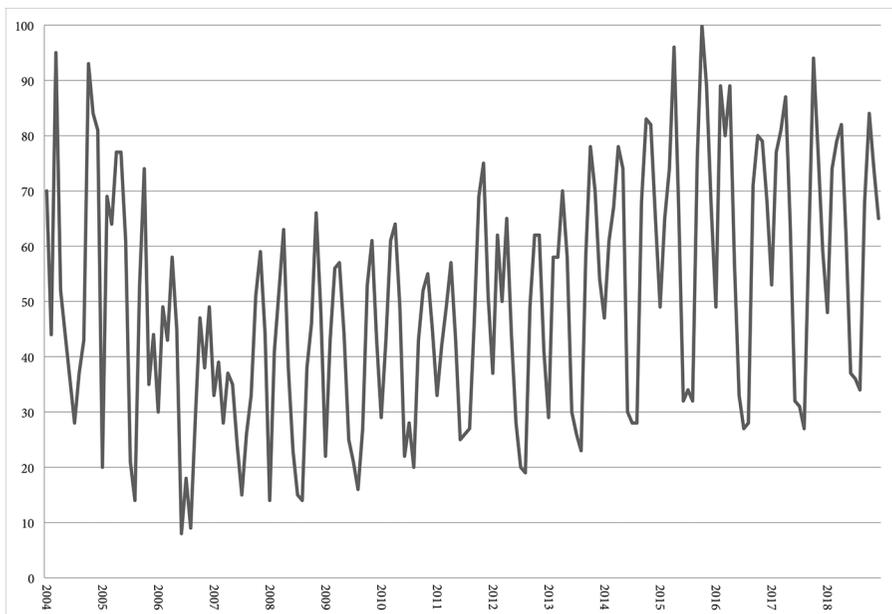


Fig. 1. Relative frequency of term “social inequality” searched on Google

President Kennedy’s speech that urged Americans not to ask what their country can do for them but what they can do for their country is credited with engendering a historical change; however, although the speech is often quoted, there is precious little evidence that, by itself, it had much of an effect. President Jimmy Carter tried to make Americans treat the saving of energy as a test of their moral fortitude in his famous “malaise” speech—with mainly negative effects. President Obama spoke eloquently for many causes, especially for finding common ground, but the nation became more polarized. Such speeches can have high motives and aspirations, but as noted earlier, other sociological factors must be present for them to have the sought-after societal effects. Systemic change depends on more than speeches or verbal persuasion in general, however evocative and well-meaning they may be.

Instead, when a topic takes off, or “gets hot,” it becomes the subject of extensive discussion in personal settings (over dinner, at the water cooler, in bars, firehouses) and in local meetings of voluntary associations and clubs (Rotary, PTA, places of worship). These, in turn, are amplified and linked through national organizations during their meetings (such as AIPAC, League of Women Voters, NAACP, Sierra Club,

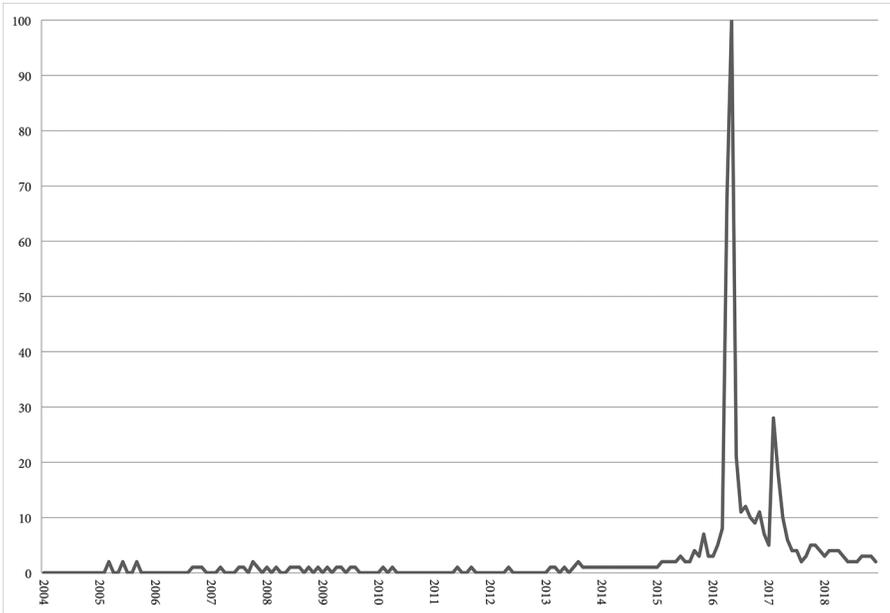


Fig. 2. Relative frequency of term “transgender bathrooms” searched on Google

Conference of Catholic Bishops, National Council of Churches, etc.) and through the media (call-in shows, commentaries and debates on TV and radio) and social media.

To illustrate, in 2016–17 a subject that was only sporadically discussed in previous years became a focus of a nationwide moral dialogue in the US, namely the rights of transgender people. Figure 2 is a Google Trends graph showing the relative popularity of the search term “transgender bathrooms” in the US from January 2004 to December 2018.¹⁰

Distinct Attributes

Moral dialogues differ sharply from both expressions of emotions and from rational deliberations. In effect, they constitute a hybrid that has qualities of its own, different from the composite elements. Moral statements contain emotions in contrast to sheer statements of facts or logic. At the same time, these statements contain justifications—that is, they are intellectually accountable—in contrast to emotions. When one discloses that one hates or loves or declares any other emotion, it suffices to state “because this is what I feel” (*de gustibus non est disputandum*).¹¹ In

contrast, if one states that a given condition is immoral—say, not fair—one is expected to spell out the reasons and give a basis for this statement. And one may be challenged with arguments that such a statement is inconsistent with previous ones, or violates a general ethical position to which the person subscribes, or with still other arguments—and one is expected to justify one’s moral judgment or modify it. This is what I mean by intellectual accountability.

Moral statements differ from rational statements that are focused on facts, as well as from logical conclusions that can be drawn from these facts. People are invested emotionally in moral statements, and hence when new facts arise or new arguments are made based on evidence, people will not change their positions readily. True, much has been written to point out that facts and values cannot be completely separated and they often bleed into each other. Still, there is a clear difference between what have been called *is* versus *ought* statements. Reasoned deliberations are about *is*, moral dialogues are about *ought*.

To illustrate, one may argue whether or not a death penalty is justified as a crime deterrent on empirical-logical, rational grounds by comparing crime rates in states that have versus those that do not have death penalties, or before and after such sentences were carried out in states that either dropped or adopted this penalty. In contrast, if one holds that it is morally wrong for the state to deliberately take a life, statistics about the effects on crime rates will matter little (or only if one can show that the result leads to a higher loss of lives).

Quite a few previous discussions of the attributes of dialogues suffer from the curse of dichotomies. The main case in point is the growing recognition that the assumption that people are rational creatures, able to collect and process the information needed to make rational choices, is a false one.¹² It is assumed ipso facto that therefore people are irrational, unable to make sensible judgments, because the analysis started from a binary position. If not A, then it must be B. Actually, as Talcott Parsons pointed out long ago, there is a whole third realm, that of the nonrational. This realm includes “otherworldly” matters that deal with questions and views about the afterlife, deities, the meaning of life, why we were born to die. And with the selection of moral values, especially when two or more of these values are in conflict.

I am not arguing that rational deliberations and moral dialogues do not affect each other. However, when one examines particular dialogues, one can, as a rule, readily determine which statements are moral versus

factual, and see differences in the give-and-take between those that are evidence-centered and those focused on moral issues.

We can gain some insight into the issue from mental experiments. A father finding out that his young son has been smoking may merely yell at him, demanding that he stop (sheer emotion), or he may strongly express, in emotive terms, his concern for his son's health and also explain the risks involved to him and others around him. For the purposes of moral dialogues, it matters not in this case if the argument that the father made was merely a rationalization that followed his emotions or one he developed on the basis of information he garnered and understood. What matters is that his son is less likely to be swayed when exposed to sheer emotion as compared to emotion accompanied by reasoning. Moral dialogues draw on both emotional expressions and reason. Otherwise they are shouting matches, guilt trips, or expressions of blind love, shame, and other such emotions.

Some accord a great role to the media as a moral persuader. For instance, when it shows graphic pictures following an earthquake or typhoon, millions of donations flow to the people in the devastated area, based on the emotions the pictures evoke. However, on closer inspection, one notes that the pictures do not so much shape one's moral disposition as direct where it is applied. One can determine this by noting that large donations will come from Americans because voluntary donations are part of the American moral tradition. In some other countries, the same pictures will lead to greater demands on the government to act. And in still others, very few donations will be forthcoming. Bernard Cohen made this point well when he observed, "It [the press] may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think *about*."¹³

In further deliberating on the question at hand, one can draw on firsthand experience in moral deliberations. Thus, when we serve on a committee that considers whether or not to disclose to the public or the authorities some unethical conduct or acts that might be illegal—for example, bullying or unconfirmed reports about inappropriate sexual advances made by a coach—we note that our emotions are surely engaged but that we also take into account moral arguments.

Moral dialogues resolve differences and are thus able to lead to new SMUs in their own ways, frequently without relying on new empirical evidence. One procedure often used in moral dialogues is *to appeal to an overarching value* that the various parties to the sorting-out process

share. Robert Goodin in effect is using this rule when he seeks to pave the road for a community that must sort out a course between the rights of nonsmokers and those of smokers.¹⁴ At first, this may seem like a typical clash between two values: the rights of one group versus those of another. However, Goodin points out that *both* groups are committed to the value that one's liberty does not allow that person to violate the "space" of the other. In popular terms, my right to extend my arm stops when my fist reaches your nose. Goodin argues that this value applies because nonsmokers, in their nonsmoking, do not penetrate the smokers' space, whereas smokers do violate nonsmokers' space in public situations, thus nonsmokers' rights should take priority. Using such arguments, American communities reached the SMU that lies at the foundation of the new restrictions on smoking in numerous public spaces. (The fact that these new regulations have met very little opposition shows that they, unlike Prohibition, were based on a thoroughly shared moral understanding.)

Another procedure is *to bring a third value into play when two diverge or clash*. For instance, those who recently tried to restore the Black-Jewish coalition of the 1960s in the US argue that both groups share a commitment to liberal causes. Additionally, attempts to create an interfaith coalition pointed to the shared commitment to fight poverty, as the participants struggled to work out a joint position.¹⁵ Groups that strongly support pro-life public policies and those that strongly support pro-choice ones agreed to work together to improve the care of children, whom both groups cherish.¹⁶

"Culture wars" is a term that was used originally to refer to the conflicts between social conservatives and liberals about issues such as abortion and divorce. More generally, it is used to refer to "a conflict between groups with different ideals, beliefs, [or] philosophies."¹⁷ It implies persistent, unresolved value differences such as those between Protestants and Catholics in earlier eras, Shias and Sunnis, and secular and ultra-Orthodox Jews more recently. One may view culture wars as failed moral dialogues, in part due to higher levels of emotional involvement compared to moral dialogues. However, one should note the findings of an excellent study by the historian Stephen Prothero that shows that, over time, even these dialogues often lead to new SMUs, for instance about same-sex marriages, use of contraception, and divorce.¹⁸ This may even be true about gun control; however, in this realm moral consensus has not yet led to significant changes in voluntary behavior, and the law moved away from the SMU.

Dramatization

So far this analysis of moral dialogues has focused on communications, on members of a community, however small or large, exchanging moral viewpoints, discussing moral issues with one another, reexamining their moral positions, and reaching (often) common ground. One should not ignore, however, that *all* such dialogues also contain acts that serve to dramatize the moral issues under discussion, such as sit-ins, demonstrations, occupying administrative buildings on campuses and at corporations, sit-downs in traffic lanes, and spilling blood on fur coats (by animal rights activists). Court cases such as the Scopes Trial, congressional hearings regarding Joseph McCarthy, and the confirmation hearing of Associate Justice Clarence Thomas also serve to dramatize the issues. If words, deliberations, and communications entail two dimensions, dramatizations are three-dimensional.

These dramatizations serve two main purposes. One is to nurture the dialogues. Following dramatizations, especially those with novel rather than merely routinized elements, one finds a spike in dialogues. For instance, the spike in dialogue cited above was associated with lawmakers in North Carolina passing a law that prevents transgender individuals from using bathrooms that correspond with their gender identity, by requiring individuals to use public bathrooms in alignment with the sex given on their birth certificate, and by the dramatic response of the US Departments of Justice and Education that threatened to deny billions in federal funds to North Carolina and any other state that followed the same course. The importance of dramatization has risen since the advent of TV. Pictures are highly evocative, whereas verbal dialogues rarely lend themselves to dramatic footage. Hence, dramatizations on TV are a particularly effective means to promote moral dialogues, to keep the issues under discussion in the public eye, and to mobilize participation.

Second, dramatizations engage people's emotions, whereas verbal give-and-take relates more to intellectual accountability elements. Dramatization thus helps ensure that people who may be swayed by an argument will also refigure their emotional commitments accordingly.

Closure

To reiterate, even when successful, the change in an SMU encompasses merely a large segment of the people who engaged in these dialogues;

there always remain some who do not change their moral position. Moreover, some moral dialogues fail, for example, between the pro-choice and pro-life groups. Many take off, slow down, and are relaunched before a significant level of SMU is reached (e.g., the dialogue on inequality). However, when these dialogues take off and mature, they change the moral positions of large segments of the populations, often creating new moral majorities.

More importantly, the great significance of SMUs is that they lead to voluntary *changes in behavior—well beyond changes in attitudes*. Thus, people who acknowledge that they have a moral obligation to the environment are much more likely than others to recycle, use recycled paper, bike and walk, buy low-emission cars that use fuel efficiently, support public policies that protect the environment, use solar panels, and so on. True, these behaviors are also affected by changes in economic incentives and legislative acts. However, for reasons next outlined, it makes a very great difference (*a*) if the changes in behavior are mainly voluntary, due to changes in what people consider the right behavior versus mainly due to economic and legal incentives, and (*b*) if the changes in incentives and laws are supported by an SMU or not.

The role of SMUs in affecting behavior rather than just attitudes is of great significance and hence deserves some elaboration. In a very extensive study of what motivates people,¹⁹ a study whose findings were replicated and augmented many times,²⁰ I showed that people can be motivated to engage in pro-social behavior that they would not have engaged in otherwise, in three ways. They can be coerced; motivated by economic incentives or disincentives; or convinced of the moral rightness of changing their behavior. The study shows that people resent being coerced and will try to deviate from forced patterns of behavior whenever they believe they can get away with it. Hence compliance will be costly, unreliable, and far from satisfactory.

People who are paid to behave—read a book, come to class, work, etc.—will be less alienated than those who are coerced, but they will also seek to gain the incentives while giving in return as little as possible because in their view their preferences are not compatible with what they are paid to do.

In sharp contrast, people who find their tasks morally compelling will feel ennobled and highly motivated to complete them well, even if unsupervised. (Those in hybrid situations will act accordingly; e.g., the feelings and behaviors of physicians who are morally compelled to

treat their patients while also receiving financial reward for their service will fall somewhere between those physicians driven only by economic incentives or only by moral principles.)

There are those who hold that each person is out to pursue their self-interest and, famously, that an invisible hand will ensure that as a result, the economy will thrive and all will do well. Whether this is true or not for the economy need not be examined here; however, this certainly does not hold true for society. The problem of social order, as Dennis Wrong put it, is that people need to be motivated to engage in pro-social behavior.²¹ However, no society can provide a sufficient number of police officers, accountants, border patrols, etc. to coerce a satisfactory level of pro-social behavior. Moreover, such enforcement is costly, as the US discovered when it incarcerated people en masse, spending more on prisons than on higher education, trying but failing to curb substance abuse. Last but not least, such enforcement faces the often-cited challenge, Who will guard the guardians? Many enforcement agents are corrupt and engage in antisocial behavior themselves: They shoot unarmed African Americans. They smuggle contraband into prisons. They harass inmates.

In contrast, to the extent that most people do at most times much of what needs to be done—go to work, take care of their family, pay taxes, avoid polluting, and so on—because they view their responsibilities as legitimate and morally compelling, compliance will be high, costs will be low, and inclination to rebel, minimal. An interesting example is tax compliance. It has been shown that if people believe that taxes are fair and legitimately used, they pay more of the taxes owed.²²

When SMUs are formed, they enable a society to limit coercive enforcement and rely much more on self-regulation. For example, when public smoking bans were enacted, they caused little opposition and resulted in general compliance because they followed public education (especially on secondhand smoke risks) and moral dialogues.²³ On the other hand, Prohibition failed miserably because public consensus on the issue was lacking; the law was not backed up by a shared moral understanding.²⁴

Although, as we have just seen, the main benefit of new SMUs (or the reworking of an old, obsolete one) is an increase in voluntary adherence to the social norms that define pro-social behavior, SMUs also lead to new *laws and regulations* or to changes in them. That is, the new SMUs tend to become legally embedded and reinforced. This is the case because (a) many social functions cannot rely only on moral persuasion and vol-

untary compliance (or economic incentives); and (b) even if only a relatively small number of people ignore social norms, their conduct can unravel voluntary compliance in the larger population over time because law-abiding citizens would feel like “suckers” who are taken advantage of and treated unfairly. Thus, if a growing number of people speed or park illegally with impunity, more and more will follow. Hence, mature SMUs should not only be expressed in changes in voluntary behavior but also should be embedded in laws. Thus, the rise in the SMU that we have a stewardship over the environment led to the formation of the EPA and scores of laws limiting pollution. The rise in the SMU that African Americans were treated unfairly led to Affirmative Action, the formation of the Equal Employment Opportunity Plan (EEO), and court cases banning several forms of segregation, among other such moves.

Those who tend to favor enacting moral changes should note that in many cases *gaining a new SMU precedes the enactment of laws* that express and undergird the values agreed upon. Dialogue about women’s rights advanced before Title IX became the law of the land. The same is true about gay rights before the Supreme Court ruling that made same-sex marriage legal across the country, and before legal segregation was struck down.

A Case Study: Dialogues about Same-Sex Marriages

Baseline

The moral dialogue about same-sex marriages is a subset of a much more encompassing moral dialogue on homosexuality, a dialogue not here examined. In 1970, no US state allowed same-sex marriages. Even civil unions for same-sex couples did not exist as an alternative. According to the Supreme Court, it was not even a substantial federal question (implying that same-sex marriage was not something to be considered), a statement the Court made in 1972 when refusing to hear a case on the issue. Over a decade later, in 1986, as a result of the Supreme Court’s decision in *Bowers v. Hardwick*, states maintained their ability to criminalize gay sexual relations.²⁵ In 1996, the Defense of Marriage Act (DOMA) was passed with 79 percent approval in the House²⁶ and 85 percent approval in the Senate,²⁷ which declared that for federal purposes, marriage was between one man and one woman.²⁸ It was signed by President Clinton, whose statement on DOMA declared, “I have long opposed governmental recognition of same-gender marriages and this

legislation is consistent with that position.”²⁹ In terms of public opinion, a 1996 Gallup poll found that 68 percent of respondents thought same-sex marriage should not be valid.³⁰ Data from the Pew Research Center taken from the same year show a similar figure of 65 percent.³¹

Sociological Dialogue Starters

There were several “historical starters,” such as the 1993 case in which the Hawaii Supreme Court suggested that it may be unconstitutional to reject same-sex marriage.³² However, this prompted a backlash, and “by 2001, thirty-five states had passed laws limiting marriage to a union of one man and one woman [including Hawaii].”³³ One should not mistake this legislation as a reflection of a new SMU; rather, it was a codification of the status quo, which had previously been seen as unnecessary. Vermont’s recognition of same-sex civil unions in 2000 can be viewed as a “sociological starter,” though it provided an alternative to same-sex marriage rather than a redefinition of marriage.

A takeoff point was reached in 2004, when Massachusetts became the first state to legalize gay marriage.³⁴ As such, because of the DOMA provision denying federal benefits to same-sex couples, it put state and federal law at odds.³⁵ The decision in Massachusetts prompted a backlash of state constitutional amendments banning same-sex marriage.³⁶ California voted for Proposition 8 in 2008, which banned same-sex marriage in the state. But “advocates could show the nation that allowing gay and lesbian couples to marry had no negative consequences.”³⁷

Billion-Hour Buzz

The legalization of same-sex marriage by Massachusetts in 2004, with the media portraying happy gay and lesbian newlyweds, helped trigger a national debate on the subject. In 2004, 2005, and 2006, proposed amendments to the Massachusetts state constitution were discussed at what were called constitutional conventions: “Each convention generated extensive local and national media coverage, and drew large crowds of demonstrators on both sides.” Ultimately no amendments were made, and same-sex marriage remained legal.³⁸

During this time, marriage equality remained a salient issue across the country. In order to gauge where the public stood after the Proposition 8 vote in California, there were focus groups, roundtables, and thirty groups created a survey together.³⁹

In Maine, same-sex marriage was legalized in 2008, repealed by voters in 2009, and then was supported on a ballot measure in 2012. To prepare for the 2012 referendum, a new type of canvassing was introduced, one that involved “in-depth conversations, in which the canvasser asked open-ended questions designed to invite respondents to share their experiences.” More than 200,000 such conversations took place, and it is estimated that these conversations changed the stance of 12,500 Maine voters.⁴⁰ One of the televised political ads in Maine at the time closed with the statement: “This isn’t about politics. It’s about family and how we as people treat one another.”⁴¹

Television played a key role in moral dialogues on marriage equality. The portrayal of gay and lesbian characters in the media has increased,⁴² and there is evidence that this had an impact on public opinion: “According to a 2012 *Hollywood Reporter* poll, 27% of people who had changed their minds about gay marriage from anti- to pro- in the last decade said that they made their decision after watching gay characters on shows like *Modern Family* and *Glee*.”⁴³

When President Obama came out in support of same-sex marriage in 2012, it had a significant impact on the amount of conversation taking place.⁴⁴ On blogs there was more than a 60 percent increase in statements on same-sex marriage after Obama’s announcement, and the percentage was even greater on Twitter: “For the week of May 7–11 [2012], Obama’s comment on May 9 in favor of same-sex marriage was the No. 1 topic on blogs and the No. 3 subject on Twitter.”⁴⁵ Furthermore, “there have been nine previous weeks [since 2009] when the subject [same-sex marriage] was among the most discussed on blogs or Twitter.”⁴⁶

In 2013, the Human Rights Campaign (HRC) introduced an image of a pink equal sign against a red backdrop in support of marriage equality as part of a social media campaign in connection with the Supreme Court’s consideration of *Hollingsworth v. Perry* and *United States v. Windsor*, two cases that had implications for marriage equality. The logo went viral, with many people replacing their Facebook profile picture with one that included it, prompting news headlines such as “How the Red Equal Sign Took over Facebook.”⁴⁷ HRC provides the following description of the phenomenon of the red logo: “The red marriage equality logo first appeared on HRC’s Facebook page at 2 p.m. on March 25, 2013. Within 24 hours, HRC’s Facebook post to encourage digital activists to change their social media profile pictures to a red and pink version of

its ubiquitous logo received 189,177 shares, 95,725 likes, appeared over 18 million times in Newsfeeds, created upwards of 10 million impressions worldwide, and inspired countless memes. Facebook recorded a 120 percent increase in profile photo updates, and they deemed the effort the most successful campaign in their history.⁴⁸ Pew Research Center did a study of news coverage both leading up to and during the Supreme Court hearings; the study looked at five hundred stories about marriage equality during an eight-week time frame, concluding that the coverage indicated “strong momentum for same-sex marriage.”⁴⁹ Although this number is by no means inclusive of every relevant news story during the selected time frame, it illustrates the extent to which marriage equality was being discussed. Pew also noted that the “Gay Voices” microsite of the *Huffington Post* “produced so much coverage that it was examined separately from the rest of the news media.”⁵⁰

Dramatization

The movement for same-sex marriage used court cases to dramatize the issues at the heart of the moral dialogue and drew on protests to engage public attention. For example, after the Proposition 8 vote, protests were widespread in California,⁵¹ which kept the issue in the media. At the Sacramento Capitol, 2,500 protesters gathered, and other large protests occurred outside of religious institutions that had supported the measure to ban same-sex marriage.⁵² Same-sex marriage was also promoted in pride parades in many cities. In 2013, DOMA was ruled unconstitutional by the Supreme Court decision in *United States v. Windsor*,⁵³ which furthered the momentum of the same-sex marriage movement.

Closure

In June 2015, the US Supreme Court decision in *Obergefell v. Hodges* recognized a constitutional right to same-sex marriage.⁵⁴ It applies to all fifty states, though some states still have laws banning same-sex marriage and now seek to obstruct it in other ways. A month prior to the decision, a Gallup poll showed that 60 percent of respondents thought same-sex marriage should be legal.⁵⁵ The tide had turned, and Justice Anthony Kennedy recognized that Americans had reached a new SMU. He wrote that “new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.”⁵⁶

Community Building and Power Structures

When moral dialogues mature, they become a major source of community building and nurturing. Communities are not merely places where people bond and have affection for one another. They are also places where people have a shared moral culture and shared values from which specific norms are derived. However, moral cultures are continually challenged by technological, economic, and international developments, among others. To respond to these challenges, moral cultures draw on moral dialogues. The dialogues either shore up or revise the core values needed to keep various contending factions from eroding communal bonds and the core of shared values.

Social scientists and social philosophers have long worried that the social transformation accompanying the Industrial Revolution—when most people moved from the tightly knit communal life of villages into cities with “atomized” affiliations—caused the loss of essential social moorings. This thesis is often referred to as a shift from *Gemeinschaft* (community) to *Gesellschaft* (society).⁵⁷ True, we have since learned that communities can be found in industrial societies, for instance in such ethnic neighborhoods as Chinatown, Spanish Harlem, Greenwich Village, and in the gated complexes in which many millions of Americans live.⁵⁸ However, there is still considerable evidence that a large number of people lack the social bonds essential for their flourishing—hence the call for rebuilding communities in which moral dialogues play a major reconstructive role.

Major liberal scholars hold that each person should define the good and that the state should be morally neutral. Hence some have suggested that the state should stop issuing marriage licenses altogether and leave the various religions’ functionaries and civic bodies to determine what marriage is. Moreover, liberals feared that even if the state remains morally neutral, as long as the society forms strong SMUs, these will be embedded in laws.⁵⁹

In contrast, communitarians point out that social order requires a core of shared values. Some of the reasons have already been cited, such as the need for social order to rest on voluntary compliance. Further, various factions with rival interests and values need to form shared public policies as well as procedures to resolve differences so that disagreements do not spin into unresolved standoffs and violence. Devel-

oping SMUs is the process that can keep these essential core values intact or allow them to adapt rather than unravel in times of change.

I refer to a set of “core” values because the difference between core and other values is crucial for several reasons. First, much attention has been paid in recent years to the polarization of American politics, reflected in more and more people identifying themselves with either a conservative or a liberal position and fewer and fewer as somewhere in the middle—as well as a growing adamancy in the positions held by both camps. Polarization is viewed as a key reason the government is in gridlock and held in low regard by the overwhelming majority of the American people. From a communitarian viewpoint, the main question is whether the polarization concerns secondary values—and hence differences can be settled by appealing to core values—or is holistic, leading to irreconcilable differences. If the breakdown of moral consensus is holistic, moral dialogues will either fail to lead to SMUs, or they will restore the needed consensus by leading to the formation of a new core of shared values.

Relativism?

The term “moral” implies that one approves whatever is so judged. However, there is no a priori reason to hold that just because the overwhelming majority of the people of a given community come to an SMU, the content of this understanding will be in line with what a particular person will consider moral. For example, the majority of Americans used to hold that “separate but equal” was a fair SMU (reflected in the 1896 Supreme Court decision *Plessy v. Ferguson*). Another example is the Defense of Marriage Act, which held that for the purposes of federal law, marriage is between a man and a woman, as well as gave states the right to decide whether or not to recognize same-sex marriages that had taken place outside their jurisdiction. Many will not find these SMUs to be moral.

In short, moral dialogues are just that—dialogues about what the majority considers moral—not what is moral by some ethical theory or anyone’s standards. One must hence keep in mind that whatever SMU a community or society or transnational body might reach—which might have all the functional merits I discussed earlier, such as making society more peaceful, functional, and effective—that SMU may nevertheless be immoral by your or my standards, or those of the Bible, Kant, Rawls,

utilitarianism, Aristotelianism, or virtue ethics. Those troubled by the substance of any SMU are hence called upon to continue to reexamine it and, if found objectionable, to work to change it through moral dialogues.⁶⁰

The Need for a New Dialogue

The reason that members of the patriotic movement now need to engage in major national dialogues on the core values that should guide the nation is that the prevailing polarization cuts much deeper than political disagreements. Many democracies have lost a shared understanding of the basic values that serve to contain conflicts and provide a foundation for forming shared directions for public policies and allocation of resources. There is no going back to the old consensus, which was biased against women and minorities. A new consensus needs to be formed from the ground up.

The patriotic movement will have to find its way through all the steps other movements did: it needs to form a brief (to which this book seeks to contribute); insert it into local dialogues and launch megalogues; find ways to dramatize its cause; and ensconce the new shared understanding yet to arise into laws and public policy.

COMMUNITIES ARE ESSENTIAL BUT SUSPECT BUILDING BLOCKS

The Me Needs the We to Be

The dominant ideologies in the West are individualistic. Libertarians, who have a much larger following than the number of people who vote for libertarian candidates for public office would suggest, see the world as composed of individuals acting as free, autonomous agents. As they see it, the aggregation of their votes guides the polity just as the aggregation of their purchases guides the economy. In their judgment, any intervention in their preferences is suspect and should be minimized. *Laissez-faire* conservatives hold similar viewpoints. The government that governs least governs best. Liberals are much more attuned to social factors, yet to the extent that they are preoccupied with human and individual rights, they too are individual-centered.

However, as communitarians like me have shown, individuals—at least the kind who can be reasonable and responsible citizens—are the product of communities and need communities to ensure their stability and flourishing. As I once put it, in a popular vein: The Me needs the We to Be. The patriotic movement will have to take note that the erosion of community is a major factor that drives populism, which in turn undermines both democracy and social stability. As Yoram Hazony put it, “National cohesion is the secret ingredient that allows free institutions to exist, the bedrock on which a functioning democracy is built.”²¹ Hence this movement will have to make shoring up communities a key element of its agenda.

The idea of community evokes various responses—including hope, a sense of connectedness, fear, and cynicism. This variety is understandable; community is a complex, variegated concept. Communities can be morally uplifting or highly troubling, because they can promote rather different values. Gangs are communities. So are the chapters of the KKK. It is best to think about communities (and the social bonds they entail)

as pipelines: the stronger the bonds, the more social “business” the community can carry. However, what flows in these pipes, the content of the values the social bonds help introduce and enforce, can vary a great deal. We shall see that a new core of national values is what is now called for. We do not just need to shore up communal bonds; we need also to ensure that they support the appropriate values.

Social movements typically form new communities. There was no working class before socialism. There were workers, to be sure, but they had no sense of shared communal bonds, values, agenda, and future before Fabian socialists and Marx. There were no environmentalist communities before Rachel Carson. Now people from various social groups need to come together to form new communities, to provide the social base for the patriotic movement.

There is a widely held belief that if people of different backgrounds meet, they will listen to each other and form new bridges. (A whole school of sociology at the University of Chicago was based on this assumption.)² Such meetings, however, often reinforce rather than transform their participants’ prejudices, including about each other. A study found that Republicans and Democrats formed even more conservative or liberal views, respectively, after being exposed to messages from elected officials, thought leaders, and think tanks from the opposing party on Twitter.³ When people meet as partisans, framing their encounter with each other in terms of their party identifications, they tend to fit new facts into their old gestalts by interpreting the facts to suit their predispositions.⁴ Hence the importance for the patriotic movement to fashion new meeting grounds that encourage people to draw on other identifications they have—we all have multiple identities—and be more inclined to form new gestalts.

For instance, if people meet at firehouses as firefighters or emergency medical services (EMS) providers rather than as Democrats or Republicans, they will tend to leave behind their political preconceptions and work together for a common cause. (Of the 1.2 million registered fire department personnel in the US, approximately 865,000 are volunteer workers, and 195,000 are classified as “mostly volunteer” workers.)⁵ These meeting grounds serve as a good example of places in which one can find or develop the kind of leaders and founding members the patriotic movement needs to take off and grow.

Many veterans are similarly well suited to launch patriotic chapters

because many of them are accustomed to and comfortable with speaking in terms of service to the nation. Historically, veterans groups in the US have been associated with conservative causes, and liberals often have ceded patriotism to the Right. Richard Rorty called the American Left “unpatriotic,” claiming: “It refuses to rejoice in the country it inhabits. It repudiates the idea of a national identity, and the emotion of national pride.”⁶ However, just as liberals have learned not to cede family to the Right (but to redefine it), liberals now need to reembrace patriotism (and help ensure it does not turn into xenophobia and jingoism). Veterans should join with others to refurbish the national bonds that can contain and curtail polarization and enable the democratic polity to function again. One may view the fact that many of the most successful Democratic candidates in the 2018 election primaries were veterans as a sign that this approach has political legs.

Political Implications

To proceed, the patriotic movement needs to develop a political strategy that puts on one side the people, the public, the 99 percent; and on the other side the small elites, those with deep pockets, the special interest groups, the 1 percent. It differs from strategies that seek to build coalitions based on color or gender or age, or some combination of these, strategies that, by definition, leave out one or more major segments of the population. The patriotic movement should view all Americans as potential allies and not a priori write off anybody. This strategy does not prevent anyone from pursuing identity-specific agendas, but they should follow those through other associations. Just as the environmental movement does not deal with women’s right to choose or absorb the missions of the ACLU, the patriotic movement should focus on issues directly tied to its missions and that speak potentially to most if not all members of society.

A Preliminary Platform

The patriotic movement’s platform must rise from a national moral dialogue—and cannot, and should not, be forged by some public intellectual or a handful of them. I can imagine that such a platform would include the following:

The Patriotic Movement: A Platform

The Patriotic Movement is seeking to promote national unity and the common good.

As patriots, we love our country. We are not blind to its flaws but refuse to allow these to define who we are, as we dedicate ourselves to work for a “more perfect union.”

We strongly favor candidates for public office who are committed to supporting the common good while they advocate for the special needs and interests of the various constituents or social groups they represent or speak for.

We are troubled by the polarization that prevents effective government. We hence strongly favor candidates for public office who do not consider working with the other party a betrayal, who do not demonize their opponents, and who compete fairly.

We strongly favor candidates who are seeking campaign finance reforms that limit the role of private money in public hands.

We are keen to protect our national sovereignty. We support multilateral and international institutions but only to the extent their policies do not harm my country’s interests and do not violate its values.

(I use the phrase “strongly favor” to indicate that I realize that the extent to which a candidate is patriotic cannot be the only factor determining one’s support. However, it should be a very major consideration.)

The Patriotic Movement is out to promote:

- A year of *national service* for all Americans. Initially, enrollment will be voluntary but encouraged by colleges and employers according special recognition to those who served, akin—but not equivalent—to the recognition awarded to veterans.
- *Teaching civics* in all public and private schools. These classes should be dedicated to introducing the next generation to the values we all share and the nation we cherish.
- *Welcome English*. Finding volunteers to teach new immigrants English. In the process volunteers would learn to know the immigrants personally, introduce immigrants to the values of their new homeland, and, in turn, learn about the contributions immigrants can make to the community.

- Conducting *local and national moral dialogues* on defining the common good and ways to advance it.

One may well ask, What is the position of the patriotic movement on inequality, the wars in the Middle East, and many other issues? Some of the answers can be derived from the principles already laid out; others will arise out of moral dialogues. However, one should not expect the patriotic movement to have a position on all issues. Thus one may draw on another organization if one is keen to promote animal rights or oppose gentrification and so on.

I further can imagine people creating a lapel pin composed of their nation's flag and a "P" imposed on it, an image they would carry as well on the cover of their laptops, notebooks, and T-shirts.

Patriotic Projects

Naturally, to a significant extent, the initial efforts of the patriotic movement will be focused, like other movements before it, on mobilizing support, finding members, and forming local chapters. At the same time, the movement will need to launch and nurture moral dialogues to develop its platform beyond the elementary planks outlined above that flow from the essence of the movement's nation-building purpose. The patriotic movement will be well served if it adds activities or projects for its members to engage in, above and beyond the "normal" ones of forming positions and promoting them through the political process through voting and lobbying.

One major candidate for such projects is to find volunteers to teach English to immigrant adults, many of whom experience great difficulties when they seek to find such classes. The greater the number of immigrants who learn English, and the more quickly they do so, the more they will find their way into society, and the easier it will be for current members of society to learn to know them. Moreover, the volunteers would "automatically" share American norms with their immigrant students. And the volunteers' personal relations with the immigrants would help the volunteers to see the immigrants as humans rather than viewing them in terms of the labels "foreign born" and "undocumented immigrants."

The same may be said about mentoring. Mentorship programs exist in many forms. Some of the most common include community members mentoring at-risk youth by providing educational support and life

coaching, often through a structured program such as Big Brothers Big Sisters; university-level mentorship, where academic or professionals provide guidance and support for undergraduate or graduate students studying in the same field; peer-to-peer mentorships, where youth separated by only a few years cultivate a mentor-mentee relationship; sports mentorships, where an adult volunteers time and energy to coach youth and foster relationships with team members; and professional mentorships, where a mentor teaches a protégé the trade.

Studies consistently show that students in mentorship programs have fewer unexcused absences than students who are not in mentorship programs, have better attitudes toward school and education, and demonstrate a greater investment in their studies.⁷ Undergraduate students receiving mentorship typically demonstrate higher educational attainment and are more likely to return to school the subsequent year.⁸ Students in mentorship programs are less likely to abuse drugs and alcohol than their nonmentored peers.⁹ Further, individuals who are career mentors are found to be more satisfied by their job, more committed to the organization, and have higher perceived career success than those who are not mentors.¹⁰

Civic Education: Essential but Woefully Inadequate

An important way to promote patriotism is to include it in the curriculum of school education on all levels, in a form of enriched, “thicker” civics education. True, civics education of any kind has never been paramount in the US. And it has been on the decline since the early 2000s, as growing pressure by parents and policy makers to teach “academics” has resulted in schools devoting more educational resources to math and sciences and cutting civics classes.¹¹ Currently, only nine states and the District of Columbia require a year of “government” or civics, while thirty-one require simply a half year of either.¹² Moreover, “many of the failures in civic education seem to originate from a disagreement regarding what a civics education should include.”¹³

Further, many states focus on knowledge acquisition such as explaining the differences among the three branches of government, how bills become laws, and so on.¹⁴ However, civics education typically does not teach students how to be a responsible citizen, to care about the common good, and to embrace the core values of the nation. Yascha Mounk holds that civics education should take a historical long view of both liberal

democracy's successes as well as its injustices, writing, "One integral part of this education should be an account of the reasons why the principles of liberal democracy retain a special appeal."¹⁵

A still thicker conception is called for. Thick civic education should include the kinds of communitarian ideas that have long played a key role in the American faith, although at various periods have been neglected. E. J. Dionne Jr. sees American history as an "ongoing tension between two core values: our love of individualism and our reverence for community."¹⁶ Dionne finds that all Americans hold these values to varying degrees and that what is now needed is a balance that accepts commitment to both individualism and community.¹⁷ Indeed, communitarians have shown that the US tilted too far toward individualism following the Reagan era (and the Thatcher era in the UK), and hence the age requires a rededication to communal values.¹⁸

For all these reasons, the patriotic movement should promote the teaching of civics in all levels of school and college.

National Service: Voluntary and "Expected" for Now

Among the major efforts that can be undertaken to shore up the national community, national service is often mentioned. Its advocates hope that it will bring together people from different backgrounds and instill in them the value of service to the common good.¹⁹ It is mandatory in some liberal democracies (such as Denmark and South Korea) and has strong supporters in countries where it is not.

Retired US Army general Stanley McChrystal supports a voluntary but socially expected "service year" where "young Americans from different income levels, races, ethnicities, political affiliations and religious beliefs could learn to work together to get things done."²⁰ Brookings Institution scholar Isabel V. Sawhill favors a universal national service that may not be mandatory but is socially encouraged. Sawhill says national service has strong bipartisan support: Republicans regard it as an obligation or responsibility of citizenship, and Democrats see the value in youth earning work experience.²¹

Having served myself, I have never doubted the merits of national service, both in terms of forming social bonds among people of different backgrounds and promoting patriotism. However, I was concerned about the high costs involved, and I feared that unless meaningful tasks could be found for those who serve, national service would not bring

about an enhanced level of patriotism. However, Isabel Sawhill came up with an ingenious proposal, namely that those who serve be hosted in homes of people who volunteer to take care of them, the way many families do for foreign students. And having observed the Zivildienst in Germany, I have concluded that it is possible to make national service meaningful. I still hold that it would be best to start by making such service expected rather than mandatory, for instance, by asking applicants for work and candidates for public office if they had served. The patriotic movement should encourage its members—and all others—to serve and host, and treat those who served with the respect now accorded to veterans of just wars.

These are but a few examples of projects that patriotic movement members can undertake to combat growing polarization. They all create continual and meaningful relations among people from different backgrounds and engage in pro social activities.

Patriotism Meets Globalism

The patriotic movement will find itself challenged, opposed, and confronted by globalism. Given that this is a relatively new concept and often loosely defined, a few lines follow on what it entails. Globalism approaches issues from a postnational perspective, imagining or fighting for a world in which national values and bonds and hence borders matter much less than they mattered in earlier years. Indeed, some advocates of globalism call for overriding national loyalties altogether. A dictionary defines globalism as “the attitude or policy of placing the interests of the entire world above those of individual nations.”²² Greg Ip of the *Wall Street Journal* writes that globalism is a “mind-set that globalization is natural and good, that global governance should expand as national sovereignty contracts.”²³

A major globalist tenet is support of free trade policies that allow goods and services to flow across countries without regard for state borders. Another calls for open borders, allowing people to move freely from one nation to another. Still another promotes universal advancement of human rights. To the extent that human rights advocacy is not combined with a recognition of moral commitments to one’s local and national community, this is an exemplary globalist position. Many public intellectuals, policy makers, and hundreds of millions of citizens subscribe to one or two of these positions but not necessarily to all of

them. Globalists may be defined as those who subscribe to several of these positions.²⁴

Anand Giridharadas points out that globalist ideology allowed corporations to pursue “a vision of globalization in which they owed nothing to any community.” The ability to tap into global markets resulted in companies no longer acting with a sense of citizenship or loyalty to the nations in which they started. These corporations skirt the responsibility of serving the community that made them possible by moving their business across the globe to the location that allows them to maximize profits.²⁵ Dani Rodrik points out: “The reality is that we lack the domestic and global strategies to manage globalization’s disruptions. As a result, we run the risk that the social costs will outweigh the narrow economic gains and spark an even worse globalization backlash.”²⁶

Globalists can draw on the works of some very highly respected and influential philosophers and public leaders. They can draw on Immanuel Kant, who hoped that eventually all states could order their politics on these principles and form a global political community. On Woodrow Wilson, who sought a world governed like a federal state.²⁷ And on Peter Singer, who suggests that the utilitarian maxim to seek the greatest happiness for the greatest number of people entails that we owe as much to children on the other side of the world as we owe to our own.

Globalists typically hold at least one of the following three positions: support for free trade; open or more-open borders; and recognition of universal human rights.

Free trade: Milton Friedman, a leading figure of the Chicago school of economics, exemplified globalist trade policy by asserting that “since Adam Smith there has been virtual unanimity among economists, whatever their ideological position on other issues, that international free trade is in the best interests of trading countries and of the world.”²⁸ Think tanks such as the Adam Smith Institute in London explicitly state that they are “Globalist in outlook”²⁹ as they advance “free markets to create a richer, freer, happier world.”³⁰

Open borders: Several noted academics have proposed that state borders are inherently unjust and that people should be allowed to move more freely across them. The libertarian scholar Alex Tabarrok made a case for open borders to allow for the free movement of people on economic and moral grounds.³¹ Joseph Carens has argued that borders should “generally be open” as there is a moral imperative to allow people

from developing states to freely move to more developed states to gain access to a higher quality of life.³² Jacob Hornberger writes, “Freedom entails the right to live your life any way you want, so long as your conduct is peaceful.” Thus, “There is only one libertarian position on immigration, and that position is open immigration or open borders.”³³

Universal human rights: Organizations such as Human Rights Watch and Amnesty International give primacy to international human rights and humanitarian law over the laws of any particular state. Members of these organizations work to hold state officials and citizens to international law irrespective of whether a given country is a signatory to relevant human rights treaties.

Samuel Huntington coined the term “Davos Men” to describe globalist elites who “have little need for national loyalty, view national boundaries as obstacles that thankfully are vanishing, and see national governments as residues from the past whose only useful function is to facilitate the elite’s global operations.”³⁴ Jonathan Haidt proposes that the song “Imagine” by John Lennon serve as the anthem of globalists. Speaking of “Imagine,” Haidt quips: “It is progressive in that it looks forward to a utopian future. It is anti-nationalist and anti-religious. It is, in essence, *anti-parochial*. Anything that divides people into separate groups or identities is bad; removing borders and divisions is good.”³⁵ As globalist sentiments grow, “local ties weaken, parochialism becomes a dirty word, and people begin to think of their fellow human beings as fellow ‘citizens of the world’ (to quote candidate Barack Obama in Berlin in 2008).”³⁶ Theresa May may not be an outstanding prime minister, but she put it well when she stated: “Too many people in positions of power behave as though they have more in common with international elites than with the people down the road, the people they employ, the people they pass in the street. But if you believe you’re a citizen of the world, you’re a citizen of nowhere. You don’t understand what the very word ‘citizenship’ means.”³⁷

Many who hold one or more globalist positions are willing to allow some qualifications, for instance, exempting farmers from free trade. Martha Nussbaum writes that the Stoics held that “we should give our first allegiance to no mere form of government, no temporal power, but to the moral community made up by the humanity of all human beings.”³⁸ At the same time, she argues that while it is “permissible” to be concerned with local and national issues, being global is the best way to

advance national goals. Nussbaum argues that nations should develop education systems that give special attention to the history and current affairs of their own country but teach children that—above all else—they are citizens of the world.³⁹

Yuval Noah Harari thinks people are able to maintain nested loyalties, wherein loyalty to the global community does not diminish one's loyalty to the nation, community, or family.⁴⁰ As I see it, national and global commitments often come into conflict, for instance when international law and national laws point to different conclusions, and when people must choose between foreign aid and aid to the domestic poor. Harari commented: "In order to confront climate change, we need additional loyalties and commitments to a level beyond the nation. And that should not be impossible, because people can have several layers of loyalty. You can be loyal to your family and to your community and to your nation, so why can't you also be loyal to humankind as a whole? Of course, there are occasions when it becomes difficult, what to put first, but, you know, life is difficult. Handle it."⁴¹ This flippant line ignores that there are major conflicts between the national level and the global one and that in order to combine them one needs difficult and complex deliberations on how to proceed. For instance, when national laws should take international laws into account and when to ignore or even flout them. Moreover, no one has yet found a way to develop loyalty for the global community akin to the loyalty many hundreds of millions of people feel for their nation.

Globalists tend to view nationalism as a dangerous anachronism. For instance, Jamie Mayerfeld argues that nationalism has the pernicious potential to transpose the darkest parts of human nature onto an extremely powerful entity and that those who identify with it often fail to perceive the violence they perpetrate: "Nationalism is dangerous because it encourages the unjust use of violence. The perpetrators may not see themselves as using violence unjustly. This is not a consolation, however; it is the heart of the problem. When we identify closely with the nation, we are predisposed to see it in a good light, and therefore have difficulty perceiving the injustice it commits."⁴²

These globalist views fly in the face of often-cited communitarian studies that show that:

(a) Isolated individuals exhibit major psychological problems. James House, Karl Landis, and Debra Umberson, for instance, found that "more

socially isolated or less socially integrated individuals are less healthy, psychologically and physically, and more likely to die.”⁴³ John Cacioppo and Louise Hawkey demonstrated that perceived social isolation engenders a ripple of health risks, including depleted ability to cope with stressors, poor sleep, slower healing, hypertension, and so on.⁴⁴ The same researchers in a later review of the literature concluded that “loneliness is the social equivalent of physical pain, hunger, and thirst.”⁴⁵ With the literature showing the serious health risks associated with social isolation, the UK has even decided to appoint a minister of loneliness.

(b) People are much more content in meaningful, lasting relationships than in isolation. A study across seventeen countries showed that married people, for example, report significantly higher levels of happiness than unmarried people.⁴⁶

(c) People cut off from their social moorings are more likely to turn to hostile demagogues for meaning in a society that they believe has alienated them. Sociologists and critical theorists, including the proponents of “mass society theory” in the mid-twentieth century who built on earlier work by Émile Durkheim, have long held that an atomized citizenry of isolated individuals is more easily mobilized by extremist leaders.⁴⁷ Social media allows charismatic leaders to reach directly to the masses, whereas in the past such communications were largely mediated via the press and local leaders. The individual who is able to deliberate and make considered choices—the basis of both the democratic polity and free market economics—is found among people who feel emotionally secure. That is, if liberalism is to endure, people who have developed communitarian bonds are much more likely to have the temperament that demands than are those who lack such involvement. (Recall that we are dealing with a continuous variable. The reference is not to people who have versus those who do not have communitarian bonds, but to people who have more or less of such support.) In short, a liberal society assumes a communitarian foundation.

Many rest here. However, communitarian bonds provide people with much more:

(d) A core of shared values promoted by informal, noncoercive means. In other words, communities enable people to regulate each other and sort out a great deal of social business without recourse to the power of the state. Bans on smoking in select public places in recent decades, for instance, have resulted in very widespread compliance without the

coercion of law enforcement.⁴⁸ The stronger the communitarian bonds, the less need for policing.⁴⁹ True, the bonds can become oppressive when they grow too strong; however, this is hardly the case in societies in which populism thrives. (Amy Gutmann has charged that communitarians want Salem but without witches, suggesting that bonds ipso facto go with oppression.⁵⁰ My answer up to a point is that firm social bonds minimize coercion, but like many other good things, they can become overpowering.)

(e) Nationalism is not dead or dying. On the contrary. Attempts to form more encompassing communities, like the European Union, are halting. For now at least, in many societies, especially in developed ones, the nation is a very powerful community, as evidenced by citizens' willingness to die to protect it. In an informal survey asking which layer of society people feel most connected to, David Brooks found only 5 percent of respondents felt most connected to humanity as a whole.⁵¹ The French philosopher Ernest Renan elucidated the virtue of nationalism by describing the "essential conditions of being a people: having common glories in the past and a will to continue them in the present; having made great things together and wishing to make them again. One loves in proportion to the sacrifices that one has committed and the troubles that one has suffered."⁵² I return below to the matter of how thick a community needs to be to counter centrifugal forces and what this entails.

(f) Globalists tend to vastly overestimate the capacity of deliberate social change. They, in effect, hold that even if it is true that people are keen to maintain their identity communities and sense of nationalism, these positions can be reformed through public policies. Hence the notion that the US could construct a liberal society in places such as Iraq and Afghanistan; promote human rights and democratic regimes in scores of other countries; and the thesis that free trade will bring with it a growing commitment to a liberal world order. The failure of these policies in the Middle East and Africa is obvious. The EU is losing support precisely because its commissioners assume that they can centralize decision-making in the EU capital and overcome national sentiments that oppose such changes. Actually the record shows that deliberate social change (i.e., social engineering) is very difficult even within one's own nation, as we see from the great difficulties of dealing with drug abuse, reducing inequality, curbing global warming, among other issues.

Far from preparing the ground for liberal regimes, attempts to overcome nationalism actually feed populism. Realistic responses to populism must accept identity communities and nations as given and seek to effect the values they embrace rather than ignore or seek to minimize these major sources of communitarian bonds.

Among the recent studies of the essential role of communitarian bonds, Amy Chua's *Political Tribes* stands out.⁵³ It is mostly dedicated to showing the high costs of public policies that ignore communities both overseas and within the US. Failing to understand, for instance, the tribal lines extant in Vietnam led American strategists to misjudge the contours of the conflict and to attempt to implement doomed-to-fail pro-capitalist reforms: "The group identity America offered the Vietnamese was membership in a puppet state—the ultimate affront in a country where many Vietnamese soldiers wore trinkets dedicated to the Trung sisters, symbolizing resistance to foreign invaders at all costs."⁵⁴

More recently, Chua shows, American policy makers' poor understanding of the web of tribes in Iraqi society led to historic blunders in the region, especially following the 2003 invasion: "The Shias had a collective ax to grind, and the Sunni minority had every reason to resist and fear majority rule. Yet most of America's foreign policy makers, politicians, and thought leaders seemed to think that the Sunni-Shia divide was no big deal, repeatedly minimizing its significance."⁵⁵

In contrast, Francis Fukuyama, in his *Identity: The Demand for Dignity and the Politics of Resentment* (2018), sees the loss of community as the source of much that ails us. People, he holds, have a profound need for recognition and respect (to which he gives a Greek name, *thymos*, defined by Fukuyama as "the seat of judgments of worth"). *Thymos* in turn is based on one's sense of identity and community. As we have lost these, we have been beset by alienation, populism, Brexit, and Trump.

Communitarian Bonds Are Primordial, but Differ Greatly in Their Normative Content

To reiterate, communitarian bonds are a force of nature; they can be reshaped to some extent, but when they are ignored or attempts are made to eradicate them (as globalists are prone to do), such moves engender backlash, often in the form of populism.

If one grants that communities—on both the national and sub-

national levels—will continue to be a major source of essential communitarian bonds, it does not follow that we should ignore their illiberal tendencies. To cope with these tendencies, an essential distinction is needed. Communities have some built-in, hard-wired attributes that are widely considered negative from a normative viewpoint. The most important is that, by definition, they are exclusionary. Communities divide members from nonmembers and exclude the latter. Indeed, there is no community that opens its membership to one and all and sets no limits on its numbers. To seek elimination of communal boundaries entails elimination of communities per se. In short, borders must be tolerated.

In sharp contrast, one can seek to ensure that the bases for membership will not be discrimination against people who differ in color, religious or sexual orientation, and other such protected statuses. Communities can insist that all members' homes adhere to a given building style, respect resting periods, and thousands of other such considerations (as long as they do not serve as an indirect way to discriminate along the banned lines).

In effect, much of American national history, over the longer run, has moved in the direction of making the nation less illiberal. Thus, voting rights were first extended to non-property owners, then to women, then to African Americans, and to younger people. The civil rights movement has a long way to go to achieve its goals, but the US is less racist than it was in earlier generations.⁵⁶ In recent years, same-sex marriage was legalized. Most recently, moves have been taken to develop the rights of transgender people. The process of reform on the national level is a familiar one and needs no retelling here.⁵⁷ Making headway on liberal values does not imply that history is irreversible or without serious setbacks. One notes, first of all, though, that nations can move in the opposite direction (in contrast to Fukuyama), as we have seen in Poland, Hungary, Venezuela, and Turkey, among others.⁵⁸ And that the march of rights, combined with an expansion of free trade, automation, and immigration, can drive illiberal populism. Hence the patriotic movement needs to ensure progress in the face of continued efforts to reintroduce illiberal policies.

I turn next to ask what can be done to promote liberalism in conjunction with communitarian bonds—without engendering more populist pushback.

Liberal Bonds

More Durkheim

Before I review some suggestions for specific positions the patriotic movement may wish to consider, a general observation is called for. It concerns the relative importance of economic versus sociocultural responses to populism.⁵⁹ I write *relative* importance because clearly both responses are needed. Before the recent rising interest in populism, Benjamin M. Friedman showed that economic growth “more often than not fosters greater opportunity, tolerance of diversity, social mobility, commitment to fairness, and dedication to democracy,” that is, economic factors are considered the main determining factor of social and political well-being.⁶⁰ Along similar lines, several analyses of populism are mainly economics-oriented, focusing on class rather than culture.⁶¹ They see the fact that American workers’ wages have largely stagnated since the 1970s, with the effects of the 2008 Great Recession, automation, and loss of jobs to other nations as the driving forces. Hence, their response is couched largely in terms of restoring jobs, improving wages and benefits, guaranteeing free college tuition, and so on.

This approach featured heavily during the 2016 presidential race in the rhetoric and platform of Senator Bernie Sanders, who vowed to take on a “rigged economy” and “the one percent.” In his stump speech, Sanders called for increasing the minimum wage, making public colleges free of tuition, installing single-payer health care, and increasing taxes on wealthier Americans. While his campaign was themed on both “economic and social justice,” the candidate notably said little about community or identity.

“In its early stages, the populist revolt appeared to be motivated by economics,” commented William A. Galston. However, Galston points to larger forces at play: “This narrative was valid as far as it went. But a purely economic explanation obscures the more complex reality, which includes fears about immigration, concerns about culture, and frustration with politics itself.”⁶² Among those who focus on economic factors but who are fully cognizant of the importance of social and cultural factors, two works stand out. Paul Collier, in *The Future of Capitalism*, provides a valuable and imaginative attempt to bridge the economic and ethical, which leads him to the following suggestions: make corporate directors legally liable when they do not take into account the public

interest in their decisions; tax people who benefit undeservedly from capitalism, such as the owners of land whose value rises for reasons that have nothing to do with their endeavors; and place a tax on every financial transaction.⁶³ And of special interest is Isabel Sawhill, who, in *The Forgotten Americans*, supports vocational training and adjustment assistance for workers left behind by the global economy; a broad-based tax credit to increase wages; the private sector improving its workforce training programs; and a social insurance system that supports education and family care, as well as retirement.⁶⁴

Others note that workers who were believed to have voted for Trump because he promised to bring back the coal and steel industry stuck with him when his policies did not achieve much on these fronts. These workers felt that he represented their values in matters concerning immigration, cultural issues (e.g., transgender bathrooms), and nationalism.⁶⁵

Poland's recent history reveals the same interplay of sociocultural anxiety and populist politics. According to Jordan Kyle and Yascha Mounk, Poles succeeded in tamping down a populist near-takeover in the early 2000s only to re-create the conditions for another rise: "For eight years, Poland went back to being relatively stable. Thanks to a highly competent government, the country barely suffered during the Great Recession. But many voters were frustrated with the prominent role that some former communists continued to play, afraid of rapid cultural change in a country long dominated by Catholicism and livid at a series of corruption scandals."⁶⁶

In short, those who believe that populism is mainly driven by economic deprivation ought to pay more mind to the challenges to communitarian bonds and values engendered by globalism, mass immigration, and culture wars. It follows that an effective response to populism must include major communitarian elements, the kind of factors Émile Durkheim flagged, addressing social, cultural, and normative deficits rather than focusing solely on economic considerations.

Community Building Lite

There is merit in fully recognizing the value of communitarian bonds; however, this understanding alone cannot bring about the kinds of Durkheimian changes that are needed. Proclamations of national unity, often vague if well-intentioned, were President Obama's stock-in-trade. At the 2004 Democratic National Convention, then senator Obama famously declared: "There's not a liberal America and a conservative

America; there's the United States of America. There's not a black America and white America and Latino America and Asian America; there's the United States of America."⁶⁷ Such worthy sentiments need to be backed up with richer narratives and related policies in order to be effective.

Amy Chua suggests that the first step to reestablishing a unified American identity is for individuals to come to know each other personally, to engage each other, across tribal divides. To support this idea she refers to Gordon W. Allport's 1954 work *The Nature of Prejudice*, which theorized that face-to-face interactions between members of in-groups and out-groups could reduce mutual prejudice.⁶⁸ Yet a few pages later, Chua herself acknowledges that "merely putting members of different groups in the same space is not enough and indeed can aggravate political tribalism."⁶⁹ Chua is correct—prejudice is multicausal, and even Allport's contact theory proposed that a significant reduction of prejudice would occur only under conditions that were strict and hard to attain.

Furthermore, we learned that even when people of different backgrounds are placed in the same environment, they tend to interact with each other sparingly.⁷⁰ In any case, it is difficult to imagine millions of members of liberal communities going out for dinner and drinks with coal miners or steelworkers, or millions of Trump supporters "engaging" with one kind of progressive people or another. It is heartwarming when it happens; one finds instances of such dialogues, some of which even lead to increased mutual understanding and tolerance. However, they are few and far between and cannot begin to carry the burdens that must be shouldered.

Chua adds that one of the US's greatest achievements was to build a "super group" in the form of a national identity that is not mono-ethnic, resulting in a nation that has been able to accommodate and embrace a variety of ethnic communities.⁷¹ She points out that much of super groupness is being lost, as we now face white mono-ethnic movements, egged on by leftist identity groups: "But white identity politics has also gotten a tremendous recent boost from the Left, whose relentless berating, shaming, and bullying might have done more damage than good."⁷² In response, she calls for restoring the super group. "It's not enough that we view one another as fellow human beings," she writes; "we need to view one another as fellow Americans. And for that we need to collectively find a national identity capacious enough to resonate with, and hold together as one people, Americans of all sorts—old and young,

immigrant and native born, urban and rural, descendants of slaves as well as descendants of slave owners.⁷³ She wonders if the moment is ripe for such a reconstruction of America as a super group but offers no way this might be achieved.

Democracy Per Se Is Too Thin

Mark Lilla argues that progressives should dispense with identity politics and instead secure power by appealing to a sense of citizenship. According to Lilla, today's identity politics are the product of the excessive individualism of the Reagan era (or a shift "From We to Me," to use his words).⁷⁴ And, while the civil rights movement pushed solidarity, sacrifice, and a call for Americans to live up to their founding principles—particularly, "all men are created equal"—Black Lives Matter, Lilla says, appeals to group difference, outrage, and calls for a societal indictment.⁷⁵

Lilla holds that one ought to recognize that we have a duty to fellow citizens and that our destinies are intertwined. This recognition is particularly important as America moves toward its inevitable status as a majority-minority state. That is, "because America has become more diverse and individualistic in reality, there is greater, not less, need to cultivate political fellow feeling."⁷⁶ In other words, the more diverse we become, the more citizenship seems the sole potential source of solidarity.

The idea needs to be unpacked. Lilla stresses the importance of what he calls democratic citizenship—the notion that we are all political equals and should be treated as such—which is a sound idea. However, politics are mainly not processes through which three hundred million-plus individual choices—all equally weighted—can be harmonized to form public policies. They are, to a large extent, a give-and-take among *groups* of citizens who have different values and interests and seek common ground. Voters come, to a large extent, in packages called communities. In other words, in a pluralistic, diverse society, one cannot ignore group differences in politics—but one can ensure (*a*) that they are not radicalized to the point that parties refuse to compromise and negotiate, and (*b*) that they are contained by a core of shared values. Democratic citizenship, to the extent that it treats people as atomized individuals, is one of the forces driving populism rather than its antidote.

To his credit, however, Lilla views citizens not only as voters and the bearers of rights but also as people who have duties to serve each other

and the common good. This observation suggests that we need a much more profound sense of civility than can be achieved by promoting citizen education, political awareness and participation, and mutual tolerance.⁷⁷ What is needed in addition are shared understandings of what these duties entail and what core values they draw on.

Yascha Mounk recognizes that the post–Cold War momentum toward supranational institutions and identities is failing and that resurgent nationalism is rippling throughout the international system. “Institutions like the European Union,” he writes, “are on the back foot.”⁷⁸ According to Mounk, liberals today act futilely when they try to reject or transcend nationalism. He notes that liberals/progressives view nationalism as inherently suspect and have abdicated their role in constructing their nation’s identity. Instead, he argues that liberals ought to reclaim nationalism: “To win the fight for an inclusive form of patriotism, countries will have to do much more to facilitate a real sense of community among all citizens and ease lingering fears about future migration.”⁷⁹ So far, so good.

Mounk’s suggestions regarding what can be done start from a similar point as those of Lilla. In fact, both thinkers point to President Obama’s 2015 speech on the fiftieth anniversary of the march from Selma to Montgomery: “What greater expression of faith in the American experiment than this, what greater form of patriotism is there, than the belief that America is not yet finished, that we are strong enough to be self-critical, that each successive generation can look upon our imperfections and decide that it is in our power to remake this nation to more closely align with our highest ideals?”⁸⁰

The question, though, is, What is going to be the normative content of the “good” nationalism (sometimes referred to as patriotism)? And how can it also speak to the communitarian needs of those now driven to populism and “bad” nationalism? In Mounk’s view, one ought to make nationalism as inclusive as possible. The first step he proposes is to monitor and reduce discrimination to the fullest possible extent, especially through reforms in education. By the same token, Mounk argues that nations cannot afford exemptions on cultural grounds to practices like domestic violence and female genital mutilation. Mounk goes on to propose practical policy fixes in the areas of taxes, housing, jobs, and social security.⁸¹ Although these all may be sound liberal ideas, they need a communitarian underpinning that these policies cannot provide.

For a Thick Patriotism

To curb populism and polarization, to enable democracy to function effectively, commitments to the overarching community—the nation—must be strong enough so that when they come into conflict with commitments to subnational communities, the national commitments will take precedence. This is in contrast to the view that these subnational communities are disappearing or can be kept out of politics, the ending of identity politics.

Much has been written about the need to ensure that nationalism will not be aggressive. More needs to be said about how to make its bonds sufficiently potent in those countries in which the national community was never strong or commitments to it have weakened unduly. I turn next to outline key elements needed for such community building:

(a) Communities find meaning, and public policies and regimes find legitimation, in *historical narratives*. These must, in the main, be affirmative, a source of pride, an account with which one wishes to be identified. There is no need to whitewash darker periods, but they cannot dominate the narrative. For example, one can retell the story of slavery but focus on the great sacrifices the nation made to end it rather than dwelling mainly on the shame of introducing it in the first place. One can point to the progress made since 1865 for the rights of African Americans while acknowledging that the effects of slavery still linger and need to be countered. In contrast, arguing that little progress has been made and that racism has mainly changed only its form will not do. The same holds for other darker parts of the shared history, for instance the treatment of Native Americans, Japanese Americans, or women.

(b) Communities do best when they have a *core of shared values, a sense of shared destiny and purpose*. While initially major segments of the American public were quite reluctant to join the fight in World War II, once the US did, many saw a compelling virtue in fighting fascism. The US saw itself as championing liberty against tyranny. After the war was won, the US prided itself in turning two enemies, Japan and Germany, into flourishing democracies and allies. The US soon embraced the virtue in fighting communism during the Cold War. And following the Cold War, it saw itself as bringing democracy to the rest of the world.⁸² Since 1990, however, these narratives have lost their power. Democracy is in retreat in many countries. Russia and China are asserting themselves. Many have come to fear the challenge of terrorism. Restoring a sense of

purpose is now called for. There is nothing wrong with seeking to make America great again. The question is, How does one define greatness?

(c) *An America that works for everyone.* No one public intellectual—or even a conclave—can develop a compelling new vision of America that will be both liberal and sufficiently communitarian to guide the forces that are out to arrest populism and launch a period of *reconstruction* of the institutions, norms, and bonds that populism has undermined, and in the process provide the conditions needed for restoring the guardrails of a liberal democracy. However, one can help nurture the dialogue about such a vision by sketching what its main contours might look like. Because currently, to Americans who see themselves as besieged minorities—including working-class whites—a vision of America as a *fair society*, in which nobody faces discrimination and everyone gains their due share, may have wide appeal.

It first of all entails that everyone will be treated with respect, that nobody is written off as deplorable or ignorant or “undereducated.” It entails that everyone who seeks work should be able to find a job and that workers in all types of employment situations, including independent contractors and part-time employees, be provided with benefits.⁸³ Menial labor should be accorded the same standing as white-collar and knowledge work. (A movement in this direction is California’s rebranding campaign to eliminate stigma from technical education programs and career options.)⁸⁴ Health insurance should be available to all. Expanding earned income tax credits should ensure everyone has the income needed to obtain basic creature comforts.

(d) *Shoring up a community of communities.* As far as subnational communities are concerned, there is no way to keep them out of public life, and their proper involvement is part of a legitimate democratic process. Armenian Americans can quite legitimately call on the US government to declare the Turkish massacre in Armenia to have been genocide. Irish Americans can favor independence for Northern Ireland. Jews and evangelicals can support Israel and so on. Issues arise only when these secondary loyalties conflict with the primary one, to the US as the nation. This issue was raised when Catholic candidates were running for public office and critics claimed that they would take their lead from the pope, and when leftist candidates were held to take their lead from Moscow. Some suggested that Latinos would not have to fight if the US were to engage in a war in Latin America. However, as long as those involved show that the nation will trump when their particularistic concerns

come into conflict with national loyalties, ethnic identities can be part of “normal” public life.

The trouble with some of the more extreme forms of identity communities is that they see the primary loyalty to their group and not to the encompassing society—the nation. In the most extreme forms, some groups on the right, as well as Antifa, do not even support peaceful resolution of differences and legitimate use of violence against their opponents. And they view all compromises as treason. These radical forms of identity need to be curbed, but not identity politics per se.

(e) *The importance of the third sector.* For many decades, much of the public debate about policies in the US and in other Western nations has focused on the relative role of the government versus that of the private sector. In the process one often loses sight of the importance of the third sector, which includes hundreds of thousands of not-for-profit corporations, ethnic, religious, racial, and professional associations, voluntary associations, and communities. These bodies often provide the highest-ranked social, cultural, health, and elder care services. Expanding the third sector—instead of more privatization or government expansion—will make society more communitarian.

To proceed, communities should be allowed to keep the institutions around which their social life tends to center, such as a local school, public library, or post office, even if consolidating these into regional institutions is less costly. Urban design can facilitate community building by carving out public spaces in parks, promenades, and pedestrian zones, among others.

(f) *The driving force.* New visions and public policies need a social force behind them. Otherwise they are like a shiny new car without an engine. Lilla’s and Mounk’s books are basically aimed at the center wing of the Democratic Party. For the sake of emphasis, let me repeat that, as I see it, there is only one “driver” strong enough to carry the massive changes in culture and society and politics that are needed, the same kind of driver that led to major social changes in the past: a social movement. Major changes did not come about because one party or another formulated a new platform and lined up voters to support it. They came about as a result of social movements such as the civil rights, environmental, women’s rights, and LGBT rights movements. What is needed now is a new social movement that will seek to bring about an America that works for everyone. Call it the patriot movement.

The Model of Marital Conflict

The restoration of shared bonds and core values, a major priority if not *the* priority of the patriotic movement, is the ultimate social foundation that allows democratic politics to work. This cardinal mission, to reiterate, entails neither suppressing differences in the name of gaining harmony, nor the end of identity politics. It merely requires that various politically active groups vie with each other to influence public policies and allocation of resources in line with their values and interests, and compete in ways that maintain the union and commitments to the common good.

I refer to this kind of competition as the “marital conflict model” because couples that stay together seem to not experience conflict at significantly different rates than those who break up but rather they fight in different ways. The couples that endure are those that fight with one hand tied behind their back, so to speak. The wife may want her husband to do more household chores, or a husband may want to cut back work and spend more time on his hobbies—or the other way around—but both seek to resolve such differences in ways that keep the marriage going rather than threatening it. The same must hold true for various political and social groups that vie for the power to advance their particular agendas in democratic nations.

In part, the marital conflict model is achieved by following *rules of engagement*. These involve not “demonizing” one another, attacking the issue but not the person, treating all with elementary respect, searching for a third option when two sides are dug in, and not treating compromises as betrayals or violations of principles. Nebraska senator Ben Sasse has added that addressing complex issues “require[s] vigorous debate. And we should always worry that calls for civility can be reduced to a demand to accept the status quo, which tends simply to favor those with status. But again, my point is that even as we debate these contentious issues passionately, we have to maintain the republic that allows us to do so. And so *even* on these absolutely essential issues, we must approach our opponents in these debates as people created with dignity—and we must demand that both we and they dig in as sincere, fellow countrymen rather than as enemies to be trolled.”⁸⁵

Attempts to delegitimize President Obama by claiming that he was not American-born; McConnell blocking a Senate vote on President

Obama's Supreme Court nominee Merrick Garland; John Boehner, when discussing Obama's agenda, declaring, "We're going to do everything—and I mean everything we can do—to kill it, stop it, slow it down, whatever we can"; and Democrats trying to find out what videotapes Robert Bork rented during his Supreme Court hearing to smear him are all examples of kinds of conflicts incompatible with the marital conflict model. The model assumes that people will fight fairly.

A key example of fighting unfairly is the gerrymandering of congressional districts. Both parties are guilty of the tactic. The patriotic movement should support those who call for districts to be drawn by nonpartisan commissions.

The Senate used to follow many of the elements of the marital conflict model. Norman Ornstein and Thomas E. Mann note:

Senators were intensely loyal to the Senate as an institution; they identified first as senators rather than as partisans or through their ideology, and they were fiercely protective of their prerogatives vis-à-vis the president or the House of Representatives. The rules and procedures of the Senate were a key to its unique role as the world's greatest deliberative body; and even those who were frustrated by them and by their application, especially when an intense minority thwarted the will of the majority, were respectful of their centrality to the Senate itself.⁸⁶

Members of each chamber crossed the aisle to find common ground on pressing issues—such as ensuring equal rights through the Civil Rights Act of 1964—to uphold the norms of their institution, placing country over party. The patriotic movement seeks to restore such a "club" not only in the Senate but in the nation.

Trust is essential. It is slowly built when different sides live up to commitments they made to each other, and it is undermined when such understandings are betrayed. Trust is like capital; one can accumulate it and be richer for it, or squander it and be left high and dry. John Gottman and Nan Silver offer insight from marital relations on how to overcome gridlock and find common ground. They advise that competing sides each create two circles, one containing their core, non-negotiable principles and the other including their positions that are more flexible. Gottman and Silver say the first circle should be small, while the second is more expansive. By clarifying core and flexible positions, the two op-

posing sides can conduct meaningful negotiations that provide room for compromise.⁸⁷

To move forward, we now need, first on the local level, new social formations—chapters of a patriotic movement yet to be fashioned—that will include people of different political persuasions, backgrounds, and parties all committed to consenting and advancing the common good.⁸⁸ This position stands in sharp contrast to those who call for the formation of third parties or centrist parties. These are by definition fragments, which provide one more division when what is called for is finding a common ground. This position is also in sharp contrast to those who argue that we shall not find a common ground until either the Left ideology or that of the Right prevails and becomes the common ground. As the distinguished historian Michael Kazin put it, “Until the left or the right wins a lasting victory, America will remain a society rent in two.”⁸⁹

What is called for is society coming together under a “big tent.” The term is often used to refer to making a particular political party more inclusive; I use it to refer to an even bigger tent, one that will include people from different parties and independents. As noted by President Obama after securing a second presidential term: “By itself, the recognition that we have common hopes and dreams won’t end all the gridlock, resolve all our problems or substitute for the painstaking work of building consensus and making the difficult compromises needed to move this country forward. But that common bond is where we must begin.”⁹⁰

The marital model assumes that all parties seek to maintain the union. It cannot succeed if one of the parties is willing to risk a breakup, say, if he or she threatens divorce whenever the other side does not yield. In such a marriage one does best to attempt to get the uncooperative party to restore its commitment to the union, but if this fails, all bets are off. The model, however, does not call for one party to keep making concessions in a desperate attempt to keep the union going in the face of such obstruction.

What Makes a Great America?

Age-old debates about patriotism and what constitutes a good American have taken on a new significance in the Trump era. Trump’s rhetoric often draws heavily on respect for the nation and its symbolic expressions, such as the flag and the national anthem. He points to athletes taking

a knee while the national anthem is played as an act of disloyalty and proudly defines himself as a nationalist.

Many Democrats, especially in the left wing of the party, view the very concept of a “nationalist” as being associated with white supremacy and xenophobia. In a seminal essay in the *New York Times*, Trip Gabriel describes how the Democrats’ view of patriotism is different from that of the GOP.⁹¹ Gabriel finds that Democrats do not consider dissent as unpatriotic but, rather, as the essence of patriotism. During his Senate campaign, Beto O’Rourke declared: “I can think of nothing more American” than protesting. James Baldwin is quoted as saying, “I love America more than any other country in the world and, exactly for this reason, I insist on the right to criticize her perpetually.”

The right to differ—to disagree—is indeed very American. However, when it is regarded as the essence of patriotism, one overlooks that the foremost meaning of patriotism is love of country. *There is a world of difference between showing appreciation for the nation while seeking to cure its flaws and considering the nation to be deeply flawed.* Thus, to view America as a racist society dominated by white supremacists is not to dissent but to question the very nature of the American enterprise—its basic goodness. That is quite a different perspective from the one that holds America to be a “shining city upon a hill” that has developed some serious difficulties that urgently need to be remedied.

A telling example is the attitude toward the military. To argue that the military must be subject to civilian control, that the president should not go to war (or more precisely, continue to fight) without authority from Congress, and that the military should not discriminate against people based on sexual orientation can be readily reconciled with patriotism if one acknowledges that one is proud of the millions of young men and women who are risking their lives to keep us safe. However, if one views the military with suspicion and refuses to collaborate with it and considers working on security issues as unpatriotic (as many of the employees of high-tech firms do), one crosses a line.

One can cherish the right to dissent, including the notion that burning the flag is a constitutionally protected expression of free speech. However, one must also note that if people seek to dissent while acknowledging their basic loyalty to the country, they must recognize that there are some symbols that express such loyalty and hence draw on the numerous other ways to protest rather than assaulting the already weakened expressions of national unity.

A similar distinction arises when one finds that many Democrats view pluralism and diversity as major elements of patriotism. Gabriel quotes a Democrat who gives voice to this viewpoint when she says, “I feel very patriotic that I want this country to get back to . . . a place of being who we truly are, which is a very diverse, very eclectic, beautiful mix of all kinds of people.”

While it is true that the US is a nation of immigrants and that diversity makes us better in many ways, the essence of American society has always been that diversity must be contained within a framework of unity. Thus, it is fine for Americans to express special concerns for the countries from which they, or their parents, immigrated—as long as their primary loyalty is to the US. And it is fine for Americans to seek more equality for people of different ethnic and racial backgrounds, incomes, and sexual orientations, but not to deny the significant progress America has made, on all these fronts, one generation after the other.

In short, just as the GOP version of patriotism is truncated because it tends to view dissent as unpatriotic and diversity as undermining unity, the version of patriotism championed by many Democrats—especially in the left wing of the party—is flawed. It views the nation as basically defective, a nation that needs to be transformed rather than reformed. Oddly, combining the two visions may provide a sound concept of patriotism: love of country with tolerance for a critical but loyal opposition; diversity bounded by a core of shared values and a sense of community.

In Conclusion

Globalists contribute to populism when they ignore or seek to override communal bonds both on the national and subnational level. True, communities can foster values many find morally troubling. Hence these values need to be examined. Some are relatively benign and ineradicable and can be tolerated as a price one pays for securing communitarian bonds and for curbing populism—for instance, the tendency of communities to view themselves in a positive light and to view others less favorably. Other attributes—racial, gender, or religious discrimination, for example—ought to and can be curbed by public education and law enforcement.

The same holds for nationalism. The fact that many see their nation as exceptional and cast other nations in a less favorable light can be tolerated. The same is not true about aggressive policies. Ensuring that

patriotism does not turn into aggressive nationalism entails more than the promotion of individual rights and democratic designs; it includes providing the communitarian underpinnings patriotism requires. These underpinnings include a shared history, a shared vision and a core of shared values, a well-developed third sector, and a community of communities. We have seen that the main engine that could drive such a movement for a good society (a liberal communitarian one)⁹² is a social movement, not a political party.

TOPICS FOR NATIONAL DIALOGUES: TRADE, IMMIGRATION, RIGHTS

The discussion so far has focused on processes (national moral dialogues) and social formations (local and national communities, social movements) rather than on the content of the core values of a patriotic movement. This focus was called for because I hold that the new core of shared values will have to arise from intensive moral dialogues. However, one can discern a fair number of issues that are ready for a new shared understanding. Some concern areas in which there can be a policy consensus even among people and communities who subscribe to rather different values. This chapter covers three such areas: trade, immigration, and the balance between individual rights and communal obligations.

Countering Globalists

Many political commentators have characterized the 2016 US presidential election as a contest between enlightened, rational, cosmopolitan globalists and prejudiced, parochial, know-nothing nationalists. (The same perspective has been applied to Brexit.) Globalists articulate three main reasons why we ought to see nationalism as xenophobia: nationalists oppose global free trade in order to protect their own country's economy; they oppose immigration—especially immigration from cultures with different values—to safeguard their sense of national identity; and they oppose universal human rights in the name of national exceptionalism and sovereignty.

The self-congratulatory tone of many globalists is illustrated by an August 2016 *New Yorker* article by Pankaj Mishra, which appeared under the title “How Rousseau Predicted Trump.” Mishra sees in Trump's America—and in Europe, India, and Russia—whole countries that “seethe with demagogic assertions of ethnic, religious, and national identity.” These movements threaten “the great eighteenth-century venture of a universal civilization harmonized by rational self-interest, commerce, luxury, arts, and science.” Nationalists reject the wisdom of the

great thinkers of the Enlightenment, Mishra writes, and instead follow in the wake of Jean-Jacques Rousseau, whom Isaiah Berlin once called “the greatest militant lowbrow in history.”¹

During the campaign, much less attention was paid to the communitarian views that Hillary Clinton extolled in her 1996 book *It Takes a Village*, which pointed out that to raise children well (and to do well in the moral sense), all community members must bear responsibility for one another’s well-being. The thesis that every citizen has not only rights but also responsibilities is a communitarian keystone. True, her vision of community is hardly one that nationalists hanker for; still, it is a good starting point for a better understanding of what globalists miss.

As I see it, the rise of right-wing populism in the US and Europe can be attributed to no small extent to the profound misunderstanding globalists have of community and communitarian values. Globalists tend to view society as composed of freestanding individuals, each of whom has his or her own individual rights and is keen to pursue his or her own self-interest. As a result, globalists assume that, given the proper information, their fellow citizens will see that their aging societies are refreshed by immigration, that free trade raises the standard of living for everyone, and that individual rights outweigh tribalism.

The trouble with this view of society is less in what it claims and more in what it leaves out: namely, that people are social creatures whose flourishing and psychological well-being depend on strong, lasting, meaningful relationships with others and on the sharing of moral and social values. These relationships and values are found in national and subnational communities (including families, which are microcommunities). By definition, communities are circumscribed rather than all-inclusive and are inevitably parochial rather than global.

If a major goal of the patriotic movement is to reduce right-wing populism, violence, prejudice, and xenophobia, then communities must be nurtured, a goal that cannot be advanced by denigrating parochialism. Rather, globalists must understand that parochialism—an attribute of all communities—can be reconfigured in terms of its content but cannot, and should not, be eliminated.

The miscomprehensions of today’s globalists are reminiscent of how Enlightenment thinkers such as David Hume viewed religion, and how quite a few rationalists still do.² In the eighteenth century, some thinkers placed religion in the same category as witchcraft and black magic, reducing it to a set of traditional values that made people act

irrationally and held back the progress of humanity. David Hume wrote in *The Natural History of Religion* in 1757 that “the primary religion of mankind arises chiefly from an anxious fear of future events; and what ideas will naturally be entertained of invisible, unknown powers, while men lie under dismal apprehensions of any kind, may easily be conceived.”³ Most of us have learned that people have a profound need to grant meaning to parts of life that science—and more broadly, reason alone—cannot address: What is the purpose of life? Why are we born to die? What is it that we owe one another? Religion provides an answer to these questions. Enlightenment thinking does not and is not about to replace religion.⁴

On the contrary, religion is thriving around the world, even in places like Russia and China. After decades of suppression by the former Soviet government, the church is resurgent in Russia. In 2014, 72 percent of Russians identified as Orthodox Christian, up from 31 percent when the Soviet Union disbanded in 1991.⁵ In China, the number of Protestants alone has grown by 10 percent per year since 1979, and China may well soon have a larger Christian population than any other country in the world.⁶ In Latin America and Africa, the Catholic and Anglican churches are being challenged not so much by secularism as by the rise of evangelical and Pentecostal churches.⁷ Polling indicates that a majority of Muslims in many countries would like to see Islam—and, specifically, Islamic law—play a still greater role in their lives.⁸ And religion continues to hold a significant place in the lives of scores of millions of Americans and Europeans.

The Communal Costs of Free Trade

Free trade, according to Robert Bartley, is a panacea. He claims that “economic interdependence will not only avoid major wars but forge a new world civilization based on political democracy and open markets, a world of political and economic freedom.”⁹ Prominent publications such as the *Wall Street Journal* and the *Economist* extol globalist economic principles, favoring what they deem an inevitable push to a “flat” global economy through ever-reducing barriers to trade. Public support appears to be in their favor, as a global Pew survey found 81 percent of respondents in favor of trade.¹⁰

When globalists champion free trade, they tend to ignore the “externalities.” The fact is that many developing nations can produce cheap

goods because they pay little attention to the welfare of their workers or to the environmental consequences of mass production. Trade agreements are supposed to curb these social costs and help workers in countries that pay higher wages to compete with workers in countries that do not, but such curbs have only limited effect. True, free trade lowers the costs of consumer products at Walmart and Target, but how does that help people whose jobs are outsourced? Promises to retrain them and find them other jobs—for instance, to make computer programmers out of coal miners—are often unrealistic. (Thomas L. Friedman of the *New York Times*, Robert J. Samuelson of the *Washington Post*, and writers in the *Economist* all argue that job losses are more attributable to technological developments than to free trade. But this is like saying you should not mind being kicked in the stomach because you hurt more when being hit over the head.)

Above all, globalists ignore the effects of free trade on people's essential communitarian needs. Economists often fail to understand people who are reluctant to move from, say, West Virginia to Montana when the coal industry is declining but the gas industry is growing. These globalists do not sufficiently consider that people lose their communal bonds when they make such moves. People leave behind the friends they can call on when they are sick or grieving or would like to share new joys—and the places where their elders are buried. Their children miss their friends, and everyone in the family feels ripped away from the centers of their social lives: school, church, social club, union hall, or American Legion post. And when these people finally bring their families along and form new communities, changes in free trade often force them to move again. Thus, after a boom in Montana, prices of oil and gas have fallen, and so many of the workers who moved there now need to relocate again. A reliable evaluation of the benefits of free trade should take into account the destructive effects that churning the labor force can have on communities. The patriotic movement should at least show that it feels the pain of the casualties of free trade and offer realistic means to deal with it rather than denigrate the victims of free trade and view them as redneck boors who just do not get it.

Paying mind to the social costs of increased transnational trade does not mean that nations should stop trading with one another; rather, it means that those who worried about the social effects of new trade treaties are not know-nothing, parochial nationalists but, rather, are people with valid concerns. It means that making trade deals fairer to workers

in developed nations is a reasonable demand and that one has to invest much more in finding out what can be done for those who lost jobs due to trade and technology and cannot find new jobs or can find only jobs that pay poorly and provide few benefits, if any—for instance by securing a basic income or providing work in a publicly financed conservation or infrastructure corps.

The Communal Effects of Immigration

Globalists favor the free movement of people across national borders. Scholars such as Alex Tabarrok have made the economic and moral case for borders to be eradicated completely.¹¹ They strongly support the Schengen Agreement, which removed border controls among many members of the European Union. They cheered Angela Merkel, the German chancellor, for welcoming millions of immigrants to Germany. And they view Trump’s call for building a wall on the Mexican border and restriction on immigration from Muslim countries as typical right-wing, xenophobic, reactionary policies.

In contrast, the social psychologist Jonathan Haidt views mass immigration as the trigger that set off the authoritarian impulses of many people in many nations. He concludes that it is possible to have moderate levels of immigration from “morally different ethnic groups”—so long as immigrants are capable of assimilation into the host culture—but that high levels of diverse immigration groups without adequate assimilation are likely to cause an authoritarian backlash. Haidt suggests that immigration policies ought to take into account three factors: the percentage of foreign-born residents at any given time; the degree of moral difference between the incoming group and the members of the host society; and the extent to which assimilation is being achieved by each group’s children. Globalists do not approve of this approach.¹²

American patriots may well favor a path to citizenship for millions of undocumented immigrants. However, they should also pay better attention to the further acculturation of this large group than many globalists do. Adding a sizable number of people to a society, especially if many are culturally distinct from current members, is very likely to engender social tensions. The answer is not to draw up the bridges or build walls but to adopt realistic sociological strategies for absorbing immigrants into their new, host communities.

One such strategy I call “Diversity within Unity,” which can help

lower social tensions in countries that accept relatively large numbers of immigrants by welcoming diversity without requiring full assimilation. (This strategy is explored in chapter 8.) The US has in effect followed this policy, with surprising success, compared with the more assimilationist European nations, as well as Japan and South Korea.

Assimilation, in its strongest form, requires that immigrants abandon their distinct cultures, values, habits, and connections to their country of origin in order to integrate fully into their new country. France stands out as an archetype of this approach. In contrast, Diversity within Unity is a combination of partial assimilation and a high level of tolerance for differences. It presumes that all members of a given society will respect and adhere to certain core values and institutions that form the basic shared framework of the society (this is the *unity* component). At the same time, every group in society, including the majority, is free to maintain its distinct subculture—those policies, habits, and institutions that do not conflict with the shared core (this is the *diversity* component). Respect for the whole and respect for all are essential to this approach; when these two come into conflict, then respect for the national community (which itself may change over time) is to take precedence.

Among the core values are adherence to the law, acceptance of democratic processes to resolve differences and create public policy, and belief in civility in dealing with others. Religion, a core value for many European societies, need not be a tenet of unity. However, a measure of patriotism should be expected, especially when loyalty to the new, host nation clashes with commitments to the nation of origin. (Thus, if the US were to go to war with another country, our immigrants from that country would be required to support our effort.) Under Diversity within Unity, all immigrants are expected to learn the national language but are welcome to keep their own and speak it with their children as a secondary language. Immigrants can celebrate their own holidays (Chinese New Year, say) but are expected to participate in the national ones, such as the Fourth of July.

Nobody can decide exactly where to draw the line between the elements of unity and those of diversity, and the line shifts as historical conditions change. However, the main sociological design remains: allowing immigrants and minorities to keep intact their immediate communities—often ethnic ones—in places like Chinatown, Spanish Harlem, Little Havana, and numerous American suburbs—while maintaining their membership in the national community.

Even a global community, if one can be forged, would have to be constructed on top of local, regional, and national communities, rather than replacing them and forming a single community to encompass more than seven billion individuals, each with individual rights but with no particularistic social bonds and set of values. Thus, universalism and parochialism can be combined, but attempts to maximize either position are sure to lead to deeply troubling, socially disturbing consequences.

Reconciling Rights and Community

The greatest social and philosophical challenges for members of the patriotic movement arise from situations in which their passion for human and individual rights clashes with their understanding of communitarian values. However, there are ways to reduce the tensions between these two core elements of a good society.

Globalists hold that all human beings are created equal, that people living in Kansas City and in Kandahar are essentially the same, and that they are all entitled to the full measure of individual rights as spelled out in the UN's Universal Declaration of Human Rights. Some globalists favor using force to prevent large-scale violations of human rights, under a United Nations precept called the Responsibility to Protect, and to establish liberal democratic regimes in those nations that do not rush to the light—a strategy referred to as regime change. These globalists view local communities (in particular, gated ones) as discriminatory if not racist. And they hold that people who have a hard time accepting gay marriage and the march toward equal rights for women and minorities are longing for a Norman Rockwell vision of America that never existed or was hopelessly prejudiced.

One would do well to avoid the trap of dichotomies, of either/or, and see the merits of synthesizing universalist elements—first and foremost the respect for rights—with respect for communal bonds and a shared moral culture. This synthesis is the cornerstone of tolerant, liberal-minded communities.

One way to illustrate how such communities can be fostered is to look at the gated communities in which many millions of people live. Scorned and criticized by globalists, these places offer their members social bonding, solace, and comfort. Once again, a two-layered approach is called for: gated communities should not be allowed to discriminate, ban books, suppress speech, infringe upon the freedom of religious

expression, or violate anyone's rights. However, in other matters, these communities should be welcome to form their own norms and policies, to create rules for the appearance of their communities (homes, lawns), restrict certain types of behavior in its members (e.g., loud music after midnight), and address numerous other matters, in accordance with the distinct cultures of these communities.

To illustrate: When some localities resisted allowing transgender students to use bathrooms of a gender other than the one indicated on their birth certificate, the federal government threatened to withhold billions of dollars in federal funds, putting at risk the education of hundreds of thousands of their citizens, especially poor and minority children. A less zealous approach to the rights of transgender people would have found policies that could satisfy both sides, for example, by adding gender-neutral bathrooms.

In 2015, the Supreme Court ruled that the right to marry applied to same-sex couples. A few clerks refused to issue marriage licenses to gay couples because they felt that such acts violated their faith and that God's law takes precedence over human law. In some states they were reassigned to other duties, but no gay couple was refused the license due them. Several globalists held that these clerks should be fired. Instead, globalists might have shown empathy for the strong beliefs of such people, without accepting this or any other violation of individual rights. (Much more about this topic in chapter 9.)

Communitarian sociologists have been pointing out that, for two centuries, the rise of modernity has threatened the communal bonds and shared moral cultures that are essential for a person's sense of identity, emotional stability, and moral order. Studies of the rise of Nazism show that communities serve as the best antidote to the mass appeal of demagogues. The kind of reasoned, self-governing, tolerant, civil person whom globalists favor is much less likely to be found among individuals outside the bonds of community than among people with stable social bonds, imbued with a proper moral culture. Hence, globalists have strong reasons to shore up communities.

In Conclusion

The patriotic movement must take into account that nobody can bond with seven billion people, and almost everyone feels more responsibility toward those closest to them. People have profound needs for lasting

social relations and shared moral beliefs. And the patriotic movement must recognize that several globalist values can be combined with national, parochial ones. For instance, demanding that communities not violate individual rights while allowing them to foster bonds and values for their members in numerous other matters.

Local communities need to be nurtured rather than denounced, not only because they satisfy profound human needs but also because they anchor people to each other and thus help to dilute appeals to their worst instincts. Championing fair trade, fostering diversity within a framework of unity and shared values, and accepting many kinds of communities as long as they respect rights—all are positions that will help shore up the national bonds that are the foundation for stable and effective democracy, which is the agenda of the patriotic movement.

WHAT IS THE COMMON GOOD?

Central to my analysis is the idea that communities, local and national, serve the common good. This idea provides an important antidote to the tendencies of fragmentation, a centripetal force to limit centrifugal forces. Some critics contest the very concept of a common good. This chapter grapples with these critics.

Jeremy Bentham, for instance, characterized the concept of community as “fictitious.”¹ Margaret Thatcher stated, “There is no such thing as society.”² Proponents of such individualistic ideologies see the good as individually defined and social direction as arising out of the aggregation of individual choices and preferences.

Communitarian ideas contest individualistic ideologies and take two major forms. Some are authoritarian, as found in many East Asian countries that extol social obligations and the importance of the common good and accord much less weight to autonomy and rights. Liberal or responsive communitarianism, the other major form, holds that people face two major sources of normativity, that of the common good and that of autonomy and rights, neither of which in principle should take precedence over the other. I subscribe to the liberal communitarian viewpoint and have contributed some to its development.³ This book draws on this social philosophy.

Some point to nations in which the common good has been allowed to dominate and trump individual rights as a reason to see it as a dangerous concept. For instance, Singapore has been characterized as an authoritarian communitarian state. The one-party government holds that individuals must make sacrifices for the betterment of the communal whole but makes short shrift of individual rights.⁴ The state not only limits individual rights but also influences citizens’ everyday choices. Japan also exerts strong pressure to serve the common good and fulfill social responsibilities, but this pressure is less often directed by the state and more often promoted through social processes. For instance, even

an act as simple as placing your bicycle in the wrong place can result in public rebuke and a request to change your behavior.⁵

I am not denying that the concept of the common good, like most others, can be usurped and abused. However, given this risk, I see only more reason to stress that the common good can be balanced with commitments to individual rights, interests, and pursuits—rather than oppression. To call for a patriotic movement means ipso facto to call for formulating—or, more accurately, restoring while reformulating—conceptions of the common good, those of the nation.

The Common Good Defined

The common good (also referred to as the “public interest” or “public goods”) is the sum of those goods that serve all members of a given community and its institutions, including goods that serve no identifiable group, as well as those that serve members of generations not yet born.

For many economists, the common good is the aggregation of individual goods.⁶ It grows out of economic exchanges, and hence there is no need for the state to promote the common good.⁷ The term “the common good” is contested on a number of fronts. First, there are those who argue that it does not exist at all. Ayn Rand wrote, “Since there is no such entity as ‘the public,’ since the public is merely a number of individuals, the idea that ‘the public interest’ supersedes private interests and rights, can have but one meaning: that the interests and rights of some individuals take precedence over the interests and rights of others.”⁸ Political scientists who adopt the assumptions of economics see little need for the concept of the public interest.⁹ These political scientists hold that in a liberal democracy, competition among interest groups—which reveal and are guided by the preferences of individuals (i.e., private goods)—gives rise to a public policy that maximizes general welfare. Critics of that view argue that discrepancies in wealth, power, and social status grant various groups varying measures of leverage over the government. As a result, public policy—based on interest group politics—does not serve the common good but rather the interests of the powerful groups.¹⁰

In contrast, communitarians hold that the common good encompasses much more than the sum of all individual goods. Moreover, con-

tributions to the common good often offer no immediate payout or benefit to anyone, and it is frequently difficult to foresee who will be the beneficiaries in the longer run. Members of communities invest in the common good not because their investment will necessarily benefit them but because they consider it a good in itself, for example, defending the nation or nature. Economists do recognize that there are situations in which the market fails to provide “public goods” that benefit society at large, making government promotion of these goods legitimate.¹¹ Such public goods include defense, basic research, and public health (e.g., fluoridation and vaccinations).¹²

A criticism of the common good from the left holds that the concept serves to conceal class differences in economic interests and political power so as to keep those who are disadvantaged from making demands on the community.¹³ However, the fact that a concept is abused does not mean that it is without merit.

Finally, several academic communitarians, in particular Michael Sandel and Charles Taylor, have shown that conceptions of the common good must be formulated on the social level and that the community cannot be neutral in this matter.¹⁴ Moreover, unless there is a social formulation of the good, there can be no normative foundation for resolving conflicts of value among individuals and groups.

To state that a given value is a common good of a given community does not mean that all the members subscribe to it, and surely not that they all live up to its dictates. It suffices that the value is recognized as a common good by large majorities and is embodied in law and in other institutions. At the same time, a value to which members merely pay lip service cannot qualify. This chapter will show that it is essential for solid analysis to consider the extent to which values are institutionalized as a continuous variable rather than as a dichotomous one. Some values are relatively highly institutionalized (e.g., marriages in the US in the 1950s). Others are largely aspirational (e.g., the belief that the US should promote democratic regimes overseas). The common good may be promoted and enforced by the state, but this is not necessarily the case. Indeed, often values are promoted by informal social controls, by peer pressures, and by communities.

Particularly important and challenging is my observation, spelled out elsewhere, that references to the common good should be read as if the emphasis is on the “common” and not on the “good.” For the fol-

lowing discussion, the main issue is whether a value is widely shared and institutionalized—not whether a particular ethicist would judge it to be morally good. Thus, for example, a society may define the common good as giving precedence to economic development over political development—or expect that all members adhere to a particular religion. Many may not consider it a good society, but it is the “good” the given society has formulated as its common good. Shared values unify; whether the resulting union is one you and I judge morally sound is a separate consideration. As I noted above, one should not automatically assume that communities are “good”; they are needed, but one needs to pass moral judgment about the kind of values they promote. This why I am not a communitarian but a liberal communitarian.

Several scholars oppose the kind of balancing approach here followed.¹⁵ They argue that rights are a common good, and hence the very opposition of the two goods—rights and the common good—that the balancing analysis presupposes is a false one.¹⁶ This view is held particularly with regard to freedom of speech, taking inspiration from Justice Oliver Wendell Holmes’s dissent in *Abrams v. United States* that the “ultimate good,”¹⁷ both for the individual and society, is “better reached by free trade in ideas.”¹⁸ It is expressed in the Federal Communications Commission’s opinion that “the public interest is best served by permitting free expression of views.”¹⁹ Likewise, Scott Cummings points out that many believe that “strong protection for individual rights is itself advancing the public interest.”²⁰

In response, one next notes that many common goods are not recognized as rights either in the US Constitution or the Universal Declaration of Human Rights.²¹ There is no right to national parks, historic preservation, public health, or basic research.²² One can of course aspire to add these rights, but until they are recognized as such, it is best not to dismiss the normative claims for these goods because they are “merely” common goods and not individual rights.

Indeed, some common goods cannot be reasonably defined as individual rights.²³ The National Archive in Washington, DC, houses the original copy of the Constitution. This preservation is a clear common good.²⁴ However, to argue that individual Americans have a right to have the Constitution preserved is stretching the concept of a right to the point that it becomes meaningless and has no foundation, either in American core normative concepts or in legal traditions.

National Creed vs. Constitutionalism

Some consider the core of the American faith a commitment to abide by the law, to play by the rules, to support democratic government and individual rights. This is one key interpretation of what is called constitutionalism. This concept is an essential element of the core values the patriotic moment needs to shore up, but it is also woefully inadequate. We need a much richer, “thicker” set of core values.

Various conceptions of the American Creed get closer to what is called for. William Tyler Page wrote a version of “The American’s Creed” in 1917, later passed as a resolution by the US House of Representatives on April 3, 1918, that reads:

I believe in the United States of America, as a government of the people, by the people, for the people; whose just powers are derived from the consent of the governed; a democracy in a republic; a sovereign Nation of many sovereign States; a perfect union, one and inseparable; established upon those principles of freedom, equality, justice, and humanity for which American patriots sacrificed their lives and fortunes.

I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies.²⁵

Gunnar Myrdal provides a different version,

where the American thinks, talks, and acts under the influence of high national and Christian precepts, and, on the other hand, the valuations on specific planes of individual and group living, where personal and local interests; economic, social, and sexual jealousies; considerations of community prestige and conformity; group prejudice against particular persons or types of people; and all sorts of miscellaneous wants, impulses, and habits dominate his outlook.²⁶

This much richer, thicker concept includes the ideas encompassed by constitutionalism but adds substantial values. These are needs to be continually revisited by moral dialogues. However, whatever is agreed upon needs to be reinforced for all citizens and be introduced to new ones, whether they are youngsters entering the school system learning the ways of their country or if they are immigrants. Civics education and national service are two ways to promote these core values, part of the much more encompassing agenda of the patriotic movement.

In Conclusion

Shared recognition of a common good can hold otherwise fractious societies together. However, members of the patriotic movement should be clear that the common good does not trump individual rights but, rather, provides a balance to these rights. National moral dialogues will provide the opportunity to develop an understanding of the common good—of the responsibilities patriots should foster and the rights that must be honored.

RIGHTS AND RESPONSIBILITIES

Much of the current dialogue in democratic societies follows the advocacy model, which assumes that the clash of two strong one-sided views will lead to a just conclusion, reasonable judgments, and sound public policies. In contrast, the liberal communitarian approach favors the model exemplified by the *agora* in ancient Greece,¹ the *jirgas* of Afghanistan,² and the US Senate in earlier decades:³ one of dialogue, in which opposing sides engage in a civil discourse, give-and-take, and commit to finding a widely acceptable course.

We all face two fully legitimate normative and legal claims—those of individual rights and those of the common good—and the fact that neither can be maximized nor can the two be fully reconciled. It follows that some balance must be worked out between the conflicting claims. The liberal communitarian model assumes from the outset that a democratic nation ought to be committed to advancing both individual rights and the common good and that neither should be assumed to a priori trump the other.⁴ (Social responsibilities are the specifications of the common good. For example, a common good may be protecting the environment; recycling is a social responsibility.)

Reasonable Searches

The Fourth Amendment provides an important text for the liberal communitarian philosophy when it states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”⁵ By banning only *unreasonable* searches and seizures, it recognizes that there are *reasonable* ones—those that serve the common good (or, to use a term more familiar to the legal community, the public interest).

Moreover, the Constitution provides a mechanism for determining which searches are reasonable: the courts. What the courts consider reasonable searches changes as conditions of public security and or-

der change. For instance, after a rush of skyjacking in 1972, the courts deemed legal the newly introduced screening gates in airports where millions of travelers are searched. These gates stopped skyjacking within roughly a year. The courts, as a rule, do not use the term “common good” but refer to the “public interest.” Although they have given different rationales for authoring a considerable variety of searches, many even without a warrant, they seem to be morally grounded: searches are legitimate if the gains for the public interest greatly outweigh the harms of intrusion on privacy.

A review of Supreme Court rulings shows that the Court has a broad understanding of public safety, which allows diverse intrusions into the realm of individual rights to serve this common good.⁶ The most basic element of public safety is upholding law and order, and the deterrence and prevention of crime. A second element of public safety relates to preventing accidental death and injury. Thus, the Court allowed suspicionless, random drug and alcohol testing of train engineers in the wake of a series of train accidents⁷ as well as random sobriety checkpoints on highways to prevent deadly car accidents resulting from drunk driving.⁸ A third element of public safety is the promotion of public health.⁹ Thus, the Court held that the public interest in eradicating the smallpox disease justified compulsory vaccination programs despite the resulting intrusion on privacy,¹⁰ and held that search warrants for Occupational Safety and Health Act (OSHA) inspections do not require “probable cause in the criminal law sense.”¹¹ In short, there are ample precedents to hold that when the common good of nations, in particular public safety and security, is concerned, individual rights can be curbed, *especially if the intrusion is small and the gain to the public interest is significant.*

Achieving a communitarian balance does not mean invariably opting for the *same* golden middle ground between rights and responsibilities. Rather, it requires consideration of how changes in historical conditions might shift the equilibrium point. The September 11, 2001, attacks against the US heightened the country’s need to attend to homeland security. One can argue that the US overreacted and introduced unnecessary security measures, but one cannot deny that the event showed that some additional attention and resources had to be committed to prevent more such attacks, that is, that some correction in the balance between rights and responsibility was called for.

The patriotic movement needs, as part of developing its agenda through moral dialogues, to determine where the current balance lies

between individual rights and the common good, and what corrections ought to be introduced. To illustrate the issue, first a short example follows, in which a victory of individual rights was recently declared, although actually a rebalancing occurred, namely the protection of privacy by treating information as private property. Chapter 6 provides a case study in which the common good seems to have been undermined.

Is Personal Information Akin to Private Property?

Treating personal information like private property is a popular solution to the threats to privacy in the cyber age. The essence of the idea is that if someone wants to use a piece of personal information, then they will need to get one's permission (and if one wishes, pay for this privilege). And if one disclosed personal information to another party, then that party can use it only for the purposes one agreed to and will not be allowed to share it with others without the original owner's explicit consent.

Among those who advocate this idea is Andy Kessler, a former hedge fund manager and columnist for the *Wall Street Journal*, who championed it in the article "A Better Way to Make Facebook Pay."¹² He notes that the US is a country founded on property rights. Hence "Congress can deliberate for 90 seconds and then pass the Make the Internet Great Again Act. The bill would contain five words: 'Users own their private data.'¹³ Under this solution, users' Facebook data—photos, "Likes," ads that have been clicked on, and much else—would be kept in a "virtual locker." It would be up to individual Facebook users to decide how these data may be used. And Facebook would pay the owners of the information for using it.

For homeland security and public safety the suggested approach raises major difficulties. It is widely understood that under most circumstances the government cannot legally search anyone (i.e., violate privacy) unless it has shown to a court that it has probable cause to suspect that the person is a criminal or terrorist. Much less attention is paid to the question of how the government can gain such information if it is not allowed to search before it gets a warrant. The answer lies in large part in drawing on personal information that people disclose to others, for instance when they open a bank account, purchase a house, get credit, and so on. Under the third-party doctrine, if a person discloses information to another party, then he or she no longer has a "reasonable

expectation of privacy” and the government may obtain the information without a warrant. If the government must ask suspects for their consent prior to accessing these kinds of personal data, then not only is consent unlikely to be obtained, but the suspects will also be tipped off that the government is investigating them. Thus, ending the third-party doctrine would severely set back homeland protection and law enforcement.

Research would be bedeviled as well. A medical researcher tried some years back to get personal consent from several thousand people to interrogate their medical records. He found that some people could not be found, others were six feet under, and quite a few refused. He spent most of the funds set aside for his project on trying to gain consent—and ended up with a very unrepresentative sample of the population, given that the older and the less educated patients refused more often than others. One may suggest he could use the data after removing personal identifiers, a process referred to as anonymization. However, under the new doctrine, he still would need their consent for their data to be included in the study in the first place.

Finally, personal information about a given person is used at least seven hundred times a day. If each such usage would require permission from the “owner,” then people would have to spend a good part of their day refusing or agreeing to share their information (as well as exploring various offers for trading privacy for coupons).

The fact that all these concerns are far from theoretical ones can be seen in a closer look at the European Union’s General Data Protection Regulation (GDPR).¹⁴ The GDPR is often hailed as an example of a sound way to protect privacy by maintaining ownership of one’s personal data.¹⁵ Indeed, the GDPR states that any secondary use of personal information released by a person or collected about him requires the explicit prior approval of the original individual “owner” of the information and that this consent cannot be delegated to an agent or machine. The details of the GDPR are complex and changing. However, it deals with all the issues I raised above by making exceptions to the ownership rule in many areas, including when the data are needed for the purposes of research, public health, or law enforcement, among others.

The GDPR makes repeated reference to Member States retaining the ability to process personal data for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes, given that Member States provide appropriate safeguards¹⁶ and allow individuals to object to the processing of their data—unless the task

is considered to be in the public interest.¹⁷ The GDPR's parameters for processing data in the public interest (not related to national security) extend to "the field of employment law, social protection law including pensions and for health security, alert purposes, the prevention or control of communicable diseases and other serious threats to health."¹⁸ The GDPR's parameters for scientific research are similarly expansive, as the text requests it be "interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research defined."¹⁹ Finally, the GDPR makes several references to security, most notably declaring, "This Regulation does not apply to the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union."²⁰ In short, the new EU data protection measures, which have been touted as a great step forward for protecting privacy, in effect are careful not to harm a variety of common goods. It is a model the patriotic movement is advised to follow in other areas in which the balance between individual rights and social responsibilities needs to be recalibrated.

In Conclusion

As the patriotic movement is developing its agenda, it needs to be leery of a tendency in liberal deliberations to focus on the question of whether or not an individual right has been violated—privacy, for instance. The implicit assumption is that any legal act or public policy that impinges on a right is on its face illegal and ought to be condemned. It should be recalled that no right is absolute and that the American Constitution, as well as the constitutions of other democracies, recognizes that in effect there are tradeoffs. Often when the violation of the right involved is minimal and the gain to the public interest (or common good) is substantial, the act or policy is considered legal by the courts. A study of privacy illustrates this point. Although at first blush it may seem that the new European General Data Protection Regulation makes privacy trump all other concerns, in effect the GDPR allows the limitation of privacy in the interest of a whole slew of common goods. It provides a model for other policy analyses the patriotic movement ought to follow.

PRIVACY VS. THE COMMON GOOD: A CASE STUDY

Discussions of privacy vs. the common good often take place on a very high level of generalization. Some hold that individual rights in many democracies are endangered by invasive surveillance and by authoritarian tendencies exhibited by governments that are justified by fearmongering. Others hold that we have lost much of our sense of responsibility to the other and the common good by extolling the individual.

In this chapter, I provide a case study to illustrate that finding the right balance between privacy and the common good (or more generally, between individual rights and the public interest) is often complicated by technological and economic factors that affect what otherwise may seem to be mainly moral and legal considerations. The case examines the policies concerning encryption, sometimes referred to as the Crypto Wars.

A Brief History

The Crypto Wars began in 1993 with the Clipper Chip proposal, but even then the encryption debate was not new.¹ For instance, “In January 1991, Senator Joe Biden inserted new language into the draft of an anti-terrorism bill, expressing a Sense of Congress that electronic communications service providers and equipment manufacturers ‘*shall ensure that communications systems permit the government to obtain the plain-text contents of voice, data, and other communications when appropriately authorized by law.*’”²

The Clipper Chip, a microchip designed for placement in a telephone, was developed to facilitate law enforcement’s access to information relevant to their investigations; the chip would encrypt the conversations, but the government would hold the key, giving it the ability to intercept phone calls provided it had “lawful authorization.”³ The government was concerned with criminals using encryption to hide from

law enforcement and saw the Clipper Chip as a reasonable approach that was in the general public's best interest.

According to a 1993 White House Press Release: "We need the 'Clipper Chip' and other approaches that can both provide law-abiding citizens with access to the encryption they need and prevent criminals from using it to hide their illegal activities."⁴ The Clipper Chip proposal met with widespread opposition. There were security concerns about the concept of key escrow; entrusting keys to a third party was seen as a vulnerability. The idea of key escrow also sparked privacy concerns, with many people distrusting government to be in charge of encryption keys.

From a business angle, companies worried that the Clipper Chip was the first step toward banning encryption that did not include a back door.⁵ Stewart Baker, chief counsel at the National Security Agency (NSA), wrote an article in *Wired* magazine in an attempt to dispel the concerns being raised about the Clipper Chip. Addressing privacy advocates, he wrote: "The key escrow proposal is not about increasing government's authority to invade the privacy of its citizens. All that key escrow does is preserve the government's current ability to conduct wiretaps under existing authorities."⁶ Baker then turned to the concerns of businesspeople, taking a stern approach yet assuring them that their ability to innovate remained intact: "So where does this leave industry, especially those companies that don't like either the 1970s-vintage DES or key escrow?" he asked. "It leaves them where they ought to be—standing on their own two feet. . . . If companies want to develop and sell competing, unescrowed systems to other Americans, if they insist on hastening a brave new world of criminal immunity, they can still do so—as long as they're willing to use their own money. That's what the free market is all about."⁷

After discovering a flaw in the Clipper Chip technology, the government abandoned it and moved on to a new, yet similar proposal: that of focusing on "commercial key escrow."⁸ The proposal was to be implemented by companies themselves and would apply to software as well as hardware. Unlike the Clipper Chip, the keys would be kept by government-certified private escrow agents rather than the government itself. Public fears were not alleviated. Opposition continued, including from some lawmakers.⁹ In the words of Senator John Ashcroft: "We do not provide the government with phone jacks outside our homes for unlimited wiretaps. Why, then, should we grant government the Orwel-

lian capability to listen at will and in real time to our communications across the Web?”¹⁰ Ultimately the government abandoned its key escrow proposals, and no mandatory back doors were imposed on encryption technology.¹¹

Aside from the key escrow debate, there are two other significant aspects of the Crypto Wars. First, the Communications Assistance for Law Enforcement Act (CALEA), passed in 1994, reflects compromise between government interests and privacy concerns. It contains major concessions for those favoring strong encryption. For instance, the legislative history states that “nothing in this paragraph [47 USC § 1002(b)(3)] would prohibit a carrier from deploying an encryption service for which it does not retain the ability to decrypt communications for law enforcement access.”¹²

Second, there was a battle over export controls on encryption technology during the 1990s (at the time, encryption products were classified as munitions). However, by 1999, the White House announced it would remove almost all restrictions on the export of encryption products. Encryption technology was gaining a foothold in foreign markets, and continuing to impose restrictions would have hurt American businesses. This policy shift marked the end of the Crypto Wars.¹³ As Andi Wilson Thompson, Danielle Kehl, and Kevin Bankston summarized, “The Crypto Wars ended with a broad policy consensus: ensuring Americans’ ability to use and distribute strong encryption free of government back-doors was critical to maintaining the nation’s economic security and information security, as well as maintaining Americans’ constitutional rights to privacy and free speech.”¹⁴

A second round of the encryption wars started in 2014, following the introduction of a new, much more powerful end-to-end encryption where the server cannot decrypt incoming communication; only the devices used to send and receive messages have the necessary key.¹⁵ This enhanced security provides a very high level of privacy for ordinary citizens, criminals, and terrorists alike.

Many companies have incorporated end-to-end encryption into their products. For example, Apple uses end-to-end encryption to secure communications sent over iMessage and FaceTime.¹⁶ The messaging app WhatsApp (which has been acquired by Facebook) also uses end-to-end encryption, and it is now an option (although not the default) on Facebook’s Messenger app.¹⁷ Google Allo is another messaging app

that allows communications to be sent using end-to-end encryption, although as with Facebook, it is not the default option—users must choose to activate “incognito mode.”¹⁸

Until the Snowden revelations, American high-tech corporations showed limited interest in developing and marketing high-power encryption software. After these revelations, many customers—especially overseas—became very concerned about their privacy. Some nations, such as Germany, India, and Brazil, considered forging their own internet networks.¹⁹ American high-tech companies viewed these developments as highly threatening to their business.

Although Apple’s iMessage service already used end-to-end encryption prior to the Snowden leaks, its security protocols were increased to allow users to erase their phone’s data after a certain number of incorrect passcode attempts. WhatsApp added end-to-end encryption post-Snowden,²⁰ and Google announced that it would develop end-to-end encryption for Gmail.²¹

Law enforcement and government officials are concerned that securing personal information through high-end encryption and other settings that tech companies themselves cannot decrypt or override poses a security risk. (From this point on, any type of encryption or security setting that leaves devices and messages impenetrable is referred to as ultimate encryption, or UE.) Then FBI director James Comey, for example, warned that “encryption threatens to lead all of us to a very dark place” and that UE “will have very serious consequences for law enforcement and national security agencies at all levels.” He added: “It’s the equivalent of a closet that can’t be opened. A safe that can’t be cracked.”²² Former British prime minister David Cameron has asked: “Do we want to allow a means of communication between people which even in extremis, with a signed warrant from the home secretary personally, that we cannot read? . . . My answer to that question is: ‘No we must not.’”²³

FBI vs. Apple

The encryption debate exploded after the US government found a phone used by a terrorist, Syed Rizwan Farook, and could not unlock it. On December 2, 2015, Farook and his wife had killed fourteen people in a terrorist attack in San Bernardino, California. The FBI asked for Apple’s help in gaining access to the contents of the phone; when Apple de-

murred, the FBI turned to the courts, which ordered Apple to comply with the FBI's request.²⁴

An intensive public debate followed between the supporters of Apple (major parts of the media, law professors, and public intellectuals) and a smaller number of supporters of the FBI. After holding back, President Obama stated in a speech on March 11, 2016, that never allowing government access to someone's smartphone would be equivalent to "fetishizing our phones above every other value" and that it would not "strike the balance that we have lived with for 200, 300 years."²⁵ The FBI ultimately found a way to access the phone without Apple's help, and the case became moot, but the underlying encryption debate was not resolved.

British authorities faced a similar issue after Khalid Masood carried out a terrorist attack in London that killed five people on March 22, 2017. It is known that his phone connected to WhatsApp right before the attack, although it is unknown whether he sent or received a message. The attack has reignited the encryption debate in Britain. Home Secretary Amber Rudd stated the need "to make sure that organisations like WhatsApp . . . don't provide a secret place for terrorists to communicate with each other."²⁶ And acting metropolitan police chief Craig Mackey called out tech companies for acting unethically, saying, "If you're going to have ethical statements and talk about operating in an ethical way it actually has to mean something."²⁷

In the wake of the Apple vs. FBI dispute, two senators tried to resolve the problems caused by UE by suggesting it be banned. Senators Richard Burr (R-NC) and Dianne Feinstein (D-CA) issued a draft bill that would require "'intelligible information or data' or the 'technical means to get it'" to be provided if required by a court order.²⁸ The proposal caused public outcry and opposition by tech companies. Apple hired a high-profile lobbyist for its Washington office,²⁹ and trade groups that represent tech companies started lobbying Congress, expressing concerns regarding privacy and the effects of weakening encryption on business.³⁰

WikiLeaks has also played a role in the encryption debate. In March 2017 it released documents demonstrating some of the CIA's hacking capabilities, including its ability to hack Apple and Android devices, as well as Chrome. However, according to Apple, "the alleged iPhone vulnerability affected iPhone 3G only and was fixed in 2009 when iPhone 3GS was released," and "the alleged Mac vulnerabilities were previously

fixed in all Macs launched after 2013.”³¹ Google’s director of information security and privacy, Heather Adkins, stated that “security updates and protections in both Chrome and Android already shield users from many of these alleged vulnerabilities,” adding that their “analysis is ongoing and [they] will implement any further necessary protections.”³² Google has “always made security a top priority and we continue to invest in our defenses,” she added.³³ That is, these corporations argue that the arms race between the government and the privacy protectors continues and that they are winning.

Enter Massive Leaks

A new wrinkle in this continual tug of war took place when Julian Assange offered tech companies “exclusive access to the additional technical details we [WikiLeaks] have, so that fixes can be developed and pushed out so people can be secured.”³⁴ In a move that seemed to demonstrate Apple’s wariness of being seen as too friendly with Assange, the company announced that it has “not negotiated with WikiLeaks for any information.”³⁵ Apple did, however, suggest that WikiLeaks “submit any information they wish through our normal process under our standard terms,” adding, “Thus far, we have not received any information from them that isn’t in the public domain.”³⁶ Microsoft behaved similarly, stating that its “preferred method for anyone with knowledge of security issues, including the CIA or WikiLeaks, is to submit details to us at secure@microsoft.com so we can review information and take any necessary steps to protect customers.”³⁷ Microsoft also stated that WikiLeaks did make “initial contact via secure@microsoft.com” and reported they “have followed up” and are “treating [WikiLeaks] as we would any other finder.”³⁸

These leaks present multiple legal issues for tech companies. Although some lawyers are convinced that the leaked documents are within the public domain due to their wide distribution, Stewart Baker, former legal counsel for the NSA, maintains that “the unauthorized release of classified documents does not mean it’s unclassified.”³⁹ Baker added, “Doing business with WikiLeaks and reviewing classified documents poses a real risk for at least their [tech companies’] government contracting arms and their cleared employees.”⁴⁰ There is also a third consideration, namely the potential for being charged with neg-

ligence if tech companies' products are hacked and they had refused WikiLeaks' help.⁴¹

As demonstrated thus far, the issue regarding the “warrant-free zone” created by encryption is very much alive. Nobody on either side disagrees with the observation that the way this issue will be resolved will have major implications for national security (especially terrorism), public safety (especially crime), privacy, personal security (e.g., protection from identity theft), and the business interests of the corporations involved.

From a Fourth Amendment viewpoint, it seemed Apple should have complied with the court order. Furthermore, it would at first seem that the government had a particularly strong case. Unlike many other instances where government surveillance is conducted based on suspicions or circumstantial evidence, there is no doubt that the phone was used by Syed Rizwan Farook, the San Bernardino terrorist—and because he is deceased, he has very diminished privacy rights. (Moreover, the phone was owned by the San Bernardino County Public Health Department, which was happy to grant permission to search it.) In short, this case seems to be an unusually clear-cut case in which the value of security should trump the remaining privacy rights of someone who is both a known terrorist and deceased. This is, though, not the way Apple, other tech corporations, and their supporters saw it. They thought that the government was using this case to set a precedent for searching millions of other phones (more about this below). Further, they believed that even in this case there were strong legal arguments to deny the government's request.

Apple argued that weakening encryption software to allow government surveillance of phones (putting in a “back door”) would not only diminish the privacy of many millions across the world but also jeopardize their security. Apple states that “at stake is the data security of hundreds of millions of law-abiding people,” meaning that it sees itself as protecting not just Americans but iPhone users around the world.⁴² This, Apple holds, is because other governments and criminals would come in through the same back door. That is, Apple rejects the very legal and ethical way this and other issues have been framed—as a tension between the common good and individual rights—and the ensuing question of which values should take precedence in a given conflict. Apple argues that it is out to protect *both* core values. For this reason, Apple repeatedly

refers to the FBI request for Apple to develop a key able to unlock encrypted phones as “dangerous.”

Tim Cook, the CEO of Apple, spells out the dangers people face if the government’s demands were to be heeded and the protection Apple provides were to be weakened by introducing a back door into the software. “Bad actors” could bring down power grids, cause people dependent on medical devices to suffer a heart attack, and track the locations of peoples’ children.⁴³ Apple’s vice president of software engineering, Craig Federighi, raised similar concerns: “The threat to our personal information is just the tip of the iceberg. Your phone is more than a personal device. In today’s mobile, networked world, it’s part of the security perimeter that protects your family and co-workers. Our nation’s vital infrastructure—such as power grids and transportation hubs—becomes more vulnerable when individual devices get hacked. Criminals and terrorists who want to infiltrate systems and disrupt sensitive networks may start their attacks through access to just one person’s smartphone.”⁴⁴ Supporters of Apple argue that the government should instead compel the phone owners to divulge the password. However, this is impossible to do to with terrorists who commit suicide or are shot dead. For others, the government often needs to keep them under surveillance before it tips them that they are suspects. Hence it needs access to phones, pursuant to court orders, without disclosure to the phone owners. (For the same reason, corporate arguments that customers should be alerted about government requests for their communications, i.e., lifting “gag orders,” are not compatible with elementary procedures of law enforcement in all democratic nations.)

Losing Control of the Key

High-tech corporations and their supporters are concerned that if a key were created, the software would be stolen or leaked. Cook warned: “In the wrong hands, this software—which does not exist today—would have the potential to unlock any iPhone in someone’s physical possession. . . . The FBI may use different words to describe this tool, but make no mistake: Building a version of iOS that bypasses security in this way would undeniably create a backdoor. And while the government may argue that its use would be limited to this case, there is no way to guarantee such control.”⁴⁵ In response, I suggested on March 7, 2016, that Apple (and other high-tech corporations) leave the encryption software

as it is—thus avoiding vulnerabilities or a back door—but develop a key to unlock phones, a key they would keep. Once a court orders that a given phone must be unlocked, the FBI would bring it to Apple (or Google or whatever other tech corporations were involved)—and they would unlock the phones they produced and turn over to the FBI any information that’s found—but not the key. (To apply the same idea to phones still in the hands of bad actors requires considerable additional collaboration between the FBI and the tech corporations, but the same principle could be applied.)

Several artificial intelligence (AI) experts have commented on this suggestion. Many thought that although Apple has the technical capability to create a key, the real issue would be keeping it secure. Steve Bellovin from Columbia University’s Department of Computer Science responded that although “a key can be readily available or it can be secure, it can’t be both.”⁴⁶ According to Philip Schrodtt, a senior research scientist, “The problem is not the technology, it is people getting careless about how they use the technology.”⁴⁷ David Bantz, chief information architect for the University of Alaska system, noted that “NYC and [the] FBI have hundreds of phones they want to unlock. That would entail a process involving many people and loading the OS on many phones. That makes it possible maybe even likely that one of those people entrusted with that power is coerced or bribed or is clumsy enough to put it in the hands of criminals.”⁴⁸

I was surprised to hear during a meeting on May 11, 2016, at the Council on Foreign Relations (a rare one, on the record) District Attorney Cyrus Vance informing the audience that until September 2014 his office was able to routinely send phones to Apple; the phones would be opened and sent back with the relevant information within a day or two.⁴⁹ The reason Apple stopped, Vance implied, was that in September 2014, it started advertising itself as the only company that sold phones whose encryption could not be broken.⁵⁰ It seems that concern over profits, a fully legitimate concern, played a key role in Apple’s sudden refusal to cooperate with law enforcement and national security authorities.

In response to tech corporations’ oft-repeated claim that such a key cannot be kept secure, even if it stayed on their premises under its own encryption protection, I note that Coca-Cola kept its formula secret for many decades. And that leaks about secrets from the FBI, during the previous twenty-five years, have been very rare. Further, if the key were “leaked,” tech corporations would modify their encryption software by

patching it up, as they often do, or developing new keys. In effect, this is what Apple sought to do when it learned that the FBI had found a way to unlock Apple's iPhone. Most importantly, I agree with Vance, who argued that one must weigh "the risk of maintaining the ability to open a phone by the company . . . versus . . . the consequence to law enforcement of not being able to access those phones."⁵¹ The answer seems self-evident.

Rights and Responsibilities

Corporations would not exist without society granting them a special privilege, that of limited liability. Without this provision, it would be impossible for corporations to amass the large amounts of capital that modern enterprises require. It stands to reason that in exchange, society can demand that corporations pay back by absorbing some losses if, as a result, security could be much enhanced.

Moreover, communitarians have pointed out that rights presume responsibility.⁵² Thus, as far as individuals are concerned, the right to be tried before a jury of one's peers means little if the peers do not see serving on the jury as their responsibility. The right to free speech will not be sustained if people do not realize that they need to accept listening to offensive speech. And the right to life will not be secured if those who seek it do not assume the responsibility to pay for national defense and public safety.

Corporations often claim that they should have the same rights as individuals. For instance, they assert that their commercials and labeling of products should not be regulated because such regulations violate their right to free speech and that they should have political free speech rights in the form of making campaign contributions. They had previously been granted due process rights and Fourth Amendment protections by the Supreme Court.⁵³ Society hence should expect that they also assume responsibility like individual members of the community and contribute to the common good.

In Conclusion

Whether one sides with Apple or the FBI, whether one holds that privacy concerns outweigh national security concerns or insists that ways can be found to prevent the formation of warrant-free zones, one may

well agree that, as the patriotic movement develops, its general positions on the balance between privacy (and other rights) and security (and other common goods) need to address the question of where the proper balance lies within the current historical context and that these positions will need to be “translated” into specific policies. These policies, in turn, will face a large variety of technical and economic challenges, as the preceding case study illustrates. Nobody should expect that developing a new agenda for the patriotic movement is going to be an easy task.

DIVERSITY WITHIN UNITY

Immigration, as previously discussed, is a major force that drives populism, as scores of millions of people—especially in the EU but also in the US—view large-scale immigration as challenging their identity, national community, security, and jobs. In chapter 3, I suggested that dismissing these concerns as a sheer reflection of bigotry and simply calling for “open borders” is neither justified nor politically productive. In the following discussion, I seek to show that the greater the capacity of societies to acculturate new immigrants, the higher the levels of immigration they can accommodate without undue social disruption. In the process, nations need to change what they consider their core values rather than merely expecting immigrants to buy into the prevailing ethos. Building up the capacity of absorption should be a major element of the agenda of the patriotic movement.

A key question arises in this context as to what level and kind of acculturation a patriotic movement should call for. I will show that major forms of assimilation, often favored in Western states, tend to pose unnecessary burdens on acculturation processes, and I suggest a different model, which I refer to as “Diversity within Unity.” Given that this issue is much more acute in the EU than in the US, the discussion focuses on the EU.

Rising Alienation

Even before the recent massive immigration to Europe of people of different faiths and cultural backgrounds, many European societies and the EU faced multiple challenges. These included very low economic growth; high levels of unemployment; political fragmentation and polarization; increased interpersonal and intergroup violence; a rise in terrorism and right-wing parties and movements; the negative effects of globalization (and growing disaffection with the EU). Several European societies, most notably Germany, Sweden, Greece, and Italy, now face

the challenge of absorbing a much larger number of immigrants than at any other time in recent history. The immediate concerns—such as limiting the flow of immigration, separating asylum seekers from economic migrants, and finding housing and work for the newcomers—have already received much attention and hence are not discussed in this chapter. Rather, I focus on strategies to absorb immigrants into their new home societies and cultures. In particular, I ask whether integration requires that these immigrants embrace the prevailing national values, or do these values need to change? This question confronts all nations that face large-scale immigration, but especially those whose immigrants are from very different cultures, for instance those who arrive in a major European metropolis after having fled a war zone in Libya or Afghanistan or, say, a rural village in Senegal.

Even prior to the recent influx of migrants, many European nations had seen a significant increase in immigration. Between 2001 and 2011, the foreign-born population in England and Wales grew by 62 percent.¹ In Norway, the number of immigrants and their children nearly tripled between 1995 and 2011.² In Spain, the increase was more dramatic still: in 2000, the country had fewer than 1.5 million immigrants, but by 2009, the number had risen to 6.5 million, more than a 300 percent spike.³ Even before these immigration surges, many countries had sizable minorities that were not well integrated. The result is what might be termed a normative distribution wherein European nations are struggling not only with integrating newcomers into the prevailing moral cultures but also with articulating what those moral cultures are and thus which values immigrants *ought* to embrace.

Some conceptualize nations as merely states and economies and focus on ensuring that new immigrants comply with prevailing laws and find adequate jobs. However, to reiterate, nations are communities invested in states. People are not merely citizens but also members of societies animated by a particular shared history, bonds, ideals, and hopes. To become full-fledged compatriots, immigrants need to wrestle with and embrace their new homelands' moral and social values. Otherwise, much of Europe and quite a few other nations will experience increased levels of intergroup violence and terrorism. Moreover, failure to integrate the immigrants, old and new, is *one key factor* among several others that contributes to the rise of right-wing and xenophobic reactions in the host societies, the fracturing of national unity and stability, and the undermining of the EU. This failure is a key reason that the centers of

political gravity in entire nations have shifted to the right, including in Germany, Hungary, Austria, and Poland, with others likely to follow. (An Autumn 2017 Eurobarometer poll found that across all EU member states, a clear majority of respondents had a negative view of immigration from non-EU countries.)⁴

Each nation must determine the most effective ways to absorb immigrants into their societies, their communities, and above all into their moral cultures. This is a major challenge because (a) many of these societies are unclear about what their distinct values are; (b) absorbing large numbers of new immigrants may well entail recasting these values to some extent; and (c) large-scale absorption is always a challenging process. Unless nations do much more to integrate immigrants on a normative level, including editing their own values, many cities are likely to come to look like the suburbs of Paris. This chapter seeks to outline how the patriotic movement should contend with this challenge.

Assimilation, Unbounded Pluralism, and Diversity within Unity

The various approaches tried by different European societies and favored by the European Commission fall on various points of a continuum. At one end of this continuum is total assimilation; at the other end, unbounded pluralism. These bookends are ideal types; no society fully adheres to either, but many are fairly close to one end or the other of the continuum. Diversity within Unity (DWU) falls in the middle of this continuum.

Assimilation is a term used in different ways by different social scientists and policy makers, and it translates into different policies.⁵ In its strongest form, assimilation requires that immigrants abandon all of their distinct cultures, values, habits, and connections to countries of origin in order to fully integrate into their new home.

France stands out as close to an archetype of this approach. For many years it was regarded as discriminatory—in the Republican tradition—to officially recognize French citizens' country of origin or religion.⁶ France made it much easier than did other European countries for new immigrants to obtain citizenship, but it also made stricter demands of newcomers to “become French.” In 2004, France passed a law banning all ostentatious religious symbols from public schools, although students are allowed to carry “discreet” religious symbols. Although concerns over the hijab were the initial impetus for the law, it does not single out

any particular religion, meaning that crucifixes and yarmulkes are also forbidden in schools. The law is so far-reaching and has been interpreted so broadly that several schools have forbidden female Muslim students to wear long dresses.⁷ More recently, schools in several French towns have decided to stop serving pork-free meals.

This approach is prone to failure because it requires immigrants to give up values and behaviors that are central to their identity. Such excessive homogenization undermines rather than facilitates integration, as we shall show below in some detail. Moreover, placing such severe, inflexible assimilation requirements on immigrants creates unrealistic expectations of homogeneity among the native population. The fact that there is a high level of alienation among immigrant and minority communities in France—and also among the native majority—reveals that this approach is not satisfactory.⁸

Unbounded pluralism holds that there is no need for immigrants to modify their behaviors, habits, and customs (as long as they do not violate existing laws) and that, instead, the host societies are to abandon their core of shared values, demands for loyalty, and national identity in order to accommodate various differences—above all normative ones—between the host society and various immigrant groups and minorities.

No society in Europe follows such a policy (Canada claims it does). Such an approach was advocated by the Commission on the Future of Multi-Ethnic Britain, whose widely discussed Parekh Report concluded that the United Kingdom had become a territory that English, Scottish, Welsh, West Indian, Pakistani and other groups inhabit like tribes resting next to each other. They had and needed few shared values or other commonalities; the government should avoid promoting any set notion of national identity and culture in order to avoid offending or injuring any of the various groups.⁹ Along similar lines, the political scientist Jamie Mayerfeld has argued that national identity is a form of group identity that—like identities based on race, religion, and ethnicity—arouses sentiments that exaggerate feelings of injury and exerts pressure on people to undertake acts of aggression and violence.¹⁰ In short, strong national identities are best avoided.

Although no European nation is currently following a full-blown unbounded pluralism policy, one can find it reflected in particular domains. For example, several countries have taken an approach to religious symbols that reflects unbounded multiculturalism. Sweden allows

on-duty police officers to wear turbans, headscarves, or yarmulkes instead of the police hat that had previously been worn by all officers. Similarly, the UK permits police officers to wear various religious headcoverings.

Unbounded pluralism cannot be made to work as a general policy for a number of reasons. First, despite growing diversity, a strong sense of national identity is far from dead or dying in most European societies. Indeed, it seems to have been reinforced in response to the mass immigration and the weakening of the EU. Second, in those countries in which national bonds are weak, we see rising tensions and conflicts. David Goodhart notes that as societies become more diverse, there are fewer shared values and thus less solidarity or willingness to redistribute resources.¹¹ The institutional paralysis one witnesses in Belgium, which some have termed a failed state,¹² reflects such a division between the Flemish and Walloons—a division that is exacerbated by the absence of a sufficient normative shared core. This lack of a shared core, in turn, makes it difficult to integrate immigrants, as there is not one normative framework into which they can be integrated.

Several countries that had previously embraced multiculturalism (some forms of which are a mild form of unbounded pluralism) are retreating from this position. For example, in the 1980s, the Netherlands adopted a policy of multiculturalism that promoted respect and support for cultural diversity and allowed minorities to maintain their cultural and religious differences but paid much less attention to the unity realm. The Dutch attitude of accommodation was built upon the “pillarization” that developed in the seventeenth and eighteenth centuries that allowed various groups (originally Catholics and Protestants, and later others) to have their own semi-autonomous institutions for education and social services.¹³ However, in 2004, following the murders of Pim Fortuyn and Theo van Gogh, the Dutch government officially rejected multiculturalism and “accommodation” by adopting a new strategy that requires new immigrants to “become Dutch” not only through language acquisition but also in a cultural and moral sense.¹⁴

There are also some indications that Germany is moving away from pluralism in the wake of an unprecedented intake of refugees and asylum seekers in 2015. In Cologne, a series of sexual assaults and harassment by gangs of men described by the authorities as having “a North African or Arabic” appearance during New Year’s Eve celebrations re-

sulted in a backlash against the German government's previous attitude.¹⁵ Labor Minister Andrea Nahles wrote in February 2016: "If you come to us seeking protection and wanting to start a new life, you have to stick to our rules and values. If you signal that you can't integrate, your benefits will be cut."¹⁶ Germany requires an "integration course" that consists of language and culture classes. An official German government description of the "integration course" says that attendees will discuss "important values in German society, e.g., freedom of worship, tolerance and equal rights."¹⁷ Whether the curriculum of these classes is well formed, the teachers are properly prepared, and these classes are effective is far from clear; however, the direction in which the policy is shifting is quite evident.

A third approach is that of Diversity within Unity (DWU).¹⁸ It presumes that all members of a given society will fully respect and adhere to select *core* values and institutions that are considered part of the basic shared framework of the society (the unity component). At the same time, every group in society is free to maintain its distinct subculture—those policies, habits, and institutions that do not conflict with the shared core (the diversity component). Respect for the whole and for all is the essence of this position, with respect for the community (which itself may be recast over time) taking precedence over diversity if and when these two come into conflict (unless the claims of community infringe on basic liberties and minority rights). No European nation fully adheres to this model; the US comes closer and has been more successful in absorbing immigrants than have many EU members.

Each of the three positions discussed here (assimilationist, unbounded pluralism, DWU) can be represented through visual metaphors. The melting pot is often used to depict society under an assimilationist model, in which all differences are melted down, resulting in a high degree of homogeneity. A salad bowl is used to represent a multicultural society in which various groups are tossed together but each maintains its original flavor and form, remaining largely unchanged by contact with other elements. DWU is akin to a mosaic that is richer for the difference in size and color of its pieces but that also has a shared frame and glue that holds the various pieces together, a frame that can be recast but not abandoned. Because I hold that DWU is the most promising approach and the one that the patriotic movement ought to champion, it is next spelled out.

Citizenship and Membership

The DWU approach is based on the observation that immigrants are not only joining a state with a particular polity, laws, and institutions but also a community with a distinctive history, values, and affiliations. States have citizens; communities have members. The requirements of citizenship are relatively limited: obey the law, pay taxes, follow public affairs, and vote. Some countries require various forms of public service of their citizens, including military service. The patriotic movement should embrace the idea that all young people provide some form of national service. Membership in a community requires learning and embracing its core values and forming bonds of affinity with other members in accordance with these values. It combines respect for individual rights with social responsibilities to the common good.

If one examines, from this viewpoint, the classes and tests required by various European societies of new immigrants, one finds that many are focused on verifying that immigrants are ready to become good citizens. Occasionally, they also include some, albeit rather limited, preparation for membership in a community. For instance, tests introduced in 2006 by the German state of Baden-Württemberg ask questions such as, “Is it right for women to obey their husbands, and for men to beat their wives when they are disobedient?” and, “If your adult daughter dressed like a German woman, would you try to prevent her from doing so?” In the German state of Hesse, the citizenship test asks, “If someone described the Holocaust as a myth or folktale, how would you respond?”¹⁹ In the Netherlands, would-be immigrants, prior to immigration, must take a “civic integration test” that quizzes them about their command of the Dutch language, history, and culture. In addition, the Dutch pre-immigration test requires viewing a video entitled *Coming to the Netherlands* that includes images of female nudity and homosexual men kissing. In addition, imams of Dutch mosques must also attend a mandatory course on “Dutch law, including the rights of women and freedom of speech.”²⁰ A British citizenship test introduced in 2003 seeks to tease out whether a person is ready to engage others in a proactive rather than antisocial or violent manner: “What should you do if you spill someone’s pint in a pub?” The correct answer in this case is, “Offer to buy them another.”²¹ One can argue about whether one question or another is appropriate or well-worded. However, from a DWU perspective, which seeks to make immigrants not only citizens but also members of the national

community, incorporating society's values and norms in civics education is essential and deserves more attention.

The discussion next turns to examine which required behaviors and elements belong to the unity realm—to which all members of the society are expected to adhere—and which belong to the diversity realm. To reiterate, although a realm of normative unity, of a core of shared values, must be maintained if the society is to hold together and the polity is to function, these values may be reexamined and adjusted over time. There is room for differences of opinion over which elements belong to which realm, and these distributions tend to shift over time and from one society to another. Nevertheless, to endure and flourish, nations—at any given point in time—need to clarify which behaviors must be “unified” (so to speak) and which can be left “unbound.”

Shared Values—Core but Not All

The term “national ethos” refers to the values, traditions, identity, and vision of the future (or “destiny”) of a given nation.²² The DWU model holds that integration of immigrants does not require that the immigrants adopt all the elements of the national ethos but only the core values—in sharp contrast to an assimilationist approach. To proceed, nations in the process of planning for massive absorption of immigrants need to sort out which values are part of the core and which are not. This requirement is challenging for members of many European societies that have only a vague sense of what would constitute such a core.

Assimilationists avoid this issue because, as a matter of principle, they view all shared values as obligatory for immigrants' adoption. Unbounded pluralists avoid the question by assuming that immigrants need no new values. However, if one grants, even for the sake of argument, that DWU might work better, one must inevitably ask, What is the core of shared values?

Granted, many difficulties arise once one seeks to determine which values are “core” and which are not. Many of the values various European societies may regard as defining their nation are universal, for example, respect for human rights. Other values are European—for example, strong support for a social welfare state as opposed to American capitalism—but do not necessarily define what it means to be French or a Swede or an Italian. (A wit captured this dilemma by asking if warm beer and fish and chips are what makes one a Brit.) Former Norwegian

prime minister Kjell Magne Bondevik stated at the 2004 Conference on European Values: “In Europe . . . to some extent we all have a spiritual and intellectual heritage from Athens—democracy, Rome—the rule of law, and Jerusalem—the Judeo-Christian values.”²³ Well put, but it does not define national differences in core values.

One set of values cited by some European leaders as part of the core is a Christian heritage or worldview. Former French president Nicolas Sarkozy said: “The roots of France are essentially Christian. . . . To take away those roots means to lose meaning, to weaken the cement of national identity.”²⁴ Former British prime minister David Cameron argued that Christianity had played an important part in shaping the country’s identity, stating: “These are values we treasure. They are Christian values and they should give us the confidence to say yes, we are a Christian country and we are proud of it.”²⁵ Public schools in many European countries in effect incorporate Christian values as part of their curriculum.

This position has to be reexamined given the need to absorb millions of Muslims. European societies have two basic choices: separate state and religion and relegate religion to the private realm of diversity or provide equal expression to several religions. For example, starting public events with a blessing from a priest, an imam, and a rabbi and perhaps a reading of a humanist text by an atheist. (While this may sound far-fetched, quite a few public events actually are implementing this policy, though atheists are typically excluded.)

There are some signs that Europe is moving in the direction of scaling back the role of Christianity in public life. Thus, Scandinavian countries that had long-standing official state churches have disestablished their national churches in recent years. Norway’s parliament voted in 2012 to separate the Norwegian Church from the state but to continue to finance the church “on par with other religious and belief-based societies.”²⁶ Similarly, Sweden disestablished its official Lutheran church in 2000, and the government now allocates money to other faiths as well, with individual taxpayers deciding what their taxes will fund.²⁷ These changes illustrate what I meant by saying that integrating immigrants needs in part to be achieved by changing the core values rather than those of the immigrants.

Another challenge to defining the national ethos for the patriotic movement is fear of endorsing insular nationalism that can spill over into nativism and xenophobia. In the 1990s, a group of political theorists began to argue for “liberal nationalism,” which sought to preserve

the sense of belonging, loyalty, and solidarity embodied in nationalism while removing chauvinist and racist elements and incorporating the personal autonomy embedded in classical liberalism.

Despite all these difficulties, one cannot disregard that each European nation has some shared values so central to communal bonds and practices that ignoring them offends or violates communal identity. One possible approach to articulating these values is for various societies to combine universal and “European” values, each in their own way. Thus, the Nordic countries may put more focus on social egalitarianism than does the United Kingdom, while the Netherlands may place more emphasis on personal liberties than does France. The UK may place less emphasis on the social welfare state than most other European societies, whereas France may stress the separation of state and church more than the rest of Europe, and so on. Further, each society has its own historical narratives, national heroes, and celebrations, which are all elements to consider in determining which particular values are to be included in the core and which are not.

In sorting out the historical values, the patriotic movement needs to take special note of the norm that accession to membership in a national community, and enjoyment of the benefits that such membership bestows, must be accompanied by an assumption of the nation’s burdens. Just as one who joins a family via adoption or marriage cannot claim they are entitled to part of the new family’s assets but none of its liabilities, so upon becoming a member of a new society, one cannot merely benefit from its accumulated wealth while disowning its past misdeeds and obligatory reparations. Thus, a new British citizen cannot claim to be an heir to the tradition of civil liberties passed down from the Magna Carta onward, yet disavow any implication in the legacy of British imperialism. Similarly, a new German cannot pride himself on the achievements of Kant, Goethe, and Bach—or *Dichter und Denker*—without also sharing in the national shame of the Holocaust.

The fact that the line between the unity realm, which all members of a society must enter, and the diversity realm, in which they are welcome to differ, is not always observed is illustrated by the following case in point. A website launched by the Federal Center for Health Education in Germany in 2016 seeks to provide sex education mainly to Muslim immigrants. The online guide seeks to teach them about the impropriety of groping women, respect for gay people, and manners for conversation with German women. But the guide also uses exceedingly graphic

images and language to introduce immigrants to the “joy of sex,” for example, by showing various sex positions and the details of oral sex.²⁸ Education of the latter kind seems unnecessary to impart core values, and respect for diversity in attitudes about such matters should be part of the patriotic movement platform.

Education: 80 Percent Shared

The assimilationist model assumes that immigrants and minorities will attend public schools and learn basically the same material as other members of society. An unbounded diversity model calls for setting up separate schools and allowing distinct curricula for various ethnic and religious groups from kindergarten to grade 12, such as separating Muslim or Jewish schools, and not merely as “Sunday” schools but as full-time schools.

The DWU model calls for a significant core curriculum (comprising perhaps 80 percent of the total curriculum) for all students. This core curriculum is to include the normal elements of a modern education (math, sciences, language arts, etc.) as well as classes that teach core values and prepare students for citizenship and membership in the society. For the remaining 20 percent, students would be free to choose between classes that nurture their particular religious or cultural values; for example, students might be able to take a course on the history and traditions of their (or their parents’) country of origin or a theology course taught by a vetted religious leader.

Several European nations lean in this matter toward the unbounded pluralism model. For example, the British government provides financial support to a variety of religious schools; although the majority of these schools are Christian, there are also Muslim, Jewish, Sikh, and Hindu faith schools.²⁹ The extent to which the government requires some measure of shared core values curriculum in these faith schools varies depending on their status.³⁰ However, serious failings have been found at some of these schools; an official investigation determined that “seven hundred children attend schools where inspectors considered that pupils were not being adequately prepared for life in modern Britain.”³¹ Among the failings were students who thought that France was a part of Britain, a book in one school’s library that asserted that women were less reliable witnesses than men, and older pupils who did

not know the term “government” or understand the democratic process. Such findings confirm the DWU view that if students are segregated into religious schools, a strong core of shared teaching needs to be assured.

Some countries have taken actions that move diverse schools somewhat closer to the DWU model. For example, Finland’s National Core Curriculum gives guidance on helping immigrant and other foreign-language students develop both cultural identities, instructing that schools should “support students’ growth into active and balanced members of both the Finnish linguistic and cultural community and their own linguistic and cultural community.”³² From a DWU viewpoint, ideally all children should attend the same public schools—to ensure the element of unity and reduce tribalism as all intermingle socially—and all schools should include in their curricula classes that teach history, literature, civics and social sciences, as well as core values. If students attend private or religious-based schools, they should still be required to include these elements in their curriculum. It would also be beneficial if these students were expected to participate in some interscholastic events and activities, not just in competition against each other but also in cooperative events, for example, participating in activities such as building homes with Habitat for Humanity, to protect and restore the environment, or joint field trips to local historical sites.

At the same time, there should be room for respect for diversity. For instance, in Germany, an eleven-year-old girl requested to be exempt from coed swimming lessons at school because she did not want to swim with boys, arguing that Islam forbade her to see male classmates shirtless. A federal court ruled, however, that the girl must continue, insisting that coeducation was an important component of learning to live in a pluralistic society.³³ A DWU approach favors allowing diverse accommodations in such situations. If a significant number of students hold similar views, schools could offer gender-segregated swimming lessons. Otherwise, individual students could use the time to pursue other scholarly or extracurricular activities approved by the school. Diversity in student attire (wearing the hijab or Islamic headscarves, yarmulkes, etc.) should be accommodated, and used to teach tolerance, as long as students are able to socialize and learn together.

In Switzerland, when two Muslim students from Syria asked to be excused from shaking a female teacher’s hand at the beginning and end of the school day, the local school district accommodated the students’

request. The arrangement, however, became a national flashpoint. There was strong consensus that a refusal to shake the teacher's hand shows disrespect for Swiss fundamental values. Hence the canton in which the school was located overruled the decision and instituted a five-thousand-dollar fine for students who refuse to shake hands with their teachers.³⁴ Every act and custom can be turned into a polarizing symbol. In my judgment, this specific practice is innocuous and should serve as an occasion to promote vibrant diversity and find substitutes. Thus students may salute their teachers rather than shake their hands. Indeed, all students may be asked to change their behavior accordingly (an especially good idea in flu season).

Primary and Secondary Loyalties

Strict assimilation models hold that any vestiges of loyalty to one's country of birth are problematic and jeopardize loyalty to the host country. According to this view, loyalty is a zero-sum game. The Netherlands' policy on citizenships reflects this view, as immigrants wishing to obtain Dutch nationality through naturalization are usually required to forfeit their other nationality.³⁵

DWU does not suggest, as do assimilationists, that adopting the identity of the host country implies discarding loyalty to immigrants' countries of origin. Rather, DWU suggests layered identities where various immigrants maintain subidentities (Turkish Germans, for example, or Dutch Moroccans) that are situated within an overarching shared identity. Dual citizenship is acceptable under this framework. However, when the two loyalties clash, loyalties to the new home nation must take priority in liberal democracies. Thus, refugees from conflict zones might be expected to have special concerns about the fate of people in the countries they came from, to send remittances, and to urge their adoptive country to help restore order in places such as Syria and Libya. However, if the new home nation were to send troops to fight in the old home country, immigrants must side with their new home, or they would be considered ill-integrated.

While the DWU approach demands primary loyalty to the national community from all its members, immigrants' affinity to their respective homelands need not be discouraged. In fact, such diversity can be enriching to the host society, contributing new holidays, cuisine, and other cultural attributes.

Language(s)

The assimilationist model emphasizes acquisition of the national language(s) and advocates for a ban on using other languages in official business, courts, ballots, and street signs. In the Netherlands, anyone receiving social assistance benefits must be able to communicate in Dutch; if a claimant has not attained a considerable level of language proficiency, they may have their benefit reduced and eventually discontinued.³⁶ In some cases, assimilationists even seek to limit second languages in the private sphere. Austria, for example, passed a bill in 2015 that requires imams to speak German.³⁷ Some think any use of immigrants' native languages signals a refusal to integrate. They take offense at shops that display foreign signage and street signs with "foreign" languages.

Unbounded multiculturalism opposes the recognition of any one language as official and seeks to provide a coequal status to multiple languages (sometimes a rather large number) in courts, official documents, and so on. The nearest example of this sort of linguistic pluralism is Belgium, where French, Dutch, and German are all official languages, and there are further languages and dialects that are recognized by regional authorities. As already noted, Belgium is one of the least integrated European countries, barely able to support a state.³⁸

A DWU approach recognizes the considerable advantages to social cohesion of having a shared language and teaching it to all immigrants, members of minority groups, and people whose education is lagging for other reasons. However, it does not oppose the state provision of translators and translated documents for those who have not yet acquired the shared language, even if this reduces the motivation for immigrants to learn the prevailing language. Thus, Sweden guarantees *mödersmålundervisning*, or the right to receive instruction in and develop one's native language. State-funded schools offer classes in indigenous minority languages, as well as Arabic, Farsi, etc. while also teaching Swedish as a second language to students who require it. The DWU model would operate on the assumption that these measures are transitional, helping immigrants bridge the gap until they are fluent in the national language rather than facilitating the long-term conducting of official business in their native language.

The patriotic movement should mobilize members of its chapters to act as volunteers, teaching immigrants the national language or languages. In this way, not merely will acculturation be much accelerated

but also the immigrants would get to know the old-timers on a prolonged personal basis (as distinct from going out to dinner together here and there).

In Conclusion

Many nations face the challenge of integrating large numbers of immigrants, which entails providing institutions and processes that will lead new immigrants to embrace the moral culture of their new homeland, even if the culture is changed somewhat in the process. The patriotic movement would do best to recognize that assimilation is unnecessary and unduly taxing while unbounded pluralism is insufficiently integrative. Sorting out which elements of the new homeland's values and norms the immigrants must absorb and in which areas they are free to affirm diversity is the basis of the model the movement ought to adopt—Diversity within Unity.

THE NEED FOR SELF-RESTRAINT

The patriotic movement may well be able to find policy consensus on many issues, including immigration and free trade. This consensus need not, nor should it aspire to, resolve all differences. In several matters the main goal may be to contain differences by explicating a core of shared values. However, the patriotic movement faces a major challenge when it must sort out its positions with regard to what has been called culture war issues, such as abortion, same-sex marriage, and transgender rights.

When deliberating culturally sensitive topics, both sides feel that they are concerned with absolutes and tend to hold that the other side has neither a moral nor a legal foot to stand on. The question arises, How can one contain conflicts when core values are at stake? Part of the answer lies in leaving some contested matters out of the public realm. Indeed, some advocate that marriage, for instance, should not be defined by the state, that each couple be left free to form their own marriage contract.

Some issues, however, the state cannot avoid—whether abortion should be legal, whether LGBTQ people have the same rights as heterosexual citizens, and what constitutes discrimination. I believe that if the opposing sides have a strong sense of community on other grounds, this will help people deal with these differences, but I grant that culture war topics will remain divisive even when all parties are strong patriots. The answer might be found in leaving these matters to the courts, which in the past worked out middle grounds that most citizens learned to live with. Others, though, hold that leaving these matters to the courts exacerbates rather than lessens the divisions, as the “losing” side feels the courts’ adjudication (“legislation from the bench”) foists its decisions without genuine public debate and consensus.¹ However, as I see it, the courts may often be the only place these issues can be worked out. In either case, I suggest, all parties involved should show a measure of self-restraint.

Legal Rights vs. Morally Right

The American law allows landlords to evict tenants who do not pay rent for a few months on any day, including Christmas Eve, as long as proper eviction notices have been served. However, our moral values hold that an eviction on such a holiday would be indecent, would be morally inappropriate. Indeed, in a considerable category of situations our values teach us the enforcement of legal rights to the full limit is morally wrong. Such legal self-restraint is often fostered by intangible moral forces.

The basic moral idea before us has been captured in the phrase “a pound of flesh,” signifying conditions where one should not extract what one is due even if one is fully entitled to do so. The expression comes from Shakespeare’s *Merchant of Venice* (circa 1599), in which a merchant, Antonio, borrows money from Shylock. The terms of repayment hold that the loan will be interest-free under the condition that if Antonio does not meet his commitment, he will have to pay a pound of his own flesh to Shylock. Antonio’s maritime business goes under, and he is forced to default on the loan. In response, Shylock, motivated by mutual enmity, sets out to collect his pound of flesh: “The pound of flesh which I demand of him is dearly bought, ’tis mine, and I will have it.” Shylock is depicted not as someone who made a fair deal and intends to claim what is rightfully his but as a heartless, cruel banker.

In the eighteenth century, the phrase started to take on its modern, figurative meaning: to take a pound of flesh is to demand of someone recompense that is legal, yet unreasonable, merciless, or inhumane.² For instance, an 1887 newspaper article read, “All the other Great Powers want their pound of flesh from Turkey.” A French romantic novel from 1905 used it similarly: “That relentless and stern France which was exacting her pound of flesh, the blood-tax from the noblest of her sons.”³

The same basic concept is reflected in a court case concerning Walker-Thomas Furniture, a rent-to-own furniture store. Its contracts stipulated that none of the furniture was owned by customers until all of the items purchased were paid for. When a customer defaulted on payment for one item, the store tried to repossess all of their previous purchases that had been paid for in full. The District of Columbia Court of Appeals ruled that courts could refuse to enforce contracts deemed unconscionable and sent the case back to the trial court for such a determination.⁴

Although the term has historically been employed to characterize

interpersonal relations, it also has a profound communal implication. It suggests that when community members deal with one another, they ought to make some concessions to each other, because they are dealing with people with whom they have bonds of affection and commitments, as well as people they will need to work with, indeed live with, another day. This holds not only for workplaces, neighborhoods, or towns, but even for nations. Nations serve as imagined communities that forge deep bonds, indicated by how strongly people feel when national sports teams win or lose and when their nation is celebrated or demeaned—and by their willingness to die for their country.

The chapter moves next to examine two situations in which this concept applies on the national level. One concerns free speech and the other, discrimination.

Free Speech: A Right Does Not Make It Right

A crucial difference exists between the *right* to say highly offensive things—to use the n-word, to employ ethnic slurs, to argue that soldiers died in battle because their nation tolerates homosexuality—and the *rightness* of saying these things. It is the difference between a legal right to free speech and what we consider morally appropriate speech. All of us are not only citizens with a whole array of rights but also members of various communities comprised of people with whom we reside, work, play, pray, take civic action, and socialize. These communities, in effect, inform one that if someone engages in offensive speech—which, granted, is one's right—that person had better have a sound reason to so express themselves. For instance, offensive speech may be essential for an artistic work that depicts the perspective of the oppressed. Otherwise, people who engage in offensive speech without a cause are considered morally flawed.

Many democracies deal with this dilemma by enacting laws that limit free speech; for example, they ban hate speech. In the US, however, we have, in effect, decided to rely on our communitarian sensibilities to prevent—and, as I show next, informally curb—hate speech rather than to legally prohibit it.

In many situations, the notion that one should not engage in offensive speech unless there is a particular reason to do so is supported by informal social mechanisms. Those who express their right to free speech

to the full limit by wantonly offending other community members are subject to social pressure, condemnation, suspensions, and even job loss. For example, Lawrence Summers, serving as the president of Harvard University, resigned after the public outcry following his remarks that women's underrepresentation in the sciences may reflect their intellectual shortcomings.

In 2017, June Chu, a dean at Yale University, was placed on leave for writing demeaning Yelp reviews, and later left her position. "If you are white trash, this is the perfect night out for you!" Chu wrote in a review of a restaurant.⁵ In a review of a movie theater, she described employees as "barely educated morons trying to manage snack orders for the obese and also try to add \$7 plus \$7."⁶ Chu apologized, saying her comments had been "wrong" and "insensitive."⁷ Kenneth Storey, a visiting assistant professor, was fired from the University of Tampa after he tweeted, in reference to the destruction caused by Hurricane Harvey in 2017: "I don't believe in instant karma but this kinda feels like it for Texas. Hopefully this will help them realize the GOP doesn't care about them."⁸ After receiving a chorus of condemnation, he deleted the tweet and issued an apology

In 2014, Elizabeth Lauten, communications director for former US representative Stephen Fincher (R-TN), resigned after the critical remarks she made on Facebook about Malia and Sasha Obama went viral and prompted a backlash. "Act like being in the White House matters to you. Dress like you deserve respect, not a spot at a bar,"⁹ wrote Lauten of the first daughters, then sixteen and thirteen years old. She quickly apologized and admitted she "judged the two young ladies in a way that I would never have wanted to be judged myself as a teenager."¹⁰

When faced with a community's pushback, free speech advocates sometimes complain, calling it soft or outright censorship. For example, some users of the social media site Reddit wanted its CEO fired for censorship after five forums (out of thousands) were deleted for racial or other forms of harassment. Facebook has been criticized and even sued for censorship because it bans users who display pictures of women's breasts. Twitter was criticized for introducing content filters and temporary account suspensions for abusive messages and "indirect threats of violence,"¹¹ in what one user said "can only be described as heavy-handed censorship." And in response to a Harris Poll showing that 71 percent of Americans want a rating system for books to protect children from inappropriate content, like those that exist for movies and games, free

speech advocates argued that such a proposal would “raise serious concerns about censorship.”¹²

These champions of free speech, unwittingly or deliberately, use the horror that the term “censorship” evokes to object to social reactions to offensive speech. In doing so, they attempt to delegitimize social pressure, which is a fundamental element of all communities. Censorship, by definition, takes place when the government exercises its coercive powers to prevent speech by jailing dissenters, closing newspapers, taking over TV stations, and so on. Social pressure merely ensures that before one speaks, one asks whether what one has to say justifies the hurt it will cause, often to people who have already been hurt greatly.

One can readily imagine communities in which the social pressure to limit speech is much too high. However, in the US and other liberal democracies, excessive moral fostering of self-restraint is relatively rare, while instances of exercising free speech with very little concern for others seem quite common. The Supreme Court has ruled that the Westboro Baptist Church (which believes that God is punishing the US for its acceptance of homosexuality) is allowed to picket the funerals of military service members, displaying signs with statements such as “Thank God for dead soldiers” and “You’re Going to Hell.”¹³ The Supreme Court also struck down a Massachusetts law that created a thirty-five-foot buffer zone around abortion clinics that protesters were not allowed to enter.¹⁴ Protesters often follow patients to the doors of clinics, shout phrases such as “baby killers,” and even threaten patients and physicians.¹⁵ These legal rights are morally beyond the pale—and a decent human being will not exercise such rights.

One may argue that there is no clear line between speech that is offensive and vital for a thriving democracy, and speech that is merely hurtful and advances no cause other than hate and humiliation. Indeed, there is a continuous debate over whether the social mechanisms that curb abusive speech are too powerful or not powerful enough (for instance, there are often debates on college campuses on whether certain speakers should be invited, or if “safe zones” and trigger warnings should be provided). True, societies may oversteer in one direction or the other (a common failing of all societies, which are driven like cars whose steering wheels are very loose, tending to overshoot in one direction and then overcorrect in the opposite one). However, these valid observations do not invalidate our basic moral sense that not all legally entitled speech is morally appropriate. We argue about where the

boundaries lie and grant that the lack of clarity may lead people to cross the line—however, in the process we, in effect, acknowledge the premise that some self-restraint is morally commendable.

Gay Rights: Cakes, Flower Arrangements, and Makeup Artists

The question of whether a devout Christian baker can legally refuse to make a wedding cake for a gay couple, especially with such an inscription as “For the marriage of Jim and John,” provides an illuminating example of the issue at hand.

In 2012, Jack Phillips, the owner of Masterpiece Cakeshop, declined on religious grounds to bake a wedding cake for Dave Mullins and Charlie Craig’s wedding reception in Colorado before their marriage in Massachusetts. According to Phillips, he told the couple he would make them other baked goods, but he “just can’t make a cake for a same-sex wedding.”¹⁶ Although Colorado did not recognize same-sex marriage at the time, the Colorado Anti-Discrimination Act (CADA) was in place, which includes discrimination based on sexual orientation. An administrative law judge ruled in favor of Mullins and Craig, and in 2014 the Colorado Court of Appeals also sided with the couple. After Phillips’s appeal was denied by the Colorado Supreme Court, Phillips petitioned the US Supreme Court, which agreed to hear the case in 2017. In the meantime, rather than make cakes for both same-sex and opposite-sex couples, Phillips stopped making wedding cakes entirely, losing 40 percent of his business. In June 2018 the Supreme Court ruled 7–2 in favor of Phillips. However, the decision was narrowly based and did not clearly address whether First Amendment rights allow businesses to refuse service to gay couples on religious grounds. Instead, the Court offered a largely procedural, case-specific ruling by finding that a member of the Colorado Court of Appeals expressed religious hostility toward Phillips.¹⁷

One should note that Phillips’s refusal of service was not an isolated incident. Aside from Phillips himself admitting that he had refused service to other gay couples in the past,¹⁸ there was another nationally recognized case regarding an Oregon bakery whose owner refused to make a cake for a same-sex couple. The couple owning the bakery was ordered to pay \$135,000 in damages, to be collected when the ongoing appeals process is over.¹⁹

Furthermore, the issue at hand is actually broader. For example, the

Supreme Court in Washington state heard a case in which a florist refused to make floral arrangements—regardless of whether the designs were hers—for a gay couple’s wedding because it went against her religious beliefs. According to the florist, Baronelle Stutzman, making floral arrangements for a same-sex wedding, or allowing employees of her store to do so, amounts to participation in, and therefore endorsement of, same-sex marriage. She would, however, be willing to sell gay people bulk flowers and raw materials.²⁰ The case has similarities to that of Jack Phillips—just as Phillips offered other baked goods, the florist offered to sell individual or prearranged flowers to the couple.²¹ Also, like Phillips, since the lawsuit began, she has stopped selling flowers for all weddings.²²

As I see it, many who read about these cases have conflicting judgments. On the one hand, they realize that law prohibits people who serve the public from discriminating on the basis of race, religion, and—most agree—sexual orientation. On the other hand, they sense that compelling behavior that violates someone’s religious conscience is not a matter one should consider lightly. Moreover, they wonder why gay people would wish to force someone who treats them as abject sinners to make them a wedding cake. Would a gay couple truly want flowers at their wedding from someone they feel hates them? Why give their business to such people? Various attempts have been made to resolve this conflict between the legal and the social/moral intuition. Those are next briefly reviewed and my suggestion added.

Religious Exception?

We allow people to discriminate (or do not consider it discrimination) if the differences made are essential for religious expression. Thus, the law allows synagogues to retain only Jews as rabbis. With respect to the Masterpiece Cakeshop case, the Colorado Court of Appeals points out that although CADA has an exemption for “places primarily used for religious purposes,” the primary function of Masterpiece is not for religious purposes, and therefore it is not exempt.²³ The appeals court also draws a parallel between the case at hand and a challenge to the Civil Rights Act of 1964 in which a district court ruled that religious beliefs do not give someone the right to discriminate on the basis of race: “Undoubtedly [the] defendant . . . has a constitutional right to espouse the religious beliefs of his own choosing, however, he does not have the absolute right

to exercise and practice such beliefs in utter disregard of the clear constitutional rights of other citizens. This Court refuses to lend credence or support to his position that he has a constitutional right to refuse to serve members of the Negro race in his business establishment upon the ground that to do so would violate his sacred religious beliefs.”²⁴

According to the Colorado Court of Appeals: “CADA does not compel Masterpiece to support or endorse any particular religious views. The law merely prohibits Masterpiece from discriminating against potential customers on account of their sexual orientation.”²⁵ It further noted that “CADA does not prevent Masterpiece from posting a disclaimer in the store or on the internet, indicating that the provision of its services does not constitute an endorsement or approval of conduct protected by CADA.”²⁶ In the terms used here, making a business owner serve people in ways that he considers a gross violation of his faith is not exacting a pound of flesh; violating his strongly held beliefs is trumped by the commitment to equality and justice. To yield on these matters would amount to giving up a whole lot more than a pound; it would compromise basic rights and principles.²⁷

On the other hand, some are concerned about protection of religious beliefs and practices. Kerri Kupec, one of the florist’s lawyers, posited that “Under this kind of rationale, that’s happening in Washington state, a gay singer could be forced by the government to perform at a religious conference that is promoting marriage as a man-woman union.”²⁸ Richard Epstein, a law professor at New York University, maintains that it is the American Left that is intolerant: “The people who are bigots are on the other side.”²⁹ Epstein supports a religious exemption for business owners in cases like these and believes that the free market takes care of the problem of discrimination against gay individuals.³⁰ Viewed this way, the issue of exacting a pound of flesh does not arise, because those who seek to force service on those who hold that such service violates their beliefs do not have a case to begin with.

A Form of Speech?

According to Phillips, wedding cakes have an inherent “communicative nature,” which conveys celebration.³¹ If forced to make a cake for a gay couple’s wedding celebration, he would be compelled to make a statement, or speech, he does not feel comfortable making.³² According to Phillips’s lawyers: “The wedding cakes that Jack designs and creates . . .

are very clearly a method of communication. . . . Jack could not just bake a cake and pretend it did not mean anything.”³³ The appeals court recognized that “a wedding cake, in some circumstances, may convey a particularized message celebrating same-sex marriage and, in such cases, First Amendment speech protections may be implicated.”³⁴ However, this was a nonissue for the court because Phillips refused to serve the couple without discussing the design of the cake or any written inscriptions the couple may have wanted. There was no communicative content.³⁵

In contrast to this opinion, the Department of Justice (DOJ) stated in a 2017 amicus brief on behalf of Jack Phillips that “A custom wedding cake is a form of expression,”³⁶ and “Forcing Phillips to create expression for and participate in a ceremony that violates his sincerely held religious beliefs invades his First Amendment rights.”³⁷

The DOJ’s opinion is thus in line with the arguments of Phillips’s lawyers, who insist that the Colorado Court of Appeals “considered the wrong question”³⁸ when it determined that “designing and selling a wedding cake to all customers free of discrimination does not convey a celebratory message about same-sex weddings.”³⁹ They contend that the proper question is whether the wedding cakes made by Phillips qualify as “expressive conduct,” whereas the Colorado Court of Appeals “looked for expression only in Phillips’s *decision* not to create a wedding cake celebrating a same-sex marriage”⁴⁰ (emphasis added). The DOJ holds that Phillips’s cakes do qualify as expressive conduct and thus the Free Speech clause applies in this case. One could limit this claim to customers’ requests to add a specific inscription that could be read as an explicit endorsement of gay marriage; this might be considered a pound of flesh—but not just making cakes or otherwise serving people. In other words, requiring a cake maker to bake a blank cake is acceptable, but requiring one to write an inscription supportive of the marriage is not. I will show below more compelling ways to discern what constitutes a fair demand and when making such demands becomes analogous to exacting a pound of flesh.

Fair Warning?

Still another way out of the box is for businesses to post their religious preferences and thus avoid the conflict altogether. According to Andrew Koppelman, law professor at Northwestern University, “The most sensible reconciliation of the tension would permit business owners to

present their views to the world, but forbid them either to threaten to discriminate or to treat any individual customer worse than others.”⁴¹ He elaborates, asserting: “If proprietors who object to same-sex marriage could make their views known, then even if they have no statutory right to refuse to facilitate ceremonies they regard as immoral, they are unlikely to be asked to participate in those ceremonies. On the contrary, same-sex couples will almost all want nothing to do with them. Announcements of the proprietor’s views will not absolutely guarantee that service will not be demanded, but it will make such demands rare.”⁴² The issue with Koppelman’s solution is that several states prohibit businesses from displaying announcements that, in effect, assert that a protected class is unwelcome. In the case of Jack Phillips, the Colorado Court of Appeals stated that a business cannot post a notice stating intent to refuse service to those who participate in a same-sex marriage or stating that those who participate in a same-sex marriage are not welcome. On the other hand, in the case of a photographer in New Mexico, the New Mexico Supreme Court held: “Businesses retain their First Amendment rights to express their religious or political beliefs. They may, for example, post a disclaimer on their website or in their studio advertising that they oppose same-sex marriage but that they comply with applicable antidiscrimination laws.”⁴³ Koppelman himself is doubtful that the Supreme Court would allow such a solution to stand, as it may be understood as an explicit form of discrimination.

Notching the Slope

A good part of the give-and-take on the issues at hand, including the line of questioning the Supreme Court judges engaged in when they heard the case of *Masterpiece Cakeshop v. Colorado Civil Rights Commission* in 2017, included weighing in on what constitutes a pound of flesh versus a fair demand. The questions of some judges seem to indicate that while they thought allowing refusal of services might be acceptable under some limited conditions, they feared such exceptions would open the floodgates to widespread discrimination. The issue hence is, How can one ensure that such an opening will not be excessive?

This challenge is a very familiar one, often referred to as the slippery slope. One recognizes that some limited change might well be called for, but one fears that a shift from the status quo will lead to the lower—wrong—end of a deep slope. The argument in the case at hand takes

two major forms. One, if bakers can refuse to make cakes, should other business owners be allowed to refuse their services? As Washington Supreme Court justice Mary Yu asked, “Is it the landscape architect next? The barber?”⁴⁴ According to James Oleske, “proposed exemptions would not only allow businesses to withhold wedding-day services, but would also ‘threaten to subject same-sex couples to discrimination in employment, public accommodations, and housing across time and in situations far removed from the marriage celebration.’”⁴⁵

The second slope concerns the implications of refusing service to gay people on potential discrimination against other groups of people, such as African Americans. According to Washington attorney general Bob Ferguson, “once you go down the road of allowing this exception . . . you can refuse service to an interracial couple based on your religious beliefs.”⁴⁶

As I have suggested previously, if one adheres to this position, then any changes, however justified, must be avoided. I hold that instead one needs to find places to notch the slope, to ensure that one can move to a limited extent but not beyond a point clearly marked. What are the appropriate markers? One possible criterion that courts often use in other contexts concerns the scope of the harm. If a refusal to sell cakes by one shop inflicts very limited harm, it should be tolerated. This might be said to be the case as cakes are readily available from other sources, especially in this era of e-commerce. Wedding cakes are ordered way ahead of time and hence differ, say, from an immediate need like medication. Also, the cakes are merely one marginal feature of wedding ceremonies compared to that of exchanging vows, wedding bands, and so on. The same holds for the services of the florist and makeup artists—but not for those of lodging, catering, employment, credit, transportation, not to mention medical treatment. One may say that there are plenty of eateries and hence there is no harm in rejecting food service. However, there are many conditions under which this is not the case—for instance, when seeking food late at night or in isolated areas or when one has special dietary requirements such as halal, kosher, vegan, gluten free, diabetic, or infant-friendly. If service is refused in the one place in town that provides these foods at a particular time of day, one may well have difficulties finding another. The same holds for lodging; denial of service late in the day, on a holiday eve, at a major sports or musical event, and so on may impose considerable harm on a person seeking to find an alternative.

The US Supreme Court declined to hear a challenge to the Protect-

ing Freedom of Conscience from Government Discrimination Act, a Mississippi law that critics argue “lets government clerks refuse to issue same-sex marriage licenses and lets adoption and foster-care organizations decline to place children with LGBT families.”⁴⁷ As I see it, this clearly is on the wrong side of the “notch.”

A counterargument is that at issue is not the provision of service per se but the normative principle regulating the provision. The harm, one may well argue, is not to the supply of cakes but to the principle that all people are to be treated equally. To push the point: a gay couple may well not want a wedding cake from someone who strongly disapproves of their conduct—and may even think that a service obtained through coercive measures of the law would mar their happy celebration and that they may as well feed the cake to the dogs—but still insist on the service, to uphold the nondiscrimination principle and to stave off pernicious precedents. I refer to such concerns as “symbolic,” by which I mean that the issue is not the object at hand but what it stands for.

If one believes that to compromise even at the margin weakens the legal principle, then the moral precept of not asking for a pound of flesh does not apply because to allow for exceptions, even if they cause little or no substantive harm, violates the principle involved. However, if one holds that insisting on the pound of flesh undermines support for the legal principle, because it makes its advocates look like rabid ideologues lacking in sympathy, one would favor making exceptions when the refusal causes little or no substantive harm.

The following case, discussed in the *Washington Post*,⁴⁸ provides an example of how North Carolina reached a middle-ground solution that tries to respect both religious and LGBT rights. In 2014, Gayle Myrick resigned as a magistrate in North Carolina because she was unwilling to perform civil marriages for same-sex couples. Myrick’s supervisor suggested that Myrick could be excused from performing marriages, but someone higher up said that Myrick’s schedule could not accommodate such a change. Myrick says she “didn’t want to stop anyone from getting married” but knew her “religious convictions would not allow [her] to perform [same-sex] marriages personally.”⁴⁹ She reached a settlement with the government after a federal judge sided with her. North Carolina has since passed a law that allows magistrates to excuse themselves from performing marriages if they have religious objections but at the same time stipulates that other magistrates—willing to perform marriages for same-sex couples—be available in such a case.⁵⁰

One should recognize the cardinal communitarian observation that we are not just rights-bearing individuals, out to carry those individual rights wherever they will take us, but also members of communities. And that such membership entails a measure of sympathy for people whose profound beliefs we strongly disagree with. We should recognize that they hold their beliefs just as strongly as we hold ours. This is *not* to suggest moral equivalency but to help appreciate that those who hold values we consider morally flawed did not choose these values but were brought up to believe in them, and that those values were reinforced by their religious leaders and those they personally know and, until very recently, were reaffirmed in the law of the land! One ought to recall that it was President Bill Clinton who, in 1996, signed the Defense of Marriage Act, which defined marriage as the union of a man and woman. And that even when President Barack Obama came to office in 2009, he was reluctant to support gay marriage. Our fellow community members need to be helped to transition and given some time to adapt—as long as the harm to those who grant them some leeway is minimal or basically symbolic and does not undermine the legal principle involved, because clearly delineated exceptions are carved out.

David Brooks takes this communitarian approach to a much higher level and suggests that the gay couple should have said to the baker: “Fine, we won’t compel you to do something you believe violates your sacred principles. But we would like to hire you to bake other cakes for us. We would like to invite you into our home for dinner and bake with you, so you can see our marital love, and so we can understand your values. You still may not agree with us, after all this, but at least we’ll understand each other better and we can live more fully in our community.”⁵¹ Although Brooks carries the communitarian idea several steps further than I do, the thesis he draws on is the same. Confronting and exercising all the legal rights one may be entitled to is not always the preferred way to conduct oneself, especially if one cares about the other and the community.

In Conclusion

A challenge the patriotic movement faces is how to deal with people with conflicting core values. The more the movement is able to shore up the sense of overarching community, and the sharing of core values in areas other than those in conflict, the more one must expect that cultural

wars will be contained. Privatizing some issues will limit the realm of conflict. Nevertheless, culture wars remain an important challenge to the patriotic movement. Calling on all sides to impose a measure of self-restraint and not to push their claims to the point they undermine the common good will mitigate the cultural wars.

CURBING SPECIAL INTEREST GROUPS

I have stressed throughout this volume that a patriotic movement should not, and need not, seek harmony and conformity, let alone suppress conflicts and differences in the name of unity. It “merely” needs to formulate and promote core values that can contain conflicts and provide criteria for their resolution. Jean-Jacques Rousseau refers to this challenge as a continual contest between the general will and “the particular and often contradictory wills of individuals in groups.”¹

In most democratic societies, the national community and its core values have weakened as libertarian ideologies and narrowly based special interests have gained more power. The common good has been eroding. Assets intended to serve the whole community, or those most in need, have been increasingly diverted to the wealthy and the powerful. While this is true for most democracies, this is particularly the case in the US. Hence, this chapter focuses on the ways the common good is undermined in the US.

Democracy is premised on the separation of economic (and social) power from political power. Democracy can tolerate a fair amount of difference in the accumulation of economic power (although the current levels of inequality may pose a danger to democracy all of their own), but it requires that economic power will not be converted into political power—that in civic life equality will reign, that each person will have just one vote. In many democracies, especially in the US following several Supreme Court resolutions (discussed below), those who have amassed economic power are also concentrating political power. Concentration of political power undermines the social contract that is at the foundation of democratic regimes, rendering them less legitimate.

Among the factors that engender populism, few are as important as the failure of representation. America’s Founding Fathers were correctly worried about what they called the mobs, the masses, whose initial raw reactions to a national challenge can be very troubling. The Founders hence sought to set up political institutions that will absorb these raw

expressions and—through deliberations in legislative bodies and the accompanying moral dialogues—transform these expressions into more reasoned and responsible positions.

However, as elected officials increasingly heed narrowly based special interests, the outcomes of their deliberations no longer serve to absorb raw protest and convert it into sensible policies. The masses may not always fully understand why and how the representation system is corrupted, but they sense that their values and interests are no longer heeded. As a result they have become prey to demagogues who use social media to give voice to the raw, unprocessed feelings of the masses. It takes years before people realize that these demagogues give voice but do not deliver. The people then turn to other such demagogues, maintaining populism. As the patriotic movement seeks to rejuvenate democracy, it must work to ensure that elected officials represent the people and not narrowly based special interests.

Deep Pockets

By far the most important tool that special interest groups use is providing large amounts of money to elected officials and those who seek public office. These payments very often amount to legalized bribery. A patriotic movement cannot succeed unless it seeks to limit the influence of economic power in shaping public policy and laws as a major part of its agenda.

Campaign finance reforms are said to be unappealing to the public, either because people are more interested in substantive than in procedural issues or because they believe politics cannot be cleaned. Given the massive harm caused by legalized bribery by special interests, however, the patriotic movement has no choice. It will either find a way to address this issue, and profoundly rather than at the margin, or it will be unable to protect the common good.

Many suggestions have been made on ways to limit the contributions donors can *give*. This chapter takes into account the Supreme Court's rulings that these limitations tend to violate freedom of speech (roughly summed up in the phrase "money is speech").² Hence I suggest that instead of limiting what people can give, the law should limit what donors can *get* in return for their contributions. Many donors would not be motivated to make campaign contributions if they could no longer gain substantial material benefits unavailable to other parties with the

same attributes. In effect, if contributors get benefits—denied to others with the same qualifications—in exchange for their contributions, they should be treated as if they had violated the law by giving a bribe. (The issues that arise in proving that indeed there was a quid pro quo are discussed below.)

At the same time, those who make contributions because they support the moral, philosophical, or ideological positions of elected officials, or strive to promote the common good—and hence neither seek nor gain any substantial material benefits for themselves in return—would continue to be free to make contributions.

Discriminatory Benefits

To curb the corrupting effects of campaign contributions, Congress should enact a law, and/or the courts should interpret existing law, that would treat as a bribe those campaign contributions in which the contributors gain a substantial material benefit not granted to others under comparable circumstances. The text should state something along the lines of the following: anyone who “directly or indirectly gives, offers, or promises anything of value to any member of Congress or a person seeking to be elected as a member of Congress, for or because of any act performed or to be performed by such person, who in return modifies Congressional acts to provide a special substantial benefit to the contributor himself/herself or a corporation, will be charged with having offered a bribe.”³ The penalty for such a violation of the law ought to be the same as for bribes offered to those in the executive branch or to judges.

The benefits, under discussion, may include appropriation of public funds (as when Congress votes that public funds will be granted to a particular person or corporation, e.g., available only to car companies operating in Michigan); tax reductions (e.g., available only to managers of hedge funds); granting credit at favorable terms (e.g., below the market value); exclusive rights to provide a service or product (e.g., supplying food to troops in noncompetitive bidding); according exclusive access to valuable resources (e.g., rights to use a former military base in the heart of San Francisco); or otherwise ensuring substantial material benefit to some while not making these same benefits available to others with the same attributes.

The qualification “substantial” material benefits serves to prevent zealous prosecutors from going after people receiving minor benefits,

for instance, free school lunches to children who are not entitled to get them. The qualification “material” benefits is included to avoid criminalizing contributions made in exchange for supportive speech, for example, a member of Congress from Indiana praising the Hoosiers. However, if the praise leads to considerable material gains, for instance, the elected official praises a product of the contributor—within a defined period before or after the donation was made—and the praise results in substantially increased sales, it would be considered a bribe. (These distinctions are important as similar concerns were raised by the Supreme Court in *United States v. Sun-Diamond*, which maintained that an overly broad interpretation of the federal bribery and gratuities statute “would criminalize, for example, token gifts to the President based on his official position and not linked to any identifiable act—such as the replica jerseys given by championship sports teams each year during ceremonial White House visits.”)⁴ From here on, the term “benefits” is used to refer to substantial material benefits.

All special benefits should be banned preceding or following contributions for two years for members of the House and three for members of the Senate. One may wonder how members of Congress are to know whether they will be rewarded with contributions upon granting a benefit to a given person or corporation. They may well not. The clause is still needed to prevent contributors from promising elected officials contributions after enactment of special favors. The onus is on the contributor, not on the member of Congress.

Some contributors argue that they give because they share the philosophical positions of the candidates. However, if they do not donate to other political candidates with similar views but only to those who reciprocate with special benefits, this defense should not stand. This argument is particularly indefensible when benefits follow contributions to elected officials with opposing philosophies. This nonpartisan opportunism is not uncommon. As Donald Trump revealed: “I give to everybody. When they call, I give. And you know what, when I need something from them two years later, three years later, I call them. They are there for me.”⁵

To illustrate: Senators Orrin Hatch and Tom Harkin cosponsored the Dietary Supplement Health and Education Act of 1994, which defined supplements as food rather than drugs, allowing the supplements to be marketed and sold without appropriate oversight and safety testing. Since that time, they have continued to mobilize senators to vote against legislation to regulate the supplements industry. They pressured the Sen-

ate to vote down Senator Dick Durbin's amendment to the 2012 FDA Safety and Innovation Act, which would have required supplements with potentially serious side effects to be labeled, and Senator John McCain's 2010 Dietary Supplement Safety Act, which would have required "manufacturers to register with the FDA and fully disclose the ingredients." They also pressured FDA officials to weaken their draft "Dietary Ingredient Guidance."

Harkin and Hatch's efforts are a major reason that unregulated supplements suffer from poor quality control and inspection. A 2013 study found that herbal supplements often contain unlabeled fillers or contaminants and that fully a third showed "no trace of the plant advertised on the bottle."⁶ The two senators have been the top recipients of donations from this industry for decades.⁷ There are numerous cases of such quid pro quo. One can argue that Senator Hatch, a conservative Republican, voted that way because he is opposed to regulation on ideological grounds. The same cannot be said about Senator Harkin, a liberal Democrat.

How is one to determine that the benefits elected officials grant, which follow or precede contributions within the defined period, are preferential to the contributor? Part of the answer is found in the defining attributes of the legislation. If the attribute is not impartial to the relevant constituency receiving the benefits (say, targeting all children, all farmers, or all exporters) but focuses only on the group related to the contributor (say, only children in private schools if the donor is an association of private schools), a bribe may be suspected.

Sometimes Congress members can and do define attributes of various benefits in impartial terms, but on closer examination, only one or a small number of chosen beneficiaries is found to qualify; for example, funds for a stadium are to be provided to a city a mile high and with a population of at least one million people. While the text does not single out a particular city, in effect only one city meets these criteria, Denver. The test lies in determining the relevance of the attribute. If it is true, in the case at hand, that football players cannot play in a smaller city at a lower altitude, then no bribe may be suspected. If not, red flags should be raised. One may argue that sorting out various attributes to determine whether specific benefits are related to specific contributions in partial terms is a messy and subjective task. However, there is considerable evidence from other areas of law to determine when the attributes are justified and when they are merely rationalizations for special treatment.

Thus, US employment law allows preferential criteria, that is, discrimination, based on bona fide occupational qualifications that encompass national origin, sex, and religion. Employers may use such criteria when “reasonably necessary to the normal operation of that particular business or enterprise.”⁸ For example, in *Dothard v. Rawlinson*, the Supreme Court ruled that although Alabama’s height and weight requirements for prison guards were unlawful because they disproportionately discriminated against female candidates, the prohibition of women working as prison guards in a male maximum security prison was justified under the bona fide occupational qualification exception out of security concerns. The Court reasoned: “A woman’s relative ability to maintain order in a male, maximum security, unclassified penitentiary of the type Alabama now runs could be directly reduced by her womanhood. There is a basis in fact for expecting that sex offenders who have criminally assaulted women in the past would be moved to do so again if access to women were established within the prison.”⁹

Age can also fall under the category of bona fide occupational qualifications according to the Age Discrimination in Employment Act.¹⁰ In *Western Air Lines v. Criswell*, the Supreme Court ruled that the bona fide occupational qualification exception allowed for a mandatory retirement age of flight engineers for public safety reasons.¹¹ In contrast, in *Griggs v. Duke Power Co.*, the Court ruled that the power company’s requirement of a high school diploma for employment could not be upheld (i.e., it was not a relevant attribute) because the nature of the job did not require the skills and knowledge associated with such a degree. And the requirement discriminated against African Americans.¹²

One can further illuminate the difference between relevant and discriminatory distribution of benefits by returning to the vitamin supplements act. The question is whether supplements are foods or drugs. The fact is that people do not take them for nutrition and are not concerned about their calories, fats, or sugar. They take them, in small amounts, to improve their health. Classifying supplements as food obfuscates the relevant attribute in favor of an irrelevant, biased attribute in order to provide special benefits to the vitamin supplement industry not available to other drug makers. It is a skewed, unfair definition on the face of it.

If the Sierra Club made contributions to secure “untrampled ski slopes for its members,” as it was charged, these contributions would be a violation of the suggested law. On the other hand, contributions intended to protect the environment for everyone are not. If Emily’s List

made contributions to politicians who secure abortion rights only for its members, it would be in violation of the suggested law; as long as it makes these only to politicians who support these rights for all women, it is not a violation—even if this right is not extended to men, because this discretion is based on a relevant attribute. Scholars tend to consider it a flaw if a definition is not airtight. However, in law there are always fuzzy cases. This does not mean that laws need to be abandoned; borderline cases can be decided by juries.

Note that the suggested approach expands the definition of *quid pro quo* in two ways. First, it does not require proof for an explicit agreement between the giver (the contributors) and the provider of special benefits (the member of Congress whose campaign received the contribution). That is between the Give and the Get. There are many situations where the connection between the donations and the allotment of benefits is obvious, so that any reasonable person would see that corruption was taking place. A criterion often used by the courts, “reasonable person” is defined as “a hypothetical person in society who exercises average care, skill, and judgment.”¹³

This chapter’s focus is on the prosecution of contributors and leaves the treatment of Congress members who received contributions deemed illegal to Congress itself. The reforms proposed in this chapter require proof of payment by a donor and the subsequent receipt of an irrelevant benefit. For those who feel that intent needs to be proven, it could be done in a variety of ways, whether through leaked emails, disaffected staff, or whistleblowers.

Additional Considerations

“Getting Only Access”

Some advocates of the prevailing system argue that contributors are merely buying access rather than gaining benefits. The Supreme Court has reinforced this claim in *Citizens United*. According to the opinion delivered by Associate Justice Anthony Kennedy in *Citizens United*, “Ingratiation and access . . . are not corruption.”¹⁴

Gaining access is by itself a very valuable benefit. Members of Congress work under great time constraints. Many, especially House members, spend a significant amount of time each week soliciting funds. According to Representative Rick Nolan, new members were told to fund-raise for thirty hours each week in 2016.¹⁵ Newly elected House

Democrats were advised to spend at least twenty hours per week fundraising in 2013.¹⁶ They vote hundreds of times a year.¹⁷ They are expected to attend staff briefings on bills' contents, as well as committee meetings of Congress and of their party. They also need to visit their constituents and travel back and forth between their home and DC. And they have, of course, personal needs, ranging from family matters to friendships and hobbies. For a person representing a special interest, gaining even fifteen minutes of a Congress member's time is a valuable benefit simply due to scarcity. Congress members have limited time to give, and any time granted to one lobbyist cannot be granted to others, who might have opposing views. Moreover, for many lobbyists of special interests, merely demonstrating privileged access to political power allows them to be rewarded by the special interest they represent.

In many situations, though, contributions lead to, or are followed by, very concrete benefits well beyond access. Leading up to the congressional repeal of the US oil export ban, some of the largest oil and gas companies contributed millions of dollars to the Senate Leadership Fund, a super PAC for Senate Republicans run by former aides to Senator Mitch McConnell. Specifically, "In the second half of 2015, Senate Leadership Fund received \$1 million from Chevron, \$1 million from Petrodome Energy, \$750,000 from Devon Energy Corporation and \$500,000 from Freeport LNG CEO Michael Smith."¹⁸ Congress passed the repeal of the oil export ban as part of a spending bill designed to prevent a government shutdown, and it was subsequently signed by President Obama.¹⁹ "For oil executives," Clifford Krauss and Diane Cardwell reported, "[this] was the culmination of a long-sought goal."²⁰ The sixty-two senators who voted for the Keystone XL Pipeline collectively received \$31,754,343 from fossil fuel companies, compared to the combined total of \$2,672,091 given to the thirty-six who voted against it.²¹

The fact that campaign contributions flow much more to committees that can dish out benefits, especially appropriations committees, and much less to committees unable to do so (e.g., foreign policy), and much more to chairs rather than their members, is indirect evidence of the connection between Give and Get.

Nonconstituent Donations Are Particularly Suspect

Particularly suspect are benefits granted to contributors, individuals, or corporations outside Congress members' districts. This is far from a rare phenomenon. According to Anne Baker, between 2006 and 2012,

“The average member of the House received just 11 percent of all campaign funds from donors inside the district.”²² *McCutcheon* is a case that highlights nonconstituent contributions: Shaun McCutcheon, who had contributed to sixteen federal candidates, filed a complaint because of his inability to contribute to twelve other federal candidates, as well as various political committees, because of aggregate limits. McCutcheon was a resident of Alabama and had contributed to congressional candidates across the country.²³ None of the twelve candidates to whom he intended to contribute was running for election from Alabama.²⁴ As Richard Briffault explains: “By preserving the base limits while striking down the aggregate limits, *McCutcheon* enables an individual to give much more money but—not any more money to any one candidate. . . . Unless the donor wants to give money to many more candidates campaigning against each other in the same electoral contest—which seems unlikely—the donor will give to more candidates in many different states and districts. By striking down the aggregate limits, *McCutcheon* directly promotes contributions by non-constituents.”²⁵ Briffault then tackles the Court’s rhetoric in *McCutcheon* with regard to responsiveness, asserting that despite Chief Justice John Roberts’s “contention that striking down the aggregate donation cap will *promote* the accountability of representatives to their constituents,” in fact it does no such thing. As Briffault points out, representatives may be responsive to contributors, but when these contributors are not constituents, it “undermin[es] the very responsiveness to the people that the Chief Justice rightly celebrates as ‘key to the concept of self-governance.’”²⁶ In short, campaign contributions from nonconstituents should face a higher level of scrutiny than those from constituents. They are particularly likely to lead to inappropriate benefits because interests served do not stem from the constituency that the given member of Congress has a duty to serve—and may well disadvantage them when the benefits flow to others.

Acts Are Not Speech

Courts have limited admissible evidence in the bribery prosecution of Congress members in light of the US Constitution’s Speech or Debate Clause, which states that “for any Speech or Debate in either House, they [senators and representatives] shall not be questioned in any other place.”²⁷ For example, in *United States v. Helstoski*, a congressman is charged with accepting bribes to introduce private bills. The Court ruled that past legislative acts could not be used in trial due to the Speech or

Debate Clause, though the Court explicitly recognized that this ruling would have a major impact on prosecuting bribery. In its opinion, the Court stated: “The Government . . . argues that exclusion of references to past legislative acts will make prosecutions more difficult because such references are essential to show the motive for taking money. . . . We do not accept the Government’s arguments; without doubt the exclusion of such evidence will make prosecutions more difficult. Indeed, the Speech or Debate Clause was designed to preclude prosecution of Members for legislative acts. We therefore agree with the Court of Appeals that references to past legislative acts of a Member cannot be admitted without undermining the values protected by the Clause.”²⁸ Joseph Weeks wryly but correctly points out that such rulings make it extremely difficult to establish that a member of Congress acts illegally, because “all legislative acts of the defendant at the time of trial are past legislative acts.”²⁹

A straightforward reading of the Speech or Debate Clause shows that it covers speech that is distinguishable from acts. In effect, a large body of law is based on this distinction. Simply put, talking about illicit conduct is usually treated very differently from acting on those words. In legal practice, there is a world of difference between threatening to kill someone and actually killing someone. The Supreme Court’s assertion in *United States v. Apfelbaum* that “in the criminal law, both a culpable *mens rea* and a criminal *actus reus* are generally required for an offense to occur”³⁰ speaks to this point. The First Amendment protects offensive speech—even hate speech—but not harmful action. When people are threatened, but merely with words, the police often respond that they have no grounds on which to act.

Deliberation and voting on the House or Senate floor should be distinguished along the same lines. The vote should not be construed as speech but as an act. Associate Justice Antonin Scalia provided the following rationale for this distinction: “There are, to be sure, instances where action conveys a symbolic meaning—such as the burning of a flag to convey disagreement with a country’s policies. . . . But the act of voting symbolizes nothing. It *discloses*, to be sure, that the legislator wishes (for whatever reason) that the proposition on the floor be adopted, just as a physical assault discloses that the attacker dislikes the victim. But neither the one nor the other is an act of communication.”³¹ In short, if contributors gain discriminatory benefits from a Congress member to whom they donated funds within the defined period, the Speech or

Debate Clause of the Constitution should not be read as providing them with legal cover.

Independent Expenditures Need to Be Tied In

The Supreme Court has ruled that independent expenditures³² pose no threat of corruption as they are uncoordinated with the candidate and that imposing limitations amounts to infringing on free speech. In *Citizens United v. Federal Election Commission*, the group Citizens United produced a scathing documentary on then senator Hillary Clinton with the intention of releasing it within thirty days of the primary election. The release of “electioneering communications” paid for by corporations and unions within thirty days of the primary was prohibited at the time. The Court overturned this restriction and opened the door to unlimited independent expenditures. The Court quotes *Buckley* to explain its rationale: “The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.”³³ The Court held that because independent expenditures are not coordinated with the candidate, there is no risk for quid pro quo corruption. The ruling in *Citizens United* helped lay the foundation for super PACs to which individuals and corporations can make unlimited contributions.³⁴

There are several ways that candidates and the so-called independent PACs sidestep anticoordination regulations. First, Federal Election Commission (FEC) rules allow super PACs and campaigns to communicate directly. They may not discuss a candidate’s strategy but may confer on “issue ads” featuring a candidate.³⁵ Matea Gold writes that “it is now standard practice for candidates to share suggested television ad scripts and video footage online—materials that are then scooped up by outside groups and turned into television spots.”³⁶ Second, it is very easy for those who spend the super PAC monies to note which points their candidate is flagging and run ads to support these points, prepare supportive campaign literature, and so on. Finally, many candidates fundraise for super PACs, and while the candidates themselves cannot ask for contributions of more than five thousand dollars, the FEC issued an advisory opinion that allows campaign aides to raise greater amounts for super PACs.³⁷ Not surprisingly, super PACs with ties to a specific

candidate appear to gain most of the contributions.³⁸ In the words of Representative David Price (D-NC), “It amounts to a joke that there’s no coordination between these individual super PACs and the candidates.”³⁹ As the election law attorney Robert Kelner puts it, “If there’s no separation between the campaigns and outside groups, then the logic of the *Citizens United* decision really falls apart.”⁴⁰

In determining whether a given party made contributions that led to inappropriate benefits, one must take into account the contributions made to independent groups, which in effect are coordinated with the member of Congress. As a result, if the reforms here suggested are to take effect, gaps in disclosure need to be addressed so that the source of contributions to “independent groups” is not obscured and connections can be made between such contributions and benefits.

“If It Ain’t Broke, Don’t Fix It”

Arguments against campaign regulation often diminish the role of money in politics by highlighting cases where winners are far outspent by their opponents. In that vein, Bradley Smith writes that higher spending does not necessarily translate into victory. Michael Huffington, Lewis Lehrman, Mark Dayton, John Connally, and Clayton Williams are just a few of the lavish spenders who wound up on the losing end of campaigns. As Michael Malbin, director of the Center for Legislative Studies at the Rockefeller Institute of Government, explains, “Having money means having the ability to be heard; it does not mean that voters will like what they hear.”⁴¹

As many studies show, however, the cases where the highest-spending candidate lost are few and far between. For instance, in 2008, candidates who raised more funds than their opponents won 93 percent of House elections and 94 percent of Senate elections.⁴² In the 2012 midterm elections, 93.8 percent of House races and 75.8 percent of Senate races were won by the candidate who spent more. In 2014, these numbers increased to 94.2 percent for the House and 81.8 percent for the Senate.⁴³

“Lobbying Is a Constitutionally Protected Right”

Some skeptics of campaign regulation contend that lobbying is protected by the Constitution. The First Amendment accords Americans the right to “petition the government for a redress of grievances.”⁴⁴ The reforms advocated in this chapter do not aim to ban lobbying; rather, their goal is only to prevent those interests that back up their lobbying

with campaign contributions from gaining benefits unavailable to others in similar circumstances. True, the Supreme Court ruled in *Buckley v. Valeo* that “equalizing the financial resources of candidates competing for federal office” is not “a justification for restricting the scope of federal election campaigns.”⁴⁵ However, the reforms here suggested do not seek to equalize the playing field but merely to ensure that many voices that are currently drowned out will gain a chance to be heard.

“One Cannot Stop Private Monies from Gushing into Politics”

While imperfect, the UK’s election system provides a helpful model for emulation and for curbing cynicism that money will find its way into elections one way or another. Parliamentary campaigns in the UK have strict and low spending limits.⁴⁶ As of the 2015 general election in the UK, during the months before candidacy has been formally declared, individuals could spend £30,700 (an extra allotment is granted of either 9p or 6p per voter depending on whether they are contesting a county or borough seat, respectively). Once a person became an official candidate, the short campaign limit, about a month, allowed £8,700 to be spent.⁴⁷ The spending limits for political parties depend on the number of seats that party contests; the highest limit would be £19.5 million if a party had candidates running in all 650 constituencies.⁴⁸ Furthermore, paid political advertising on television and radio is illegal. Instead, political parties are granted a certain amount of free radio and television coverage. Candidates are allowed to send one election communication to every elector in the constituency through the postal system at no cost.⁴⁹

The length of campaigns in the UK is drastically shorter than in the US. In 2015, the duration of the “official” campaign was thirty-seven days, and this was the longest in modern British history.⁵⁰ Particularly of note is that party discipline is very strong in the UK, inherent in its parliamentary system. Members of Parliament (MPs) vote on most issues in line with the instructions from their party whip.⁵¹ This rule makes MPs much less corruptible than members of Congress. Making a deal with an MP is of little value because the MP cannot deliver if the deal differs from the party line. The UK system is not perfect. For instance, some members of Parliament were found to receive gifts in return for asking questions during debates of interest to the donor. The differences with the American system, however, are still stark. In the US, distribution of benefits to special interests in exchange for campaign contributions is rampant, whereas in the UK such distributions are rare, as far

as individual legislators are concerned. We can aspire to a much cleaner political system.⁵²

Limiting Contributions Is More Important Than Limiting Perks

This chapter focuses on contributions of funds, whereas the media often spotlight perks, such as free meals (as long as they do not cost more than two hundred dollars) and some forms of travel.⁵³ The issue of campaign contributions seems too abstract and “procedural” to many voters rather than pressing and substantive. Such contributions, however, are much more consequential than perks. If a Congress member does not get gifts or junkets, his lifestyle may become less ritzy, but if he loses campaign contributions, he is likely to lose his job in the next election, including his power, income, prestige—as well as the perks. Moreover, members of Congress can draw on their campaign chest to pay for perks.⁵⁴ No wonder Congress members have been more amenable to limiting legal perks than capping legal contributions. The latter matter much more and should be the first, second, and third priority of any reform.

Limiting the Give?

Concern over the corrupting influence of campaign contributions has led to a considerable number of reforms to limit what a contributor can give a member of Congress or someone seeking to become one. Many of these reforms have been declared unconstitutional by the Supreme Court; others have failed for different reasons. A few illustrations follow.

The Federal Election Campaign Act (FECA) of 1971 and its 1974 amendments established limits on campaign contributions and expenditures. Contribution limits were set for the amount individuals, groups, and political committees could give a single candidate during an election cycle, in addition to an annual contribution limit for individual contributors. Independent expenditure limits were imposed on individuals and groups that capped the amount each candidate could spend in a given election. Expenditure limits were also placed on the amount of personal funds a candidate can use to finance his or her campaign, as well as on the total amount a campaign can spend on an election. However, in the 1976 case *Buckley v. Valeo*, the Supreme Court ruled that the expenditure limits were unconstitutional on First Amendment grounds, as they directly restrict political expression. (This rationale is often referred to as the Court having ruled that “money is speech.”)

Besides noting restriction of political expression, the Court also ruled that the independent expenditure limits conflicted with the freedom of association protected by the First Amendment. It reasoned that “limitation on independent expenditures ‘relative to a clearly identified candidate’ precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association.”⁵⁵

The political expression rationale was also used by the Court to rule that limits on millionaires and billionaires using their own funds to finance a campaign were unconstitutional. The Court maintained that “the candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election.”⁵⁶ The Court asserted the importance of candidates’ “unfettered opportunity” for expressing their position so that voters can form an educated opinion.⁵⁷

The Court indicated it believes that all expenditure limits infringe on First Amendment freedoms and that no corruption risks would stem from their removal.⁵⁸ The expenditure limits were judged unconstitutional. The justices did uphold the contribution limits, but as we shall see, the aggregate limit, which set a cap for the annual amount that can be given (as opposed to the amount that can be given directly to each candidate), was later struck down.

The Bipartisan Campaign Reform Act of 2002 (BCRA) had a provision that prevented corporations, non-profits, and labor unions from issuing electioneering communications sixty days before a general election or thirty days before a primary. This act, coupled with prior legislation that banned direct political advocacy by corporations, was overturned by the Supreme Court’s 2010 decision in *Citizens United*, which ruled that corporations can engage in direct political advocacy and should face no limitations on their campaign contributions.⁵⁹

In 2014, the Supreme Court in *McCutcheon v. Federal Election Commission* struck down the aggregate limits on campaign contributions to all candidates set by the FECA. The Court ruled that the limits were unconstitutional and violated the First Amendment. As a result, there are no limits on the number of candidates to whom an individual may contribute.⁶⁰

Various constitutional amendments have been proposed to address campaign finance regulation. However, in 1997 and in 2014, the Senate rejected proposed amendments to allow Congress to determine cam-

campaign spending limits in federal elections.⁶¹ The other avenue for an amendment to the Constitution, which relies on an introduction by two-thirds of the state legislatures, is a very hard row to hoe, and little progress has been made.

That almost all attempts to limit the flood of private monies into the hands of public officials have failed is evident in the continued growth of election expenditures. (They have grown increasingly quickly even if accounting for inflation and population growth.)⁶² In 1998, congressional races cost approximately \$1.6 billion (\$2.4 billion adjusted for inflation); by 2014, they cost \$3.8 billion.⁶³ While total money spent on the 2016 presidential election was slightly lower than during the prior two elections (\$2.4 billion compared to \$2.8 billion in 2008 and \$2.6 billion in 2012), money spent on 2016 congressional races reached a new high, costing more than \$4 billion.⁶⁴

All this suggests the merit of focusing on what contributors can *get* rather than on what they can *give*. This does not mean that campaign contributions should not be regulated; rather, targeting unscrupulous benefits seems a much more promising approach for reformers. Limiting the Get has one other merit. Limiting the Give means limiting even those who do not seek special benefits, those who may support a candidate for philosophical or moral reasons. This is not the case if one limits only self-seeking benefits.

Transparency Is Woefully Insufficient

Courts have held that corruption can be deterred through transparency and disclosure requirements. In *McCutcheon v. Federal Election Commission* (2014), the Supreme Court stated that “disclosure of contributions minimizes the potential for abuse of the campaign finance system [and] . . . may also ‘deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.’”⁶⁵

While often discussed as an alternative to regulation, transparency is, in effect, a form of government regulation. Unlike other forms of regulation, however, transparency has a major disadvantage: it assumes that the public has the requisite resources to interpret the findings and translate them into effective political action, above all in voting choices.⁶⁶ Substantial behavioral economics research says otherwise: the public is unable to properly process and act on even simple information because

of “wired in,” congenital, systematic cognitive biases.⁶⁷ Numerous books, studies, and TV reports by *60 Minutes* and *Frontline*, among others, have not convinced the public to grant high priority to campaign financing reforms.

Further, while in principle super PACs are required to disclose their contributions, many of their donors can remain anonymous. The Sunlight Foundation provides a revealing example: “In 2010, a super PAC that was active in one of that year’s marquee House races listed a single donor: a 501(c)(4) organization that does not have to disclose its donors. This is what is known among some campaign finance lawyers as ‘the Russian doll problem.’”⁶⁸

The 501(c)(4) and 501(c)(6) organizations fall in the category of politically active non-profits, which can accept unlimited contributions and are typically under no obligation to disclose their contributors. In theory their political activity is limited, but in practice these limits are often unenforced. The prevalence of these organizations in federal elections has increased. They are considered to provide “dark money” because their funding sources are obscured.⁶⁹ As part of the reforms here suggested, disclosure should be mandatory for all organizations that spend in one way or another on political campaigns.

Many super PACs also have misleading or vague names that make it impossible to know which interests they are seeking to promote. How is one to tell that Americans for Progressive Action was started by a Republican and never supported any Democrat or that American Bridge 21st Century supports Democrats, while America Rising supports Republicans?⁷⁰

In *Buckley*, the Court did recognize that disclosure may not be sufficient to prevent corruption, stating that “Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption.”⁷¹ However, when Congress did act, the Court struck down practically all the limits Congress had set on making contributions.

The Ground for What Constitutes Bribery

The reforms here suggested entail treating as bribery any material campaign contributions that result in special benefits not available to others with the same attributes, unless the difference is relevant. For these

reforms to be implemented, Congress or the Court needs to revisit the way quid pro quo is determined.⁷²

In the 1999 Supreme Court case *Sun-Diamond*, an agricultural trade association was charged with giving illegal gifts to Michael Spy, secretary of the Department of Agriculture, in which Sun-Diamond's member cooperatives had vested interests. Sun-Diamond objected to the charges because the indictment did not show a link between the gifts and the issues of interests. The Supreme Court agreed and held that "in order to establish a violation of 18 U.S.C. § 201(c)(1)(A), the Government must prove a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given."⁷³ According to the Supreme Court, prosecuting federal bribery and gratuities required explicit proof of a quid pro quo arrangement.⁷⁴

In a private meeting, a high-ranking official of the US Department of Justice pointed out that the department understands quid pro quo to have taken place only when the donor explicitly conditions the donation to some benefit. If a congressional committee is about to vote on whether to grant a special favor tailored to match only a single donor, and that donor indicates that he will make a major donation after the vote, or half before and half after, and members of the committee then vote in line with the interests of the donor, such practice does not qualify as quid pro quo under current law.

For the suggested reforms here outlined to be effective, the bar must be lowered for what classifies as quid pro quo. The Supreme Court's very narrow interpretation of quid pro quo is precluding the prosecution of many corrupt acts. This interpretive trend must be overturned, either by Congress or the Court itself.

In Conclusion

Under the current system, a lobbyist can visit a member of Congress on the eve of a vote on a bill that would grant his special interest group a multimillion-dollar benefit (in the case of oil companies, it could be measured in billions) and inform the member that his group just made a major donation to his election campaign (PAC or a related super PAC). The lobbyist could also state that his group is considering tripling this amount and that he will be back next week (after the vote) to let the member of Congress know the result of his group's deliberations. By current law, such statements are not considered an attempt to bribe a

public official because no quid pro quo was explicitly mentioned. That is, the US employs an extremely limited definition of quid pro quo. The definition should be expanded to account for benefits clearly favoring the interests of those who made contributions before or after the vote, within a defined period.

One may prefer other ways to stop what is, in effect, widespread, systematic legalized bribery. However, no one concerned about shoring up democracy, functional governance, and the common good—the agenda of the patriotic movement—can ignore the importance of curbing the ways private money floods into the hands of public officials.

THE RISING (MORE) NATION-CENTERED WORLD ORDER

That the nation remains the principal political community in democracies has two basic implications. Domestically, national commitments help stem globalist encroachments on essential attachments (see chapter 3). Many lament this and yearn for a world without borders, some fearing that nationalism spawns xenophobia and jingoism, and others envisioning universal fellowship as a high human good. Whatever concerns and aspirations critics of nationalism may have, the response in the near term should not be to reject nationalism but instead to embrace “good” nationalism, as Canadians, Norwegians, Swiss, and Costa Ricans do, among others. Attempts to override nationalism will continue breeding alienation and populism in the foreseeable future.

The same is true of international relations. Attempts to shape global security and development without respecting national sovereignty and national core values are bound to fail. Patriotic foreign policy needs to accept that for now international institutions and collaborations can be stable and effective only if they accommodate national loyalties.¹

The Liberal International Order (LIO) is being challenged by populism in nations that built and have long supported that order (especially in the US). The LIO is also being tested by rising powers, particularly China, and those seeking to restore their prominence, especially Russia. Many hold that the LIO is in crisis.² Robert Kagan, for example, writes about “the twilight of the liberal world order,” which is starting “to weaken and fracture at the core” and may be a harbinger of a major global conflict.³

This chapter acknowledges these cautionary observations about the LIO but points to a new international order that is already evolving. I will refer to it as a Nation-Centered System (NCS) because it is more nationalist and less multilateral (and much less supranational) than the LIO. I cannot stress enough that the transition is a relative one. Nations have long played a key role in the LIO, and multilateralism will

remain important in the NCS—only considerably less so than in the recent past.

The NCS accords higher value to national sovereignty than does the LIO and is based more on agreements among nations than on collective decision-making. It is also less focused on the promotion of individual rights, democratization, free movement of people and goods, and the quest for democratic global governance—and more on stability and peace. In this way, the NCS is more similar to the preliberal world order that existed before 1945 than it is to the order formed, mainly by the US, in the wake of World War II. As we shall see, this scaling back, which the patriotic movement ought to recognize, is necessary to facilitate higher levels of global governance. To put it in popular terms, we need to take one step back in order to be able to take two steps forward.

The transition from the LIO to the NCS is a response to a widening gulf between institutional and normative developments on the one hand and community building on the other hand (from here on referred to as the communitarian gap). In other contexts, scholars have studied institutional and normative lag.⁴ Here, the opposite developments are examined. For lack of a better term, I refer to them as premature advancements.⁵ Today, there are indications that premature advancements at the institutional and normative level are being scaled back because supranational community building is lagging. This trend helps reduce the communitarian gap, thereby laying the foundation for firmer progress in the future. Reducing the gap should be a cornerstone of patriotic foreign policy.

In other words, on the international level power has been transferred, especially in the EU, to supranational governing bodies without significant supranational community building. Theoretically, this communitarian gap could be closed by rushing to build the supranational community. Such social construction, however, is unrealistic in the foreseeable future given the fierce commitments to national communities that are being expressed in many countries. Consequently, the supranational powers for a transitional period must be scaled back. Like it or not, many nations must face the fact that their foreign policy will be driven more by national values and interests and less by multilateral commitments and especially not by supranational ones. I will show next that to make progress, some scaling back of internationalism is now needed. This is a thesis that the patriotic movements of different nations should all come to embrace.

Excessive Supranationalism?

I used the term “progress,” which implies a specific preferred direction for the future trajectory of the international order. This direction is prescribed by the need for more effective and legitimate global governance. Such governance is called for because the world is facing a growing number of global challenges that cannot be managed effectively by national governments alone.

Nations can cooperate on shared goals in two ways. One is through the inter-nation model, in which nations enter into mutually beneficial policy agreements that preserve their sovereignty. NAFTA, NPT, and NATO are useful examples. Because each nation must consent to all significant changes in policy, a cumbersome process that often requires months if not years of negotiations before a major change can be introduced—and each nation in effect holds veto power—this model is limited in the scope of international work it can accomplish.⁶

The second way for nations to cooperate is through the “supranational” model. Here unanimous consensus is not required. Once an international organization adopts democratic procedures, recalcitrant countries can be ignored. And once the states involved yield some authority to the governing body, which supranationality entails by definition, decisions can be made in short order by a central body. A key example is the institutions of the European Union, especially the Commission.

John B. Judis, in his book *The Nationalist Revival*, draws a distinction between globalism and internationalism.⁷ The latter requires that nations cede some of their sovereignty to international organizations—but not throw their borders open to trade and immigration, or allow rulings by international institutions and international laws to trump national ones. As I see it, a lot depends on what “some of their sovereignty” means. If the concessions are significant, they require communitarian preparation, the kind of community building this book suggests is essential for moving beyond an international order based on independent nations. A little internationalism may not give one indigestion, but it’s best to avoid gobbling the stuff down. I will show below how the LIO involved an increase in the number of supranational institutions and show that this increase has outpaced supranational community building and, consequently, public support.

A parallel development is occurring on the normative level. The liberal elements of the LIO entail global norms and normative principles

that supersede national ones.⁸ The advance of *human* rights is the most potent illustration. Failure to abide by the various treaties of the United Nations Universal Declaration of Human Rights leads to all kinds of symbolic condemnations and material sanctions.

Both developments presume that most citizens of nations of the world will embrace the attendant loss of national sovereignty and consider it to be legitimate. However, for this to occur requires a measure of supranational community building because most citizens in the modern world, in effect, continue to view their state as their community, albeit an imagined one.⁹ For many, their very definition of self includes particular national traditions and loyalties. Unless supranational institutions can cultivate some of this sense of shared community and extend it to the relevant supranational governing bodies, reducing national particularity and sovereignty will continue to result in alienation and pushback.

The essentiality of community building in supranational governance is contested by neofunctionalists like Ernst B. Haas, who theorized that economic and administrative integration is sufficient to engender community building. In his analysis, as more decisions affecting more interests are moved to the supranational governing bodies, the more citizens' allegiances will shift from the national to the supranational level.¹⁰ If true, there would be no need for engaging in community building per se, as the formation of a supranational community would be the *result* of successful economic and administrative integration. I have shown in the past that the neofunctionalists underestimate the import of national identity and emotive group attachments in citizens' perceptions of political legitimacy.¹¹

Hedley Bull famously distinguished between a system of states and a society of states—the latter being akin to what is often referred to as an international community—and he suggested that such a community exists. In contrast, I hold that to the extent that such a community exists, it is insufficient to support the rise in supranational governance and its normative design. In the following section, I will defend this thesis by examining recent developments in the EU and globalist structures that face a retreat to nationalism. Measures to move forward again are not yet evident.

The EU: Supranational Institutions, but National Communities

Founded in 1957, the EU's precursor, the European Economic Community, was primarily a trade association encompassing six nations.

Over the decades following its establishment, the EU added members and expanded its missions. Initially, its focus was on administrative and regulatory matters intended to facilitate trade, travel, and commerce among the member nations. These changes were low-key, aiming to increase efficiency, but largely did not challenge citizens' sense of national identity.¹² The EU Commission also invented a sage way to manage missions across borders by not forcing all nations to adhere to the same standards, instead setting minimal standards for all nations to follow. Further, many small measures were introduced “under the radar”—by being buried in complex legal documents, for instance.¹³

Over time, the level and scope of integrated activities expanded, as did the number of countries involved. In 1985, several member states signed the Schengen Agreement, which lifted border checks and allowed for the free movement of people among member states. The introduction of the European Economic and Monetary Union (EMU) in the early 1990s marked another significant expansion of EU-wide governance. Under the EMU, twelve of the member states adopted a common currency and monetary policy, establishing the European Central Bank, and set new regulations on national budgets, such as setting permissible deficit levels and minimum budget allocations to R&D and defense. Further, since 2005, following massive immigration from Asia and Africa, the EU formed a policy that required each member nation to accept a given number of refugees.

As a result of expanding its missions, the EU involved itself in matters of much higher emotive and normative content—engaging the core values of the citizens of the member nations, people's sense of identity, and communal self-governance. The flip side of this rise in supranationalism was a sense of loss of national sovereignty.

Furthermore, the EU, in effect, required some nations to decelerate their economy's growth to offset that of nations whose economies were overheating. Even more contentiously, the absence of border controls facilitated large population flows both within and into the EU. The French were upset by the influx of Polish workers into France—popularly known as the Polish Plumber problem—after 1985. The British were still troubled by the stream of workers from Baltic countries as well as new immigrants and asylum seekers. Anger directed at immigrants animated the push for Brexit by the nationalists of the UK Independence Party (UKIP). The UKIP spokesperson Nigel Farage campaigned with a poster depict-

ing an endless line of refugees and the words “Breaking Point.” Brexit advocates found themselves unified under the banner of “Leave: we want our country back.” Several EU member nations restored border controls.

While the EU was founded like a typical intergovernmental organization by a treaty requiring unanimous agreement among all members, thus protecting their sovereignty, successor treaties replaced unanimous decision-making with qualified majority voting (QMV) in more and more areas of EU governance. The Treaties of Amsterdam (1999), Nice (2003), and Lisbon (2009) extended QMV into border security standards, immigration, public health, financial assistance, and dozens of other areas.¹⁴ These changes contributed to the sense of loss of national sovereignty.

In addition to challenges posed by the EU itself, rulings by European courts made millions of EU citizens feel that their moral sensibilities and national independence were being violated. To give but one example: a 2013 decision by the European Court of Human Rights (ECHR) on UK prison sentences culminated in a widely held sense that the court had encroached on the nation’s right to decide how to protect its citizens. In *Vinter and Others v. The United Kingdom*, the ECHR declared the practice of mandatory life sentences for convicted murderers a human rights violation because to deny opportunity for release constitutes inhumane treatment.¹⁵ Without recourse to an appeals process, the UK was compelled to comply with the decision. Conservative and Labour MPs alike felt the court had usurped Parliament’s legislative powers.¹⁶

These developments have bred growing disaffection, with Brexit being its most forceful manifestation. Other nations actively contemplating EU departure included, at one point or another, Greece, France, the Netherlands, and Denmark. Populist nationalism rose in many member nations. In Austria, Norbert Hofer nearly won the 2016 presidential election under the banner of the FPÖ (Freedom Party of Austria), a party whose first leaders were former SS officers. In the 2017 Austrian parliamentary elections, the FPÖ came in third, receiving 51 of the 183 seats in the National Council. Also in 2017, a far-right party in Germany (the AfD, or Alternative for Germany) won seats in Parliament for the first time in more than fifty years, declaring its intent to “take back our country and our people.”¹⁷ Two Eurosceptic parties garnered more than half of all votes in the 2018 Italian general election. One of these parties, the League, uses the slogan “Italians First.”¹⁸ In Poland and Hungary,

right-wing populists did ascend to power, with Andrzej Duda winning the Polish presidency in 2015 and Viktor Orbán's Fidesz party ruling Budapest since 2010.

While right-wing populist candidates were fended off in the recent presidential elections of France and the Netherlands, the parties of those candidates (National Front and Dutch Party for Freedom) saw gains in their share of legislative seats on the national and European levels. Other nationalist populist parties like Alternative for Germany, Sweden Democrats, and Golden Dawn (Greece) have similarly gained steam in their respective countries in the past decade, supported by voters who seem to view them as the defenders of national sovereignty.¹⁹

I have noted that there is a growing need for supranational governance as many challenges ahead cannot be managed by each nation on its own or by inter-nation governance, which is slow and cumbersome. Given that the EU provides by far the most advanced form of supranational government, the critical question is, Why does it face such vehement populist pushback? In my judgment, to reiterate, supranational government can endure and flourish only if it is accompanied by supranational community building, where national bonds and values are expanded to include the new governing body. The EU failed to build such a community as it transferred over more power to "Brussels."

The West Germans granted the equivalent of a trillion dollars to the East Germans during the decade that followed reunification with little hesitation. "They are fellow Germans" was the only explanation needed. The same Germans resisted granting much smaller amounts to Greece and other EU nations in trouble. They were not members of "our tribe." The power of communal bonds at the national level is most clearly seen in that while millions of people are willing to die for their nation, few are willing to sacrifice much of anything for the EU.

If I am correct that the EU cannot maintain its current level of policy integration, let alone expand its scope, as French president Emmanuel Macron and German chancellor Angela Merkel have been calling for, then the EU has two options: building the supranational community or shrinking its missions. Given that no signs of major community building are in the offing, shrinking is, in effect, the only option. In effect, this scaling back is already happening.

In a significant manifestation of the EU scaling back, many EU members are restoring their own control over their borders to limit the movement of EU citizens and immigrants. New border checks have been

erected in Germany, Denmark, Sweden, Norway, and Austria. Governments in Greece, Italy, France, and Portugal have defied the EU's budget deficit and GDP-to-debt ratio constraints. Furthermore, the Czech Republic, Hungary, and Poland have refused to accept the number of immigrants they are supposed to absorb according to EU policy.

Steps taken to foster an EU-wide community include promoting shared symbols (e.g., an EU flag), student exchanges (e.g., Socrates), and an EU anthem ("Ode to Joy"). These steps have only resulted in a rather thin sense of community, as indicated by various public opinion polls and by the moves to curtail the scope and level of integrated activities. A much stronger effort at community building will be needed before the EU can expand its missions again without causing ever-more backlash. The steps that must be taken to build such a community are far from clear, given the powerful hold that national ideals have on most EU citizens.²⁰

Globalists Encounter Nationalists

Premature supranational advancements and the need to scale them back to prepare the ground for more sustainable ones are also evident on the global level. The communitarian gap internationally is much less severe than in the EU, but not because there is more international community building, far from it, but because supranationalism is much more limited and found largely in the normative rather than the institutional realm.

In recent years, those who favor postnational or supranational positions (although they do not use these terms) have been called, quite appropriately, "globalists," and those who oppose such developments have been referred to as "nationalists." The rise of populism in many democratic polities in the 2010s is often attributed to a nationalistic reaction to the ascent of globalization.

Specifically, some find that globalization undermines both local and national communities. The argument runs as follows: As people moved from villages to cities, they lost many of the social bonds that provided them with emotional security.²¹ These bonds also had protected them from the siren calls of would-be demagogues. Once the society of communities turned into a mass society of individuals bereft of social moorings,²² demagogues gained more sway over the public, particularly when economic conditions deteriorated. The conditions in pre-Nazi Germany are often cited to illustrate these developments. When this analysis is

applied to contemporary populism in the terms already introduced, we are said to be witnessing the rise of globalization undermining communities, and thus leading to nationalist populism.

In addition, large segments of the population in liberal democracies are reported to have lost employment because freer trade led to jobs moving to developing countries; most of those who are employed gained little increase in real income and experienced growing income insecurity and inequality, as well as a loss of dignity (associated with the loss of traditional jobs like coal mining). The same people are also found to be reacting to expanding diversity due to immigration, and to cultural changes resulting from extensions of individual rights (e.g., legalization of gay marriage). The affected people view the rise of diversity as undermining both their social standing and their shared core values and customs.²³ Additionally, they feel snubbed and despised by globalist elites.²⁴ As Arlie Russell Hochschild points out: “For the Tea Party around the country, the shifting moral qualifications for the American Dream had turned them into strangers in their own land, afraid, resentful, displaced, and dismissed by the very people who were, they felt, cutting in line. . . . Liberals were asking them to feel compassion for the downtrodden in the back of the line, the ‘slaves’ of society. They didn’t want to; they felt downtrodden themselves.”²⁵ Globalists do not ignore these causes of populism; however, they tend to view them as pathological reactions to the unstoppable march of future trends. They tend to see nationalists as misinformed, misled, or captured by the emotive appeals of demagogues. Moreover, globalists often view the weakening of particularistic bonds—the weakening of commitments to local or national communities—as liberating. History is seen as a march from particularism to universalism, from close local and national communities toward a global one.

Globalists have little room for communities in their moral and philosophical vocabulary. True, some associate these bonds and values with an elusive global community. Most see people as freestanding individuals, endowed with rights by the mere fact that they are human and not because they are members of this or that community or nation. One can fully subscribe to the fact that human rights are inalienable, but one must also take into account that these are best combined with particularistic social responsibilities, including to family members, friends, community members, and fellow citizens.

Globalists have made progress on both the institutional and norma-

tive level. One can debate how far they have progressed but not that these developments greatly exceeded what the very meager global community building can support. Several scholars, for instance, Anne-Marie Slaughter, suggest that informal transnational networks provide a measure of the needed community.²⁶ (David Singh Grewal takes a more critical view of these networks.)²⁷ However, rising nationalism in many parts of the world suggests that these networks provide only for a thin community and that curbing nationalism will require a much thicker global community—that is, one in which people will tie their identity, sense of belonging, and loyalties in part to the global community. Amartya Sen²⁸ and Kwame Anthony Appiah²⁹ point out that people have complex, multilayered identities, acting, for instance, sometimes as nationalists and sometimes as globalists, depending on the context. However, when these identities clash, for large segments of the population national identity reigns supreme. The patriotic movement can work to ensure that the content of the national identities be constructive and change over the longer run to make more room for supranationalism. It would be highly unrealistic, however, to ignore the current primacy of national identities.

Next, I examine key elements of the LIO and outline ways they are or can be scaled back as the NCS is developed. To reiterate, the changes are in degree, not absolutes. For example, there is some reduction in support for the UN, but few call for its termination.

The Elements of the LIO and NCS

The High Normative Standing of Sovereignty

LIO advocates offer considerably different accounts of its normative principles and their priorities. G. John Ikenberry, whose work on the LIO is often cited, spotlights the Westphalian normative principle³⁰ for the LIO, delineating it as “foundational” to the whole framework.³¹ The principle has two components: that no nation may interfere in the internal affairs of another nation³² and that no nation may alter borders by force.

One ought to note that the Westphalian norm sanctifies the state and not the individual. Indeed, for centuries, until the Responsibility to Protect (RtoP) modification was introduced, and significantly even after that watershed, the Westphalian norm left citizens at the mercy of the state. Given that both globalists and LIO advocates stress the promotion of human rights, their liberal idealism directly conflicts with the

Westphalian norm. In other words, this key element of the LIO is not liberal at all.

The US and its allies sought to weaken national sovereignty by promoting the Responsibility to Protect (RtoP), which defined legitimate conditions for armed international intervention in the internal affairs of other nations—for the sake of endangered individuals.³³ (Most nations, including China and Russia, agreed to this change in the rules of world order.)³⁴ RtoP should be seen as a liberal correction precisely because it seeks to protect people from states rather than protecting states from each other, or those in power in each state from internal challenges.

Many nations (and even liberals in the West), however, soured on RtoP after the US and its allies used it to try to legitimate coercive regime changes, notably in Libya, where democracy-building ambitions (and not the protection of endangered individuals) were a factor in extending a devastating civil war and creating a new breeding ground for ISIS. In the Syrian civil war, the US insisted for the first four years that Bashar al-Assad had to go—to open the way for regime change—as a *precondition* to any negotiation on ending the conflict. (One could say that Assad could have been replaced without changing the regime. However, this is not what the US wanted, for good reason. There was little to be gained by replacing one tyrant with another. One could argue that US demands did not involve coercion, but the US greatly ramped up its armed support for anti-Assad forces when he refused to give up power.)

While China supports RtoP as it pertains to “genocide, war crimes, ethnic cleansing and crimes against humanity,” it insists that “it is not appropriate to expand, willfully to interpret or even abuse this concept.”³⁵ The fact that RtoP lost a good part of its legitimacy is one indication of the transition from the LIO to NCS. That is, a regime that was not very liberal to begin with and has become less so after an attempt to liberalize it largely failed when the new liberal principle was abused by those who advanced it.

To restore this liberal element, in the future RtoP will have to be employed only to prevent flagrant humanitarian atrocities and not to promote regime change.³⁶ Even though more expansive ideas of international responsibility—such as my call for a responsibility to contain transnational terrorists³⁷ and Richard Haass’s recasting of sovereignty as transnational responsibility³⁸—have merit, the current international community is too weak to sustain them.³⁹

Abuse of RtoP is not the only consequence of the US and its allies’

departure from Westphalian norms of national sovereignty in the name of liberal causes. After the collapse of the USSR, Francis Fukuyama theorized that the whole world was on its way to embrace liberal democratic regimes, leading to the “end of history” in the sense that once all nations had such a regime, no more regime changes would be sought or needed.⁴⁰ He also suggested that some nations are “stuck in history” and needed a push to make the change. Indeed, the 2003 invasion of Iraq was partly justified on such grounds. Building a liberal democratic regime was used to defend the US presence in Iraq—long after Saddam Hussein was captured, his regime unraveled, and no nuclear weapons were found.⁴¹ The same rationalizations were at play in interventions in Afghanistan and Libya.

In several of these nations, coercive regime change led to civil wars, high levels of both civilian and military casualties, and mass displacement. Hundreds of billions of US dollars have been squandered. One might argue that these are the inevitable labor pains of the birth of liberal democracy. However, by and large the result of US intervention was either anarchy or a new authoritarian government. (In some cases, the new regimes are labeled “developing democracies,” although they hardly qualify.⁴² Both Iraq and Afghanistan are losing many of the democratic features they acquired under American tutelage.)

The transition toward an NCS would benefit if the US gave up on the promotion of liberal democracy by coercive means. This policy shift would be highly justified on moral grounds (sparing hundreds of thousands of casualties; priority of the right to live);⁴³ prudential grounds (the sacrifices do not lead to the desired results);⁴⁴ and the grounds of sustainability (such a move would help mitigate opposition from rising powers and nationalists). At the same time, the promotion of liberal democracy can continue by using nonlethal means. These include public diplomacy, leadership training, cultural and educational exchanges, and increased contacts with democratic nations (through travel and trade).

Yoram Hazony’s *The Virtue of Nationalism* is highly relevant to this discussion.⁴⁵ He astutely advocates for what I call the communitarian virtues of the national state, its value as a community that provides for human flourishing. Arguing that the best global order is based on independent nation-states, he views all attempts to build more encompassing communities as dangerous utopias. Here we differ. As I see it, in the longer run most of the challenges humanity faces will have to be addressed through some form of global governance. And such governance will be

possible only if there is a significant transfer of loyalty from nation-states (themselves imagined) to an imagined global community.

Aspiration vs. Reality of World Governance

The UN is treated as a (if not the) major institutional element of the LIO.⁴⁶ G. John Ikenberry writes that one of the hallmarks of liberal internationalism is “rule-based relations enshrined in institutions such as the United Nations.”⁴⁷ Jeff Colgan and Robert Keohane note that the UN is a “key feature of the liberal order.”⁴⁸ When nations do not abide by UN resolutions, many liberals chastise them as if they have broken the law. They, in effect, assume that the UN is akin to a democratic government whose representatives speak for the electorate, whom, in return, they expect to comply with enacted laws.

This view of the UN is based on what many hope the UN could be, not on what it is.⁴⁹ The UN Security Council is neither democratic nor liberal. Its veto power is wielded by the winners of World War II, whereas large parts of the world—including India, Brazil, Japan, Indonesia, Germany, and Nigeria—have, in effect, no say. It is as if the US were governed by New York, Texas, Louisiana, Rhode Island, and Delaware! A handful of nations can impose UN-authorized sanctions on any nation or group of nations while having immunity to any unwanted counterclaims. At the UN, even if all the nations of the world chose to act together, they could not impose such sanctions on any of the five, who immunize themselves by their veto power.

Further, it takes a considerable suspension of disbelief to call the UN General Assembly “the most democratic and representative body.”⁵⁰ In it, India and Luxembourg, Nigeria and East Timor, Brazil and St. Lucia have one vote each. The assembly feels it is free to pass all kinds of resolutions because its members are aware that they are backed by no credible enforcement mechanism. There is little that is democratic about a majority vote when the votes that are cast are by representatives of authoritarian regimes that are indifferent to the preferences of their people. And the UN can hardly be viewed as liberal when for decades the most brazen violators of human rights have served on and headed the UN Commission on Human Rights as well as the UN Human Rights Council that replaced it.⁵¹

It follows that unless there are major reforms in the ways the UN is composed and acts, it ought to be viewed as an aspirational ideal

rather than an institution with binding legitimacy. Nationalists have a case when they argue that the UN violates national sovereignty. There is room for legitimate questioning about the extent to which nations should mind UN resolutions until it is much more representative. It has less of a role to play in the NCS than liberals assume it played in the LIO.

A great deal of international governance is carried out through a large variety of international organizations, such as the International Labor Organization, the International Red Cross, the World Health Organization, as well as informal bodies, such as the G7, G8, and G20. They mainly work by reaching consensus among member nations—or their decisions are not binding on those nations that dissent—but not on Wilsonian principles. They could therefore find their place in the NCS without difficulty.

The world needs much stronger forms of global governance based on liberal democratic principles. However, it is sociologically not ready to be governed the way liberal democracies are, as very little global community building has taken place. Until such community building is much more advanced, treating aspirations as if they were actualized, or as normative ramming rods, does not make for a more liberal LIO but engenders cynicism and opposition. One way to correct this gap is to scale back these claims. This is a distinctive mark of the NCS.

Free Trade

In spelling out the elements of the LIO, several scholars have emphasized free trade. Robin Niblett writes: “At the heart of the [liberal international] order were the Bretton Woods institutions—the International Monetary Fund and the World Bank—and the General Agreement on Tariffs and Trade, which became the World Trade Organization in 1995. Underpinning all these institutions was the belief that open and transparent markets with minimal government intervention—the so-called Washington consensus—would lay the foundation for economic growth.”⁵²

Globalists hold that trade increases the efficiency of all economies and hence the wealth of nations. They tend to see nationalist populists opposing free trade as ignoramuses, oblivious to the grand benefits of free trade as it reduces the costs of consumer goods. Globalists point out that most jobs are lost due to automation and not trade. However, between 2000 and 2015, the US lost five million largely manufacturing (well-paying and meaningful) jobs to trade.⁵³ These job losses are an

important source of nationalist populism. Nationalist populists call for protecting their nations' workers from the ill effects of free trade by imposing high tariffs on imports, among other measures, and they tend to frame advocates of free trade as unpatriotic. Both sides use the arguments for and against free trade as ideological ramming rods.

The scaling back that is necessary regarding trade is mainly a rhetorical one. Both boosters and knockers of free trade argue about a practice that does not exist. To support this proposition, I will quickly review points others have made. First, there never was free trade because there are strong national barriers on the movement of labor, highlighted by the reactions to mass immigration.

Second, the flow of trade is affected by numerous actions of national governments, even if they are not controlling the flow of capital, directly setting exchange rates, or imposing tariffs. Changes in taxation levels, deficit size, investment in research and development, subsidies, and terms of credit provided by the government, all affect trade. Trade is also limited to protect national security (e.g., bans on the sale of certain high-tech items and many weapons), to ensure food and drug safety, to pressure nations to democratize (e.g., the embargo against Cuba), to prevent the development of nuclear weapons (e.g., sanctions against trade with North Korea and Iran), to protect endangered species and archaeological sites, and to discourage child labor. A side agreement of the North American Agreement on Labor Cooperation (NAALC), often referred to as a free trade agreement, required the three countries to enforce labor protections, including the rights of association, organization, collective bargaining, to strike, and certain "technical labor standards," such as compensation in cases of illness.

To avoid being misled by ideological claims, one should refer to less versus more managed trade—"freer" trade, as responsible economists do—but not to "free trade." Most importantly, it follows that calls for making some changes in the ways and the extent to which trade is managed can be considered and be part of the patriotic movement agenda.⁵⁴ Indeed, such changes were often made in the past during the period considered the golden days of the LIO. In this way, the populist opposition to transnational trade may be mitigated.

The extent to which trade needs to be managed depends to a great extent on measures such as Trade Adjustment Assistance, though it may have to be expanded to become Technology Adjustment Assistance, given that automation is a major source of disruptive change. The more

we can ensure that those displaced by trade or automation are either re-trained for different jobs (jobs that pay and provide benefits and meaning similar to those they lost) or hired to carry out public jobs, the less additional trade management will be needed.⁵⁵

In short, trade was never as liberal as globalists often suggest. Managing it somewhat more (if TSA is not adequate) as part of the transition to an NCS should help mitigate nationalist populism.

Free Movement of People

Globalists favor the free movement of people across national borders. They strongly support the Schengen Agreement, which removes border controls between many European nations. They strongly supported Angela Merkel, the German chancellor, when she opened the doors to more than a million immigrants. And they view restriction on immigration as typical right-wing, xenophobic, reactionary, nationalist policies.⁵⁶ Such sweeping affirmations of open borders often do not recognize a tension between open-ended immigration, especially of people from different cultures, and sustaining communities. Communities benefit from a measure of stability, continuity, and a core of shared values. A truly free flow of people across borders is endangering national values and communities and is politically unsustainable.⁵⁷

In effect, scaling back the liberal flow of people, as part of the transition to an NCS, is already taking place. All the countries involved—even those highly supportive of immigration, such as Australia and Canada—limit the number of immigrants they receive each year and favor some kinds of immigrants over others. We have already seen that all the European nations involved have limited immigration, some very drastically. I am not arguing that these limitations are just, set at the right level, or grant morally appropriate preference to some immigrants over others. I simply note that the communitarian gap undermined the previous higher levels of immigration. Accelerating the integration of immigrants into the host societies may allow another increase in immigration in the future. Meanwhile, nationalist populism is forcing immigration to be scaled back.

Freedom of Navigation: Liberal and Consensual

In many ways, freedom of navigation is a quintessential liberal element of the LIO. It seeks to ensure that people of all nations are able to move

about freely on the seven seas. The US undergirded this freedom frequently and pushed back against limitations on travel on the seas by friend and foe alike.⁵⁸ There seems to be no reason that this element could not be readily incorporated into the NCS.

Various concerns have been voiced about China seeking to limit freedom of navigation. To the extent that these refer to China's call for an Air Defense Identification Zone over the South China Sea, many other nations have similar zones, and no plane can approach within several hundred miles of the US without identifying itself.⁵⁹ Above all, China would suffer much more than the US if the flow of goods were interrupted, because China is much more dependent on such flows than the US or its allies. Populists have shown little interest in this subject. In short, one should expect smooth sailing for freedom of navigation in the NCS.

In Conclusion

The Liberal International Order (LIO), forged by the US at the end of World War II, is challenged by nationalist populism and rising powers, prompting concerns that anarchy may follow and that liberal values such as free trade, free movement of people, and freedom of navigation will be undermined. I have tried to show in this chapter that the LIO is being transformed rather than ending. One adaptation involves some sharing of power, as the US is no longer as hegemonic as it was in 1945, when the foundations for this order were first laid. In other areas, the LIO has prematurely advanced in the much-needed direction of more supranational governance. As long as people hold their nation to be their main political community—until supranational communities develop on a regional and one day global level—high respect for national sovereignty will need to underpin international order and serve as a basis for the patriotic movement's foreign policy.⁶⁰

This, in turn, requires some limits on the movement of goods and people, though not on navigation. Another important adaptation entails promoting human rights and democratic regimes only by nonlethal means, steering clear of coercive regime change (a rather illiberal form of action). The transition from an LIO to NCS and its consecutive adaptation to the sociological reality has already begun.

This chapter has a subtext that should be openly addressed. It assumes that in revising the existing world order, the preferences of national populists and rising powers should be taken into account by the

patriotic movement. The movement should not ignore that the world-wide distribution of power has changed since 1945 or that premature globalist advancements are one reason national populism is rising and endangering liberalism. Moreover, as long as the future promotion of liberal values is limited to nonlethal means, respect for national sovereignty and the promotion of liberalism can both find a place in the new international order—one more centered on nation-states, until transnational community building allows for an expansion of globalism.

THE NEW ATHENS, A POST-AFFLUENCE LEGITIMACY

The patriotic movement, as it sorts out what are the core values the nation is to share and dedicate itself to, must also determine which economic system best serves these values. Over recent decades, as even former communist countries have adopted capitalism as their main economic system, it seems as if the debate has ended. While some nations combine capitalism with authoritarian forms of government and others with democratic ones, very few states now still seek the planned economic systems. Even North Korea and Cuba are beginning to relent. Most nations act as if they consider an affluent life, working hard to gain higher levels of consumption—even if it entails sacrificing some other goods (e.g., more time with the family)—as the good life the national government should help promote.¹ In effect, a good part of the legitimacy of many regimes is that they are or are about to provide material affluence.

This consensus needs to be subjected to critical evaluation. There are major reasons to doubt that a world in which ever-more people are seeking ever-more affluence is sustainable. Sustainability is a term so often used that one tends to gloss over it. However, there are strong reasons to doubt the environment can tolerate ever-higher levels of resource extraction to meet ever-rising global market demands for goods and services. Also, rising automation may well kill more jobs than it creates, leaving tens of millions of people—many of them young and educated—without a meaningful occupation. The same holds for the ever-higher social burdens capitalism engenders as it externalizes the social costs it imposes. All these developments call for a reexamination of the legitimacy of capitalism and the legitimacy of material affluence.

Equally important is that even if one could keep the world on a pathway of ever-higher economic growth (and materialism), there are reasons to doubt that this would make people flourish and be content. This chapter hence focuses on addressing the question, What makes a good

society and what constitutes a life well lived for those whose basic economic needs have been met?²

Income and Happiness

Data suggest that once a certain threshold of income is reached, additional accumulation of income creates little additional contentment. On the whole, social science findings, despite their well-known limitations and sometimes conflicting conclusions, seem to confirm the weak link between happiness and income—with the notable exception of the poor. Frank M. Andrews and Stephen B. Withey found that socioeconomic status has a meager effect on the “sense of well-being” and no significant effect on life satisfaction.³ A survey of more than one thousand participants, who rated their sense of satisfaction and happiness on a 7-point scale and a 3-point scale, noted no correlation between socioeconomic status and happiness; in fact, the second-highest socioeconomic group was consistently among the least happy of all seven brackets measured. Further, Jonathan Freedman discovered that levels of reported happiness do not vary greatly among different economic classes, apart from the poor, who tend to be less happy than others.⁴

Additional evidence suggests that economic growth does not significantly affect happiness (though at any given time the people of poor countries are generally less happy than those of wealthy ones). David G. Myers and Ed Diener reported that while per-capita disposable (after-tax) income in inflation-adjusted dollars almost exactly doubled between 1960 and 1990, virtually the same proportion of Americans reported that they were “very happy” in 1993 (32 percent) as they did in 1957 (35 percent).⁵ Although economic growth has slowed since the mid-1970s, Americans’ reported happiness has been remarkably stable (nearly always between 30 and 35 percent) across both high-growth and low-growth periods.⁶ Moreover, in the same period (1960–90), rates of depression, violent crime, divorce, and teen suicide all rose dramatically.⁷

In a 1973 study, Richard Easterlin reported on a phenomenon that has since been labeled the “Easterlin Paradox.”⁸ At any given time, higher income generates more happiness, though over the longer run (ten years or more), happiness fails to increase alongside national income. In other words, long-term economic growth does not improve the overall happiness of citizens. Japan is an often-cited example of the Easterlin Paradox.

Between 1962 and 1987, the Japanese economy grew at an unprecedented rate, more than tripling its GNP per capita; yet Japan's overall happiness remained constant over that period.⁹ Similarly, in 1970, while the average American income could buy over 60 percent more than it could in the 1940s, average happiness did not increase.¹⁰ Another survey found that people whose income had increased over a ten-year period were no happier than those whose incomes had stagnated.¹¹

Interest in the Easterlin Paradox was revived in the late 1990s and early 2000s, as several scholars called into question Easterlin's findings. A 2006 paper by Ruut Veenhoven and Michael Hagerty explained some of the reasons for the discrepancy among happiness researchers.¹² First, changes in happiness tend to be small and must be aggregated over long periods of time. As very little data spans more than a few decades, its significance is open to different interpretation. Also, average happiness tends to fluctuate, making it difficult to separate the overall trend from the statistical noise. Further, happiness surveys lack uniformity; methodologies and questions have changed over time, possibly skewing results. Social scientists may choose to limit their data to only identical surveys (as Easterlin did) or to draw on a variety of surveys (as Veenhoven and Hagerty did), which may lead to different conclusions.

While such issues can be raised about most social science studies of this kind (especially longitudinal studies), a more serious challenge is Veenhoven and Hagerty's finding that both happiness and income increased in the second half of the twentieth century, indicating a correlation between the two.¹³ Ruut Veenhoven and Floris Vergunst's more recent paper contests Easterlin's empirical findings, arguing that data taken from the World Database of Happiness reveals a positive correlation between GDP growth and affective well-being.¹⁴ Similarly, a 2008 study by Betsey Stevenson and Justin Wolfers noted a similar correlation between income growth and happiness.¹⁵

In December 2010, Easterlin and his associates challenged Stevenson and Wolfers's study.¹⁶ Showing that much of the study's data focused on a short period (six years instead of ten), they argued that longer-term trends were attributable to factors other than economic growth. They also added data from a number of non-Western, developing countries, including China, South Korea, and Chile, and found further support for the Easterlin Paradox. Although China's growth rate doubled per-capita income in less than ten years, South Korea's in thirteen, and Chile's in

eighteen years, none of these countries showed a statistically significant increase in happiness. The authors wrote: “With incomes rising so rapidly in these three different countries, it seems extraordinary that there are no surveys that register the marked improvement in subjective well-being that mainstream economists and policy makers worldwide would expect to find.”¹⁷

As already noted, there is one important exception to these findings—when incomes of the poor are increased, happiness is significantly enhanced. This observation is important because some may use the data I cited to argue for the futility of reforms seeking to improve the lot of the poor. Thus, as Richard Layard’s 2005 book *Happiness: Lessons from a New Science* shows, when a country’s average income exceeds \$20,000 a year per person, contentment also rises considerably.¹⁸ Layard used happiness data from three major long-term public opinion surveys (the Eurobarometer for western Europe, the General Social Survey for the United States, and the World Values Survey for eastern Europe and developing nations) to calculate an average happiness measure for each country, which was compared to average income per capita. (Critics of this data argue that it used absolute rather than proportional measurements.)¹⁹

A 2010 study identified \$75,000 as the threshold after which additional income produces little additional happiness.²⁰ The study’s authors found that while high income improved individuals’ life evaluation (their thoughts about their life), it did not improve emotional well-being, defined as “the frequency and intensity of experiences of joy, stress, sadness, anger, and affection that make one’s life pleasant or unpleasant.”²¹ Hence, whereas life evaluation rises steadily with increases in income, emotional well-being does not progress once an annual income of \$75,000 is reached.²² A 2018 study found that “satiation occurs at \$95,000 for life evaluation and \$60,000 to \$75,000 for emotional well-being. However, there is substantial variation across world regions, with satiation occurring later in wealthier regions. We also find that in certain parts of the world, incomes beyond satiation are associated with lower life evaluations.”²³

In short, although the data does not all point in one direction, the preponderance of the evidence suggests that, at the very least, high levels of income do not buy much happiness. Thus, the legitimacy bestowed by affluence is questionable, regardless of whether or not a high-growth pathway is achievable and sustainable.

The Sisyphean Nature of Affluence

One reason high wage-earners derive less happiness from additional income is that material goods are judged *relative* to goods available to others rather than in terms of their intrinsic worth. Indeed, Easterlin himself observed that individuals tend to evaluate their earnings and satisfaction on a comparative rather than absolute scale. The familiar expression “keeping up with the Joneses” captures well this competitive character of contentment in social life where goods are used as visible markers of rank in a never-ending race.

Different studies have shown how contextual judgments affect reported subjective well-being. For example, people taking happiness surveys in the presence of someone in a wheelchair rate themselves as 20 percent happier on average than those in a control group.²⁴ Given this, increasing the total wealth of a given society would not necessarily increase the happiness of its members, as more or “better” consumer goods would merely raise the bar for what people judged to be “good”—leaving people perpetually dissatisfied with their material objects despite their higher quality and quantity. At the same time, improving the material plight of the poor *would* enhance their reported well-being, as their possessions would move closer to the societal standard.

The same social factor seems to help explain why small-townners are happier than big-city dwellers.²⁵ Daniel Gilbert notes: “Now, if you live in Hallelujah, Arkansas, the odds are good that most of the people you know do something like you do and earn something like you earn and live in houses something like yours. New York, on the other hand, is the most varied, most heterogeneous place on earth. No matter how hard you try, you really can’t avoid walking by restaurants where people drop your monthly rent on a bottle of wine and store windows where shoes sit like museum pieces on gold pedestals. You can’t help but feel trumped.”²⁶ Another explanation for the disconnect between increased income and happiness draws on the adaptivity of human satisfaction to varying conditions known as the “hedonic treadmill” theory.²⁷ There are different accounts of what constitutes the hedonic treadmill.²⁸ One account suggests that people psychologically acclimatize to changes in well-being, gravitating to a set level of happiness regardless of external stimulus. In a seminal study that coined the term, Philip Brickman, Dan Coates, and Ronnie Janoff-Bulman observed that lottery winners were no happier than a control group of nonwinners.²⁹ Another survey found

that the one hundred wealthiest Americans on the Forbes List were only “modestly” happier than a control group selected at random from the same geographic areas.³⁰

The hedonic treadmill is also construed through rising expectations in the wake of improvements in material well-being. Thus, a study of rural Chinese found that while rising incomes improved subjective well-being, income aspirations also grew and quickly offset satisfaction gains.³¹ According to the authors, this “partial hedonic treadmill” explains why China’s rapid economic growth has not elevated subjective well-being.³² It would also explain Amartya Sen’s findings that subjective well-being is often higher among citizens of poor than of rich countries, as the former may be more resourceful in adjusting their expectations to match their circumstances, whereas the latter tend to covet a higher quality of life than they can realistically attain.³³

In whatever way the hedonic treadmill is understood, the basic insight holds: there is no way to find contentment in the high-growth, high-consumption way of life because well-being is pinned to runaway desire and external validations.

Historical Precedents for Non-Affluence-Based Contentment

In seeking alternatives to material affluence as the source of happiness, one can turn to historical movements and previous cultures and modes of legitimacy that defined the good life by drawing on core values other than affluence. As Jeffrey Sachs notes: “The essence of traditional virtue ethics—whether in Buddhism, Aristotelianism, or Roman Catholicism—is that happiness is achieved by harnessing the will and the passions to live the right kind of life. Individuals become virtuous through rational thought, instruction, mind training, and habits of virtuous behavior.”³⁴ Consider the Buddhist tradition where happiness is understood not as self-aggrandizement or gratification but rather as self-enlightenment and transformation; being happy demands attaining a new way of experiencing and partaking in the world, and as such is more akin to a skill or ability than a sensation.³⁵

For centuries the literati of imperial China came to prominence not through acquisition of wealth but through pursuit of knowledge and cultivation of the arts. This group of scholar-bureaucrats dedicated their early lives to rigorous study, in preparation for the exams required for government service. They spent years memorizing the Confucian clas-

sics. The literati, having passed the imperial exams, were qualified for government service but instead elected to dedicate their lives to the arts or retired early in order to follow artistic pursuits. They played music and composed poetry, learned calligraphy, and gathered with like-minded friends to share ideas and discuss great works of the past.

Reinhard Bendix writes that in keeping with Confucian teachings, “the educated man must stay away from the pursuit of wealth . . . because acquisitiveness is a source of social and personal unrest. To be sure, this would not be the case if the success of economic pursuits was guaranteed, but in the absence of such a guarantee the poise and harmony of the soul are jeopardized by the risks involved. . . . The cultured man strives for the perfection of the self, whereas all occupations that involve the pursuit of riches require a one-sided specialization that acts against the universality of the gentleman.”³⁶

The Ancient Greeks—aside from the Epicureans³⁷—generally took “happiness” to be the pursuit of excellence rather than pleasure. For example, Aristotle conceived “happiness” (*eudaimonia*) as the exercise of human faculties in accordance with various practical and intellectual virtues, such as prudence, justice, courage, or temperance. To be happy is to realize your full potential in diverse practices as parent, friend, worker, and citizen.³⁸ Aristotle’s happiness, best translated as flourishing, is a way of being that requires cultivation and involves finding a balance between “excess and deficiency,” experiencing “emotions at the right times and on the right occasions and towards the right persons and for the right causes and in the right manner.”³⁹ Aristotle’s conception of happiness is much broader than that of many contemporary thinkers, amounting to “a kind of living that is active, inclusive of all that has intrinsic value, and complete, meaning lacking in nothing that would make it richer or better.”⁴⁰ It thus stands in contrast to the idea of welfare used by most contemporary economists, which lines up much more with Bentham’s account of happiness.⁴¹

St. Thomas Aquinas sought to synthesize an Aristotelean conception of happiness with Christian teachings. He redefined Aristotle’s everyday virtues with a view of human beings’ ultimate destiny. For Aquinas, true happiness cannot attach to worldly honors and riches; attaining it is nothing short of attaining one’s final good, which is fellowship with God alongside other saints.⁴² Earthly life is but a formidable training of the soul for eternal life.⁴³ Whatever intermittent fulfillment is experienced in

the course of completing daily responsibilities, it is full of conflicts and ordeals that will be set aright in the Kingdom to come.⁴⁴

During the Middle Ages, knights were expected to adhere to an exacting code of chivalry. The tenets they were to live by are well captured in the “Song of Roland,” an eleventh-century poem. Throughout the poem, the worthy knight is shown to gladly and faithfully serve his liege lord, to protect the weak and the defenseless, to show proper reverence for God, to respect and honor women, to be truthful and steadfast, and to view financial reward with revulsion and disdain. In traditional Jewish communities, studying the Torah was considered the preferred way of life.

In recent ages, numerous social movements and communities advocated consumerism-resistant forms of the good life within capitalist societies. The Shakers, who left Manchester for America in the 1770s, founded religious communities characterized by a simple ascetic lifestyle.⁴⁵ Other such communities (some secular, some religious) include the Brook Farm Institute, the Harmony Society, the Amana Colonies, and the Amish. In Britain, John Ruskin founded the Guild of St. George in the 1870s to help form agrarian communities whose members would lead a simple and modest life. Jewish refugees to Palestine in the early twentieth century established kibbutzim, in which austerity was considered virtuous, consumption restrained, communal life promoted, and socialist and Zionist agendas advanced.

In the 1960s, a counterculture (hippie) movement rose on both sides of the Atlantic. Its core values were anticonsumerism, communal living, equality, environmentalism, free love, and pacifism. Timothy Leary encapsulated the hippie ethos when he advised a crowd to “turn on, tune in, and drop out.”⁴⁶ The British iteration of the hippie movement manifested itself in London’s underground culture, a “community of like-minded anti-establishment, anti-war, pro-rock’n’roll individuals, most of whom had a common interest in recreational drugs,” and many of whom opted out of mainstream consumerist culture.⁴⁷ Many of these movements and communities sought to renounce both consumerism and work structures while fostering an alternative universe committed to asceticism and various transcendental practices drawing on eclectic spiritual, religious, and social ideas. The underlying goal was to replace rather than limit capitalism.

Most important, these various movements and communities failed

to lay a foundation for a new contemporary society—and practically all of them either disintegrated, shriveled, or lost their defining features. It seems that most people cannot abide an austere, ascetic lifestyle in the longer run. Hence if the patriotic movement intends to form a society less centered around consumption, it should not seek to displace consumption but to limit it and channel some of its resources and energy to other pursuits. If one questions whether consumption can be curbed without frustrating basic human needs, Maslow's work provides an answer, albeit not a fully satisfactory one.

The Maslowian Exit

Abraham Maslow's "A Theory of Human Motivation," though published in 1943, speaks directly to our current predicament. Maslow argued that humans have a hierarchy of needs. At the bottom are the basic human necessities of safety, food, shelter, clothing, and health; once these needs are met, affection and self-esteem are next in line; and, finally, the pinnacle of satisfaction is achieved by attending to what he calls "self-actualization." So long as basic creature comforts are satisfied, rising wealth facilitates genuine contentment. However, once consumption is used to satisfy the higher needs, it runs the risk of morphing into consumerism and spawning varied social malaises.

One might object that economic growth is necessary for satisfying not just basic necessities but higher-order needs as well. It might be suggested, for example, that the goods of self-esteem and self-actualization often require material support well beyond what a low-growth economy can provide.

In response, one might observe that a game of chess can be enjoyed whether played with plastic or mahogany pieces, a reading of *Hamlet* whether it is printed in a cheap paperback or leather-bound edition; and bonding with children whether one builds a toy together or buys an expensive one. In a similar vein, one might note that God answers prayers irrespective of whether someone wears the most recent designer garments or regular blue jeans.

In historical terms, in the US a turning point for people with incomes well above the poverty line came in the decades following World War II. Around the time of World War II, economists held that individuals have fixed needs. Once those needs are satisfied, people would allocate additional income toward savings rather than consumption. During the

war, however, as the American productive capacity greatly expanded, the economists feared that, once the conflicts ended and war-related materials would be no longer needed, there would be massive unemployment and economic depression, comparable to that of the 1930s. Why produce more when fixed, peacetime needs are sated? In this context, David Riesman published a widely discussed essay called “Abundance for What?”⁴⁸ He suggested that the “surplus” be used for public projects, such as maintaining the 1955 lifestyle of New Orleans so future generations could visit this sociological Disneyland to appreciate life in earlier ages, much as we do today in Colonial Williamsburg.⁴⁹ John Kenneth Galbraith suggested that, given that private needs were met, excess productive capacities could be used for public goods such as schools and parks.⁵⁰ These ideas, however, were soon set aside when Vance Packard’s *The Status Seekers* called attention to the fact that large-scale advertising is able to produce artificial, unbounded private wants.⁵¹ The notion that people can be sated by buying a given amount of goods and services, any amount, went out the window. Capitalism banks on people wanting ever more, whether or not they need more.

In the decades that followed World War II, industrial corporations discovered that they could manufacture artificial needs for whatever products they were selling. For instance, first women and then men were taught that they smelled bad and needed to purchase deodorants. Men who used to wear white shirts and gray flannel suits learned that they “had to” purchase a variety of shirts and suits and that last year’s style was not proper in the year that followed. Soon, it was not just suits but also cars, ties, handbags, sunglasses, watches, and numerous other products that had to be constantly replaced to keep up with the latest trends. More recently, people have been convinced that they have various illnesses (such as restless leg syndrome) requiring medications.

One cannot stress enough that the quest for a new definition of the good life is a project for those whose creature comforts have been well and securely met. Urging such a project on individuals, classes, or societies that have not reached that stage of economic development is to promote what sociologists call “status acceptance,” to urge the “have-nots” to love their misery. It is to provide a rationale to those who “have” all they need and more—and who deny such basics to others. Such a position hardly comports with a definition of a good life.

To reiterate, material consumption per se is not the issue. Maslow does not suggest an austere life of sacks and ashes or of making a vir-

tue out of poverty. Rather, his theory holds that securing basic creature comforts is fully legitimate. However, material consumption turns into an obsession when—after necessities are provided—people use the means suitable for attending to creature comforts to try to buy affection, esteem, and even self-actualization. This point is the subject of a considerable number of plays and novels, most dramatically *Death of a Salesman*. In the play, the husband (the context is of earlier generations where breadwinners were typically men) neglects his spouse, children, and community by investing his time and energy in “bringing home the bacon.” In the process, both he and his family are shortchanged.

Maslow’s conception of the good life falls short, however, in its characterization of self-actualization as the highest good. It is far from clear what he means by this concept, although leading with the “self” serves as a warning signal. Maslow does not find that self-actualization is best achieved by finding meaning in or serving anything greater than self. Any and all forms of self-expression seem equally valued. As implied by its name, self-actualization is highly individualistic and reflects Maslow’s premise that the self is “*sovereign and inviolable*” and entitled to “*his or her own tastes, opinions, values, etc.*”⁵² That is, self-actualization refers to an individual need for fulfillment.⁵³ The particular form self-actualization takes varies greatly from person to person. In some individuals, “it may take the form of the desire to be an ideal mother, in another it may be expressed athletically, and in still another it may be expressed in painting pictures or in inventions.”⁵⁴ Indeed, some have characterized Maslow’s self-actualization as “healthy narcissism.”⁵⁵

Contributions to Sustainability and Social Justice

If postmodern societies could develop a culture of moderation where everyone could attain sufficient income to secure basic creature needs and cultivate nonmaterialistic values, that culture would provide one obvious and one less obvious additional major contribution to higher levels of contentment as well as less alienation and populism.

Obviously, a good life that moderates material consumption and fosters nonmaterialistic pursuits is much less taxing on the environment than is consumerism. Practices centering on transcendental, nonmaterialistic values usually require relatively few resources, fossil fuels, or other sources of energy. Social activities (such as spending more time with children) demand time and personal energy but not large material

or financial outlays (often those who spend large amounts of money on their kids' toys or entertainment bond less with them than those whose relations are less mediated by objects). The same holds for cultural and spiritual activities such as prayer, meditation, enjoying and making music, art, sports, and adult education. True, consumerism has turned many of these pursuits into expensive endeavors. However, one can break out of this mentality and find that it is possible to engage in most nonmaterialistic activities quite profoundly using a moderate number of goods and services. One does not need designer clothes to enjoy the sunset or shoes with fancy labels to benefit from a hike. In short, the transcendental society is much more sustainable than consumeristic capitalism.

Much less obvious are the ways a culture of moderation serves social justice. Social justice demands fair distribution of material resources among different social groups. This entails reallocation of wealth from those disproportionately endowed to those who are underprivileged. A major reason such reallocation of wealth has been surprisingly limited in free societies is that the wealthy also tend to be politically powerful. Promoting social justice by organizing those with less, and forcing those in power to yield, has had limited success in democratic countries and led to massive bloodshed in others. If, however, those wielding power would embrace a culture of moderation, they would be much more ready to share their assets. This thesis is supported by the behavior of middle-class people committed to the values of giving and attending to the least among us—values prescribed by many religions and by left liberalism. This important thesis requires a whole distinct study and is included here merely to mention a major side benefit of the new culture, rather than document it.

There are three major sources of nonmaterialistic contentment that provide for a life reaching beyond the self. While all are compatible with the Maslowian hierarchy of human needs, they also add a new dimension or requirement to the way these needs are to be understood and pursued. Because these sources of contentment are very familiar, they are only briefly listed below.

The Contentment of Mutuality

Spending time with those with whom one shares bonds of affinity—children, spouses, friends, members of one's community—has often been shown to make people content.⁵⁶ Indeed, approval by intimate others is a main source of affection and esteem, Maslow's second layer of

human needs. However, social relations are about more than making the ego happy. These relationships are based on mutuality, in which two people “give” and “receive” in one and the same act. Those who engage in lasting, meaningful, and effective relationships find them to be a major source of mutual enrichment, which can be achieved with very little expenditure or material costs. (Note that much of the literature contrasts ego-centered activities with altruistic ones.⁵⁷ Much more attention should be paid to mutuality, because it is much more common and more stable than altruism.)

Both introverts and extroverts report feeling happier when they are with other people.⁵⁸ Derek Bok writes that “several researchers have concluded that human relationships and connections of all kinds contribute more to happiness than anything else.”⁵⁹ Conversely, people who are socially isolated are less happy than those who have strong social relationships. As one study put it, “Adults who feel socially isolated are also characterized by higher levels of anxiety, negative mood, dejection, hostility, fear of negative evaluation, and perceived stress, and by lower levels of optimism, happiness, and life satisfaction.”⁶⁰ Research shows that married people are happier than those who are single, divorced, widowed, separated, or cohabiting.⁶¹ In addition, the presence of close friendships can have nearly as strong an impact on contentment as a successful marriage.⁶²

Contentment from Community Involvement

Researchers who examined the effect of community involvement (as opposed to merely socializing with friends or family) also found a strong correlation with happiness. One study, which evaluated survey data from forty-nine countries, noted that membership in nonchurch organizations has a significant positive correlation with happiness.⁶³ Bok notes, “Some researchers have found that merely attending monthly club meetings or volunteering once a month is associated with a change in well-being equivalent to a doubling of income.”⁶⁴ Other studies have observed that individuals who devote substantial amounts of time to volunteer work have greater life satisfaction than all others.⁶⁵

Political participation, too, can yield the fruits of bonding and meaningful activities. As one scholar notes, using the terms of an economist, “Citizens do not only gain utility from the outcome of the political process and its material consequences but also from the democratic process itself.”⁶⁶ This is particularly true when the political culture and processes

are perceived as fair and, thus, even those whose preferred candidates are defeated feel that they had their day in court.⁶⁷ Also, research shows that adolescents who have a greater commitment to society or pursue some meaningful social cause are more content than their less engaged peers.⁶⁸ (This promotion of community involvement is reminiscent of Robert Putnam's notion of social capital, i.e., the sort of close community bonds he suggests ward off a variety of social ills.)⁶⁹

Some scholars have been more critical of community involvement. Pierre Bourdieu suggests that the social capital associated with communal bonds is possessed not by the community but by individuals who then deploy it in social struggles with others in their community.⁷⁰ Thus, where Putnam might prize a social club like the Elks for cultivating social stability and trust, Bourdieu might see a small in-group whose members seek to outmaneuver communal competitors.

As I see it,⁷¹ smaller communities are best integrated into more encompassing communities—families into neighborhoods, neighborhoods into regional communities, and these into national, and, best, supranational ones.⁷² The more encompassing loyalties help mitigate the tendency of smaller communities to maximize their well-being at the expense of others. When such loyalties are absent, the correct move is to add commitments to the more encompassing communities rather than give up on the rich fruits of the smaller ones.

Transcendental (Religious, Spiritual, and Intellectual) Pursuits

Extensive evidence indicates that people who consider themselves religious, express a belief in God, or regularly attend religious services are more content than those who do not. According to one study, agreement with the statement “God is important in my life” was associated with a gain of 3.5 points on a 100-point scale of happiness.⁷³ (For comparison, unemployment is associated with a 6-point drop on the same scale.) Other studies show that those with a deep religious faith are healthier, live longer, and have lower rates of divorce, crime, and suicide.⁷⁴ Robert Putnam and David Campbell reported that “a common finding [of happiness researchers] is that religiosity is among the closest correlates of life satisfaction, at least as strong as income.”⁷⁵ They found that the difference in happiness between a person who goes to church once a week and someone who does not attend church was “slightly larger than the difference between someone who earns \$10,000 a year and his demographic twin who earns \$100,000 a year.”⁷⁶

There is some debate as to whether the effect of religiosity on happiness is attributable to participation in religious activities (attending church services, involvement with a religious community) or religious belief. Layard characterizes the correlation between belief in God and life satisfaction as “one of the most robust findings of happiness research,”⁷⁷ whereas Putnam and Campbell argue, “The religious edge in life satisfaction has less to do with faith itself than with communities of faith.”⁷⁸ Whoever is correct, one still learns that religious life is positively correlated with happiness.

There seems to be less research on transcendental activities other than religious pursuits. However, the existing evidence indicates that participation in activities of profound meaning to the individual is associated with happiness. For example, “two studies that examined groups that chose to change their lifestyle to achieve personal values such as ‘environmental friendliness’ and ‘voluntary simplicity’ found that both experienced higher levels of well-being.”⁷⁹ A study used survey data from more than five hundred subscribers of a back-to-the-land magazine to measure participants’ sense of well-being and determine whether they lived up to their sustainability values. The researchers found that those who were able to put their values into practice (live in a sustainable, ecologically friendly manner) were more satisfied with their lives than those who did not.⁸⁰

Much like social activities, volunteering, and political action, transcendental activities also provide nonconsumerist sources of contentment. Although some can be isolating and self-centered, many also serve community building.

In Conclusion

The patriotic movement must ask which economic system will best serve the renewed national purpose. Most nations act as if they consider the affluent life as the good life that the national government should help promote. However, it is far from clear that all nations can find a high growth pathway or, even if they could, whether a world in which ever-more billions of people each consume ever more is sustainable. Most importantly, this chapter shows that even if such consumption were possible, ever-higher income and material consumption do not provide for ever-higher levels of contentment. Instead, the patriotic movement ought to favor an economy that ensures that everyone has their basic

needs well met. Once this has been achieved, people will limit their further consumption and use the freed time and resources to gain contentment from other sources. Namely, contentment will be derived from sources that are neither labor- nor capital-intensive, ones that are sustainable and more amenable to redistribution. These include cultivating intimate relations, public service (e.g., volunteering), and transcendental activities.

I started this book by pointing out that moral dialogues are needed for the moral agenda of the patriotic movement to percolate up, not to be dictated down. I provide several topics that such dialogues will have to cover if the patriotic movement is to provide a solid foundation for liberal democracy, such as the proper level and kind of trade and immigration, and the need to balance individual rights and the common good. At the top of the list of these topics is the question, What values should we gear the economy to serve?

More generally, the patriotic movement needs to achieve more than merely reuniting us by reinforcing the national community to contain—but not suppress!—differences. It must figure out what we are all seeking to accomplish together, above and beyond our varying personal and subgroup pursuits, and what kind of future we envision for the nation—aside from what we labor to gain for our families, local communities, and various identity groups. It is not enough to stress that we are, all of us, in this boat together and should be sure to keep it afloat. We would do best to concern ourselves with where it is destined to sail and how it has to be reconstructed to travel to wherever we are seeking to reach.

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Introduction

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I. National Moral Dialogues

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23. *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 89 (Colo. App. 2015).

24. *Id.* at 90 (quoting *Newman v. Piggie Park Enters, Inc.*, 256 F. Supp. 941, 945 (D.S.C. 1966)).

25. *Id.* at 90.

26. *Id.* at 72.

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Accommodation: Comparing the Unequal Treatment of Religious Objections to Interracial and Same-Sex Marriages,” *Harvard Civil Rights-Civil Liberties Law Review* 50 [2015]: 146). Oleske adds: “Although many Americans had religious objections to interracial marriage in the 1960s, and although some still do today, federal and state antidiscrimination laws have not included exemptions that would allow business owners to deny services based on those beliefs. Likewise, although the New Testament quotes Jesus explicitly condemning divorce . . . state laws prohibiting discrimination based on marital status do not contain exemptions allowing commercial businesses to refuse to facilitate the remarriages of divorced people” (ibid., 144).

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32. *Id.* at 16.

33. *Id.* at 27.

34. *Craig v. Masterpiece Cakeshop, Inc.* at 71 (2015).

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36. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, No. 14CA1351, 8 (Colo. App. 2015), 137 S. Ct. 2290 (No. 16–111). Brief for the United States as Amicus Curiae Supporting Petitioners.

37. *Id.*

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51. David Brooks, "How Not to Advance Gay Marriage," *New York Times*, December 4, 2007, <https://www.nytimes.com/2017/12/04/opinion/gay-marriage-cake-case.html>.

9. Curbing Special Interest Groups

1. *Encyclopædia Britannica*, s.v. "General will," <https://www.britannica.com/topic/general-will>; Christopher Bertram, *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2018), s.v. "Jean Jacques Rousseau," <https://plato.stanford.edu/archives/fall2018/entries/rousseau/>.

2. This concept is derived from the Supreme Court's ruling in *Buckley v. Valeo*, which struck down independent expenditure limits as a violation of the First Amendment, although it was never stated quite that explicitly. The Court reasoned, "The expenditure limitations . . . represent substantial, rather than merely theoretical, restraints on the quantity and diversity of political speech" (424 US 1, 19 [1976]).

3. Bribery of Public Officials and Witnesses, 18 U.S.C. § 201, <https://www.gpo.gov/fdsys/pkg/USCODE-2012-title18/html/USCODE-2012-title18-partI-chap11-sec201.htm>.

4. *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 406–407. This example deals with neither Congress members nor campaign contributions, yet nonetheless gives one an idea of something insubstantial, as well as illustrates the Court's concern about laws that could be construed to criminalize something trivial.

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12. *Griggs v. Duke Power Co.*, 401 US 424 (1971).

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25. Richard Briffault, “Of Constituents and Contributors,” *University of Chicago Legal Forum* 3 (2015): 31.

26. *Ibid.*, 34.

27. Joseph Weeks, “Bribes, Gratuities and the Congress: The Institutionalized Corruption of the Political Process, the Impotence of Criminal Law to Reach It, and a Proposal for Change,” *Journal of Legislation* 13 (1986): 138.

28. *United States v. Helstoski*, 442 U.S. 477, 488–489 (1979). The Court later states that “[t]he Speech or Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government” (*Helstoski* at 491).

29. Weeks, “Bribes, Gratuities and the Congress,” 141.

30. *United States v. Apfelbaum*, 445 U.S. 115 (1980).

31. *Nevada Commission on Ethics v. Carrigan*, 564 U.S. 117, 126–127 (2011).

32. “The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents” (11 CFR §100.16[a]).

33. *Citizens United v. Federal Election Comm'n*, quoting *Buckley v. Valeo*, 47.

34. Andrew Mayersohn, "Four Years after *Citizens United*: The Fallout," Open Secrets, January 21, 2014, <http://www.opensecrets.org/news/2014/01/four-years-after-citizens-united-the-fallout/>.

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60. *McCutcheon v. Fed. Election Comm’n*, 134 S. Ct. 1434 (2014).

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74. *Id.*

10. The Rising (More) Nation-Centered World Order

1. For a discussion on how American nationalism and foreign policy have evolved in tandem, see Henry R. Nau, "America's International Nationalism," *American Scholar* 12, no. 3 (2017).

2. Robert Kagan, "The Cost of American Retreat," *Wall Street Journal*, September 8–9, 2018; Ivo H. Daadler and James M. Lindsay, *The Empty Throne: America's Abdication of Global Leadership* (New York: Public Affairs, 2018).

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6. Further, national governments are overloaded with domestic considerations (see Ian Bremmer, *Us vs. Them: The Failure of Globalism* (New York: Penguin Random House, 2018)).

7. John B. Judis. *The Nationalist Revival: Trade, Immigration, and the Revolt against Globalization* (New York: Columbia Global Reports, 2018).

8. Paraphrasing John Mearsheimer: Once you grant individuals in all nations the same rights, you are essentially universalist (John J. Mearsheimer, "Book Launch: The Great Delusion" [speech, Center for Strategic & International Studies, Washington, DC, October 17, 2018], <https://www.csis.org/events/book-launch-great-delusion>). See also John J. Mearsheimer, *The Great Delusion: Liberal Dreams and International Realities* (New Haven, CT: Yale University Press, 2018).

9. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Brooklyn, NY: Verso, 1983).

10. See Ernst B. Haas, "International Integration: The European and the Universal Process," *International Organization* 15, no. 3 (1961): 366–92.

11. Amitai Etzioni addresses Ernst B. Haas and Karl Deutsch on their definition of integration. Haas and Deutsch, according to Etzioni, believe that a common government is a sufficient condition for a union to be deemed highly integrated. Noting the example of the Hapsburg Empire, Etzioni writes, "From our viewpoint, these countries are only partially integrated; they lack at least one central element of integration, that of being the dominant focus of political identification of their citizens" (Amitai Etzioni, *Political Unification Revisited: On Building Supranational Communities* [Lanham, MD: Lexington, 2001], 56). Refers to Karl W. Deutsch, *Political Community and the North American Area* (Princeton, NJ: Princeton University Press, 1957).

12. See James Caporaso, "The European Union and Forms of State: Westphalian, Regulatory or Post-Modern? A Logical and Empirical Assessment," *Journal of Common Market Studies* 34, no. 1 (1996): 29–52.

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14. For a compendium of areas in which QMV was instated from 1957 to 2004, see Vaughne Miller, *The Extension of Qualified Majority Voting from the Treaty of Rome to the European Constitution*, House of Commons Library, Research Paper No. 04/54, 2004, 10–18.

15. *Vinter and Others v. The United Kingdom* (European Court of Human Rights, July 9, 2013).

16. "Ministers Angry at European Whole-Life Tariffs Ruling," BBC News, July 9, 2013, <http://www.bbc.com/news/uk-23245254>.

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20. For some suggestions, see Amitai Etzioni, *From Empire to Community: A New Approach to International Relations* (New York: Palgrave Macmillan, 2004); Amitai Etzioni, "Nationalism: The Communitarian Block," *Brown Journal of World Affairs* 18, no. 1 (2011): 229–47.

21. Ferdinand Tönnies, *Community and Society (Gemeinschaft und Gesellschaft)*, trans. and ed. Charles P. Loomis (East Lansing: Michigan State University Press, 1957).

22. A reviewer of a previous draft noted here that the transition Tönnies points to is not from social relations to atomization but merely a change in the kind of relations people have, from communal to associational. This is indeed the case, but the point is that these are not thick enough.

23. Yuval Levin notes that both conservatives and liberals are nostalgic for a bygone era: liberals miss the 1960s and the Great Society, conservatives miss the 1980s, and both are nostalgic for the 1950s, but for different reasons (see Yuval Levin, *The Fractured Republic: Renewing America's Social Contract in the Age of Individualism* [New York: Basic, 2016]).

24. Amy Goldstein, *Janesville: An American Story* (New York: Simon and Schuster, 2017). In February 2018, the *Economist* ran a piece titled “Meritocracy and Its Discontents” that noted: “Today’s meritocrats are not only smug because they think they are intellectually superior. They are smug because they also think that they are morally superior, convinced that people who don’t share their cosmopolitan values are simple-minded bigots.”

25. Arlie Russell Hochschild, *Strangers in Their Own Land: Anger and Mourning on the American Right* (New York: New Press, 2016).

26. Anne-Marie Slaughter, “The Real New World Order,” *Foreign Affairs* 76, no. 5 (September/October 1997): 183–97. See also Anne-Marie Slaughter, *The Chess Board and the Web: Strategies of Connection in a Networked World* (New Haven, CT: Yale University Press, 2017).

27. David Singh Grewal, *Network Power: The Social Dynamics of Globalization* (New Haven, CT: Yale University Press, 2009).

28. Amartya Sen, *Identity and Violence: The Illusion of Destiny* (New York: Norton, 2006).

29. Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: Norton, 2006).

30. I refer to it as the Westphalian norm because while it was enshrined in the 1648 Treaty by that name, reference is not to the text of the treaty but to the very wide acceptance of the normative concept reflected in the treaty and supported since.

31. G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton, NJ: Princeton University Press, 2012), 21.

32. Andreas Osiander writes that “Westphalia” is purportedly a narrative about 1648 but is more the product of nineteenth- and twentieth-century fixations on the concept of sovereignty (see Andreas Osiander, “Sovereignty, International Relations, and the Westphalian Myth,” *International Organization* 55, no. 2 [2001]: 251–87).

33. Alex Bellamy and Tim Dunne, eds., *The Oxford Handbook of the Responsibility to Protect* (Oxford: Oxford University Press, 2016).

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