

Chapter 7

Nationalist Populism Is Not an Enemy

This chapter attempts to show that liberalism provides an incomplete moral language to address the populism that is rising in many democratic polities. Communitarian conceptions must be included in order to provide a more comprehensive moral language. This addition, however, raises issues because liberal and communitarian conceptions are in conflict with one another to some extent. The chapter suggests ways this conflict can be limited and proposes a liberal communitarian approach as an effective response to the populism that is challenging democratic regimes.

The chapter first briefly explores widely held assumptions about the causes that propel populism (Sect. 7.1). It then outlines the reasons that liberalism¹ cannot provide an adequate response to populism on its own, and that it needs to be combined with communitarianism (Sect. 7.2). The rest of the chapter introduces elements of such a liberal communitarian philosophy (Sect. 7.3). The elements include (a) coping with free trade; (b) an approach to immigration that combines community building, on the local and national level, with the protection of rights and of pluralism; (c) a framing of particularistic rules within the setting of a universal framework of basic rights illustrated by an examination of homeowner associations; (d) compassionate accommodations to the losers of cultural wars; (e) a study of the difference between the right to free speech and morally appropriate speech; and (f) coping with the conflicts between liberal and communitarian principles. One should note from the outset that this approach holds that societies cannot be designed to follow one overarching principle because of differences in needs, interests, and values of their various members. That is, no value can be maximized.

¹ There are considerable differences as to the meaning of this term. It is used in this article in reference to the commitment to liberty, human rights, religious tolerance, and free markets, as well as the thesis that the state ought to be morally neutral. This position is sometimes referred to as contemporary liberalism in contrast to the thicker classical liberalism both of which differ from welfare liberalism.

The discussion is centered on two recent variants of philosophical positions that have a long and rich history: *globalism*, a subcategory of contemporary classical liberalism—and *nationalism*, a particular form of communitarianism. Thus, globalism draws on liberal elements but other forms of liberalism do not necessarily share the globalists' positions—for instance, contemporary classical liberalism and welfare liberalism. And nationalism is a form of communitarianism because it views the nation as the major community (whether real or imagined)—a thesis other communitarians do not necessarily share—for instance, those who see their main community as their confessional or ethnic one.

7.1 Populism: Definition and Causes

The hallmarks of populism include a demagogue who appeals to the masses in highly emotive terms, attacking the institutions of civil society, offering ready-made solutions for society's complex challenges, and promising to deliver those solutions. Cas Mudde (2004) characterizes populism as a “thin ideology,” one that provides an ideological framework, according to which good people are being abused by a corrupt elite. (He contrasts it with pluralism, which accepts the legitimacy of many different groups and sets of values.) Similarly, Jan-Werner Müller (2016) argues that populism is anti-pluralist; he also adds that populists are always critical of elites, and that populism is a form of identity politics. The rise of populism in many democratic polities in the 2010s is often attributed to a nationalistic reaction to the ascent of globalization, whose champions hold many of the same positions as contemporary liberals. They favor open societies—open to the flow of goods, people, and ideas. They are universalists who view all people as endowed with the same *human* rights, and as rational deliberative people, able to make their own reasoned decisions.

Globalization, scholars hold, is opposed by current waves of populism that are propelled by nationalists. These are individuals and groups that are parochial (or particularistic), who view their commitments to their local and national communities as trumping global considerations. They are depicted as opposed to the spread of rights (‘deplorable’) (Chozik 2016) and to immigration (especially of people whose culture and ethnicity differs from the national one); as people who adhere to the traditional values of their communities and hence oppose liberalism; and as protectionists (limiting access to the markets of their nation) (Lind 2016; Haidt 2016). For globalists, “national boundaries are increasingly obsolete and perhaps even immoral...progressive pundits and journalists increasingly speak a dialect of ethical cosmopolitanism or globalism—the idea that it is unjust to discriminate in favor of one's fellow nationals against citizens of foreign countries,” according to Michael Lind (2016). George Monbiot (2005) adds,

When confronted with a conflict between the interests of your country and those of another, patriotism, by definition, demands that you should choose those of your own. Internationalism, by contrast, means choosing the option which delivers most good or least harm to people, regardless of where they live. It tells us that someone living in Kinshasa is of no less worth than someone living in Kensington, and that a policy which favours the interests of 100 British people at the expense of 101 Congolese is one we should not pursue.

Drawing on these definitions, a considerable number of observers view globalists as enlightened, progressive, and on the right side of history, and nationalists as seeking to preserve a traditional, anachronistic, and unjust social order. Pankaj Mishra (2016) 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 the authoritarian philosophy of Jean-Jacques Rousseau.

Another line of analysis sees the rise of populism as being caused in part by globalization, because it undermines both local and national communities. That is, globalization helped engender the forces that oppose it. Scholars who follow this line of analysis often draw on the studies of the rise of fascism to explain the recent rise of populism in liberal democracies. This argument is premised on the observation that as people moved from villages to the cities, they lost many of the social bonds that provided them with emotional security. (Recall Tönnies' 1957 terms for communal and associational societies, *Gemeinschaft* and *Gesellschaft*.) Those social bonds, however, had protected them from the Siren calls of would-be demagogues, because individuals who were well anchored in communities relied on each other and on their communal leaders (heads of families, religious figures, and other authority figures) to resist outsiders' appeals. Once the society of communities turned into a mass society—a society composed of individuals who lost much of their social moorings²—they became susceptible to demagogues. This was particularly said to be the case when their economic conditions deteriorated. The conditions in pre-Nazi Germany are often cited. These included massive unemployment, hyperinflation, and loss of dignity (emanating from humiliation following Germany's defeat in WWI and the punishing terms imposed on it by the nations who won the war). Racial nationalism is said to have provided Germany with a new sense of community, meaning, and dignity. “As the political and social fragmentation of the Weimar period imparted a sense of apocalyptic collapse for many Germans, the Nazi millennial worldview in turn conferred a sense of oneness via its racial concept of a unified Volk (race or people), a community of shared blood,” writes David Redles (2010, p. 31).

When this analysis is applied to contemporary populism, it suggests, in the terms already introduced, that what we are witnessing is a nationalist reaction to the rise of globalization. Large segments of the population are reported to have experienced job loss (because freer trade led to jobs moving to developing countries), most of those who are employed gained little or no increases in real income, all involved experienced growing income insecurity and inequality, as well as a loss of dignity (associated with the loss of traditional jobs such as coal mining). The same people are also found to be reacting to growing diversity due to immigration, and to cultural

²A 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.

changes which are the result of extensions of individual rights (e.g. legalization of gay marriages). The affected people view the rise of diversity both as undermining their social standing and as a loss of shared core values and habits.³ And they feel that they are snubbed by globalist elites.

Globalists do not ignore the communitarian causes of populism; however, they tend to view them as the pathological reactions of people seeking to hold on to the past and to traditional social structures that are discriminatory, authoritarian, and historically indefensible in view of the unstoppable rise of globalization. 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—including the weakening of commitments to local or national communities—as liberating. They draw on writings such as those by Peter Singer (1972), who argues that one should treat all children as one treats one's own (p. 229). And on the work of Martha Nussbaum's (1996) *For Love of Country*, which argues that we should view ourselves as citizens of the world. History, in other words, is seen as a march from particularism to universalism, from close local and national communities toward a global one.

Globalists, like many liberals, have no room for communities in their moral and philosophical vocabulary. They see people as free-standing 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. They hold that people are free (or ought to be free) to move across borders. Above all, each person ought to be free to choose their own definition of the good and not be hindered because their habits, tastes, or values differ from those of others. Diversity and pluralism trump the restrictive demands for conformity of various communities and their core values.

7.2 The Essentiality of Communities

The globalists miss what Aristotle already observed—that human beings are social animals. Individuals need bonding with others to flourish. A considerable number of studies show that when people are cut off from their social moorings, when they are isolated—in prison cells, in high rise buildings (especially the elderly), or in psychological experiments—they show many signs of diminished cognitive and emotive capacity. Scores of other studies show that they thrive when they are involved in lasting meaningful relations with others (see Helliwell 2003; Fratiglioni et al. 2000). That is, communal bonds—which are *prima facie* particularistic, because all communities, including families, local communities, and nations, exclude most people—are an essential part of that which constitutes an individual.

³Yuval Levin notes that both conservative and liberals are nostalgic for a bygone era: liberals miss the 60s and the Great Society, conservatives miss the 1980s and both are nostalgic for the 1950s, but for different reasons. See Levin (2016).

The absence of sufficient communal bonds is a major reason people feel detached, alienated, and powerless and either withdraw or act out in antisocial ways, including joining gangs and militias (to find community) or abusing drugs and alcohol, or each other.

Identity too is profoundly tied to communities, and thus to particularistic bonds. As Joseph de Maistre put it, “There is no such thing as *man* in the world. In the course of my life, I have seen Frenchmen, Italians, Russians etc.; I know, too, thanks to Montesquieu, that one can be a Persian. But as for *man*, I declare that I have never met him in my life; if he exists, he is unknown to me” (Berlin 1991, p. 100). Michael Sandel (1998) puts it well when he writes that we cannot understand ourselves but “as the particular persons we are—as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic” (p. 179).

Strong involvement of people in their particularistic communities, rather than in some kind of universal social grouping, is highlighted by the fact that millions of people are willing to die for their nation but very few for the United Nations (or even the EU). Globalists might argue that the fact that identity is tied to nations is one reason for wars and the world’s great difficulties in coping with global problems. However, these are not feelings that most people have; on the contrary, most find such globalist ideas strange, if not alien. It follows that seeking to deprive people of their national sources of identity and bonding fosters nationalism and populism (at least as long as they neither develop nor are provided with other sources of identity and bonding they find compelling). A colleague noted at this point: “If they didn’t have ‘national sources of identity’ but they had jobs and dignity, is it really that there’d still be populism? That strikes me as unlikely.” In response, one notes that most of those who voted for Trump (and for other populist leaders in other societies) had jobs and the dignity they confer. They seem to have felt nevertheless that globalists’ demands (real and imagined) assaulted their identity and community (Hochschild 2017; Goldstein 2017).

Furthermore, one cannot ignore that communities form the individuals that are the mainstay of liberalism. Infants are born with human potential; however, they will not even learn to walk upright or communicate with words unless they are ‘socialized,’ studies show. Parents, families, local communities (as captured in the phrase, “it takes a village”) forge individuals, not global systems. And when these communities falter, so does the education of the people within them. To put it differently, the rational, free agents that liberalism sees are the product of communities (some as small as families, others as large as nations, with the smaller ones nestled within the more encompassing ones). One cannot grow one without the incubation provided by the other. (David B. Wong [1988] adds that to learn to be duty-bound and to act in a universalistic way, one first must have relationships of trust with others, i.e. particularistic relations.)

When children become adults, they still need communities to foster a social order that is pluralistic, tolerant, and civil, i.e. a liberal order. Communities provide the informal social controls that uphold norms by chiding violations and praising compliance. The more effective they are, the less need there is for the state to employ

coercive means to maintain social order (Wrong 1994). In short, the liberal polity assumes a communitarian society—the kind of society nationalists champion.

True, communities can be overpowering and oppressive. Historically, most communities were indeed too thick and many are still found in parts of the world as different as Singapore and Saudi Arabia. And national communities are prone to conflict with each other because there is only a limited sense of obligation toward the other. However, communities in democratic societies tend to be much ‘thinner,’ because people can leave communities that they find too ‘thick’ (Walzer 1994) and often are members of more than one community (e.g. work and residence) and hence are less psychologically dependent on any one community.

A sounder globalist philosophy will seek modes of social design that foster thin communities rather than promote individualism to the extent that it entails attacking communities, especially nations, as troublesome relics of the past. This is accomplished by combining globalist (universalistic, liberal) principles with nationalist (particularistic communitarian) ones. In other words, if one places at one end of the normative spectrum globalist liberalism and at the other end authoritarian communitarianism, the middle ground of the spectrum is liberal communitarianism. It provides both the antidote to populism (by undergirding communities) and to authoritarianism (by incorporating liberal principles). The challenge is to find ways to develop a normative framework that will incorporate the values of globalization with those of nationalism, and find ways that their contradictions can be limited, while recognizing that a measure of conflict and tension between these two core elements of liberal communitarianism is inevitable. This approach is outlined next.

Yuval Levin (2016) dedicated a book to the subject that he calls communitarian liberalism. M. Daly (1994) writes: “Most liberals and a good many communitarians would like the liberal ideals of equality and freedom to be integrated with community commitments in all aspects of American society & families, educational institutions, businesses, health care institutions, religions, and political institutions. Such integration would realize the communitarian ideal of a democratic community” (p. xix).

This philosophy has been summarized in popular terms by David Brooks (2016), who wrote: “I suspect the coming political movements will be identified on two axes: open and closed and individual and social... Donald Trump is probably going to make the G.O.P. the party of individual/closed... The Democrats are probably going to be the party of social/closed... I’ve been thinking we need a third party that is social/open.” Such a party, according to Brooks, would “support the free trade and skilled immigration that fuel growth. But it would also flood the zone for those challenged in the high-skill global economy—offering programs to rebuild community, foster economic security and boost mobility” (Brooks 2016).

An important counter to the line of argumentation laid out so far is that the mass society thesis is mistaken, that communities have far from disappeared. Residential communities abound and there are a large number of non-residential communities, such as the gay community and various ethnic and racial ones. In response, I note that (a) some segments of the population have lost communal bonds. Freer trade and automation force people to relocate to where the new jobs are, leaving their communal bonds and institutions behind. As often, if they develop new communal

bonds, a shift in the labor markets requires them to relocate again. For instance, people moved from West Virginia to Montana when coal declined and gas production increased, only to be forced to move again when prices for energy collapsed but the auto industry revived.

(b) Granted, an important correction to the mass society is called for. A good part (arguably the major segment) of populists are in traditional communities that are antagonistic to globalization. Much has been written about the reasons why these communities are antagonistic. Causes are said to include fragmentation of the news, gerrymandering, self-segregation, and political polarization.

For the purpose at hand, it matters little whether people feel that they are losing their communities or that the values of their communities are under attack. Either way they react antagonistically. One may argue that many traditional values ought to be attacked. However, as I see it, a head on confrontation is not the most effective way to change values, and the social costs of such confrontations are high. Progressive observers often argue that when we deal with drug addicts or felons, we should approach them in a therapeutic way, seeking to rehabilitate them and reintegrate them into society. There seems no reason nationalists should be treated more severely.

No less important is the sense that both those who lost their local communities and those who are members of antagonistic ones hold that their national community is under attack by globalists' conceptions of supra-nationalism. These include respect for the UN, the International Criminal Court, and international law generally, among other institutions perceived as detracting from sovereignty.

A globalist suggested to the author that people can satisfy their communitarian needs in families or some other small communities—and should avoid investing themselves in the nation. However, one notes that because of geographic mobility people are losing many of their bonds with their extended families; that the nuclear family is declining (as fewer people marry, stay married, or marry later and have fewer children); and that other communities are hollowed out, leaving the nation as a major focus of bonding and identity. True, many of the problems national governments find difficult to cope with are regional or global in nature (including wars, terrorism, climate change), and would be much easier to manage if people treated humanity as one imagined community, the way they now treat their nation. However, to make claims as if such a global community is currently in place feeds populism rather than helps to curb it.

7.3 Elements of Liberal Communitarianism

If one seeks to reduce populism, violence, prejudice, and xenophobia, then communities must be nurtured as they change, rather than be overridden. The discussion next turns to examine ways the conflict between globalists and nationalists can be reduced. The examination covers major areas of contention: the clash between the advocates of free and fair trade; the debate about limiting the free movement of people (immigration); the objections to communities that are insular and excluding;

free speech that is sensitive to community values; and the minting of new rights and community adjustments. The section closes with a discussion of the ways the two conflicting principles can be accommodated, using the relations between privacy as a human right and national security as a case study.

7.3.1 *Limiting Free Trade?*

When globalists champion free trade, they stress that it enriches all those involved, making for less costly consumer products as each nation focuses on what it is best equipped to produce, a condition referred to in popular terms as win-win. Actually the ethical situation that free trade entails is illustrated by a familiar challenge raised in reference to utilitarianism, i.e. when one asks how many Christians one may throw in the arena to contend with lions, if a very large number of Romans are going to enjoy the spectacle. The point is that sacrificing even a small number of lives cannot be justified even if it enhances the happiness of a much larger number. The Christians of free trade are the hundreds of thousands of workers, in coal, steel, and other sectors, who lost their jobs as a result. Economists respond that most jobs were lost due to automation and other technological developments and not to trade. True, but nonetheless, since 2000 at least five million manufacturing jobs in the US were lost to trade (Long 2016). Free traders do not deny this loss but respond that it can be handled through Trade Adjustment Assistance (TAA), which uses public funds to retrain the displaced workers and find them new jobs.

This response fails on two accounts. First of all, so far TAA has been unable to help most of these displaced people. Many of those involved cannot be retrained; it is hard to make steel workers into computer programmers. And many of the new jobs available are low paying, with few or no benefits, especially when compared to the jobs lost. And flipping hamburgers at McDonald's or selling T-shirts at Target does not provide the meaningful jobs coal miners, steel workers, and others previously took pride in.

Furthermore, free trade champions ignore the effects of free trade on people's essential communitarian needs. They often fail to understand people who are reluctant to move from West Virginia to Montana, say, when the coal industry is declining but the gas industry is growing. They do not take into account that people lose their communal bonds when they move—that they leave behind friends they can call on when they are sick or grieving. Their children miss their friends and everyone in the family is 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 fall, and so many of the workers who moved there now need to relocate again. In this way, free trade churns societies, exacting high social costs by undermining communities.

These high social costs do not mean that nations should stop trading with one another; rather, it means that those who are concerned about the social effects of new trade treaties are not know-nothing rednecks but people with valid concerns. These might be addressed by much greater investments in TAA. It could provide those who cannot be retrained—often the older workers—early retirement or jobs in an infrastructure corps. At best, ramped up TAA programs should not require workers to relocate, because relocations increase costs and undermine communities.

Finally, one notes that all countries impose some limitations on trade in the name of national security, consumer safety, protecting farmers, and quite a few other concerns. Hence, to add some limits, especially if they are time limited, to allow groups especially hard hit to have time to adjust, is not a sign that dark populism won but that that measures often taken in the past by ‘free’ trade partners have been extended.

7.3.2 *Limiting Immigration?*

Globalists favor the free movement of people across national borders. They strongly support the Schengen Agreement, which removes border controls among many European nations. They strongly supported Angela Merkel, the German chancellor, when she opened the doors to more than a million refugees. 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, nationalist policies.⁴

Actually, there exists 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. Social psychologist Jonathan Haidt (2016) views mass immigration as the trigger that set off populism in many nations. He concludes that it is possible to have moderate levels of immigration from “morally different ethnic groups”—so long as they are seen to be assimilating into the host culture—but high levels of immigration from countries with different moral values, without successful assimilation, will trigger a 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 degree to which assimilation is being achieved. Globalists do not approve of this approach. They embrace a libertarian perspective toward immigration, and the “core principle of libertarianism,” as Jacob Hornberger (2016) writes, “is that freedom entails the right to live your life anyway 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.” One may suggest that the idea of open borders is just a theoretical position; that nobody truly believes in unlimited immigration. However, this position describes exactly what took place in the EU when several nations joined the Schengen Agreement, which allows free movement of

⁴For a fuller treatment of reactionary thinking, see Lilla (2016).

people across national borders. The resentment that followed is a major reason for Brexit. (A reviewer of a previous draft noted here “But the major immigrant group to the UK is *Polish*. They’re not ‘morally different’. So this wouldn’t have met the Haidt criterion!” As I see it, whom people consider sociologically different is in the eye of the beholder. Indeed, often people seek to avoid and even exclude from their communities people who are rather similar to themselves, such as Sunni and Shia of the same nationality, or Japanese and Koreans.)

Brookings’ William Galston (2016) cites public opinion polls that show that Americans have become more concerned about the United States becoming a majority non-white country. In 2016, 21% of Americans said that such a majority would “bother” them, up 7 percentage points from 2013. Furthermore, “Fifty percent of all Americans acknowledged being bothered when they came into contact with immigrants who spoke little or no English.” Galston reminds his readers that in an earlier era, when the United States implemented immigration restrictions and caps, immigration fell significantly and “‘ethnics’ from central and southern Europe were gradually assimilated into white America, a process that many scholars believe contributed to the relatively placid and consensual politics of the postwar decades.”

Some nationalists hence call for at least a ‘pause’ on immigration, especially from Muslim nations. Globalists continue to favor immigration and a short pathway to citizenship for millions of undocumented immigrants. A liberal communitarian will focus on accelerated integration of immigrants, first by properly defining what such integration entails (which, we shall see, makes accelerated integration more achievable) and by taking specific measures to advance it.

To proceed, a liberal communitarian approach benefits from drawing on a strategy that might be referred to as “diversity within unity,” which can help lower social tensions in countries that accept large numbers of immigrants while tolerating particularistic diversity—by not seeking full assimilation into the culture of the new homeland. The United States has in effect followed such a strategy with considerable success, compared to the more assimilationist European countries, as well as to 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 the culture of their new country. France stands out as an archetype of this approach. For many years, it was regarded as discriminatory to even recognize the country of origin or religion of a French citizen. In this spirit, France passed a law in 2004 banning all religious symbols from public schools. The law is so far-reaching, and has been interpreted so broadly, that several schools have demanded that female Muslim students not wear long dresses (Mayet 2015). Towns and cities have banned ‘burkinis,’ bathing attire that follows Muslim prescripts for covering women in public (Auffray and Equy 2016). Schools in several French towns have decided to stop serving pork-free meals at schools (Chrisafis 2015). This anti-communitarian approach is provoking tension because immigrants are required to give up values and behaviors that are central to their identity. Furthermore, such excessive homogenization is not necessary to obtain a sound state of community. The high level of alienation in immigrant and minority communities in France—and

the corresponding alienation of the majority—reveal that this approach is not working and is indeed counterproductive.

In contrast, diversity within unity is a combination of partial assimilation and community building along with a high level of tolerance for differences in others, for pluralism and respect for individual rights. 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 the essence of 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 democracy as the way 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 unity value. 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 United States 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. They are free to follow their own rituals but also expected to partake in the national ones, such as pledging alliance to the flag.

In recent years, much attention has been paid to the level of immigration, which many of Trump's supporters view as far too high and some social scientists hold is overwhelming American communities and their core values. The level of immigration communities can tolerate, however, is affected by the pace and scope of integration. In other words, higher levels of immigration will have less anti-communitarian effects when integration is more effective.

To illustrate: in the United States, there is a great shortage of classes to teach English to adult immigrants. Obviously, a strong command of the language is an essential element of acculturation. Moreover, the language classes also serve as opportunities to introduce immigrants to American values and lifestyles, as well as to form personal contacts between immigrants and established residents who teach these classes. One could call for a new massive federal program to provide English and civics classes to immigrants. However, this is a mission particularly suited to volunteers. To teach English and to share values does not require a degree from a teaching college. Volunteers are more likely to be members of local communities than civil servants.

In short, the stress that large scale and diversifying immigration poses for local and national communities, which is one cause that drives populism, can be mitigated if one follows the liberal communitarian approach. It seeks diversity within unity rather than assimilation and favors accelerated integration. It follows, though,

that to the extent that this approach cannot be implemented, immigration will need to be capped if populism is to be reined in.

7.3.3 *Limiting Communities*

Many millions of Americans live in a gated community of one form or another, many of which are called homeowner associations.⁵ These are criticized by globalists as violating universal rights (see McKenzie 1994). Furthermore, the “spatial segregation [resulting from gated communities] has been criticized as troubling and a continuation of many of the historically discriminatory social policies of the past such as racial and socio-economic segregation, redlining, and discrimination” (Morgan 2013). But gated communities are places that provide their members with varying levels of community, mostly far from thick ones. Liberal communitarianism calls for a two-layered approach to these communities. They should not be allowed to violate basic rights, discriminate, ban books, suppress speech, infringe upon the freedom of religious expression, and so on. If they do, after proper warning, these communities should be compelled by fines or denial of public funds, and if these measures do not suffice, forced to comply. However, in all other matters, these communities should be welcome to form their own policies, to fashion particular rules that only their members will be required to follow. These may include rules concerning the appearance of their communities (homes, lawns), certain types of behavior by their members (loud music after midnight), places they may park their cars, and scores of other matters, expressing the particular preferences of the members of these communities.

In short, particularism can be well tolerated as long as it is occurring within the limits of rights enumerated in the Constitution and its Bill of Rights as interpreted by the courts, augmented with considerations based on a globalist framework, that of universal human rights.

Critics argue that even if communities do not violate rights they nevertheless are insular, isolating, and thus undermine the societal fabric. To conclude that to avoid such effects, one should take measures to curb the development of communities, one ignores the critical role thick relations play in human life—that is, that they are essential to avoid mass societies and their ill consequences, including populism. A communitarian response is to note the need to form bridging social bodies that are comprised of communities rather than individuals (Putnam 2000), and to nestle local communities within more encompassing communities—but not to agitate against the basic building block of solid communities (albeit ones that observe rights).

⁵The Community Associations Institute estimates that 68 million Americans common-interest communities, including homeowners’ associations, condominium communities and cooperatives. See <https://www.caionline.org/AboutCommunityAssociations/Pages/StatisticalInformation.aspx>

7.3.4 *New Rights, More Empathy*

Until recently, media reports and narratives about transgender people treated them mainly as outliers. They were typically discussed as people with individual struggles and peculiar needs. Questions were raised about the age at which transgender surgery should be considered ethical, and what factors led individuals to seek to change their assigned gender, and other such personal considerations.

As of 2012, transgender people have been increasingly referred to as a group and as one that has distinct rights. Public leaders and elected officials started to associate gay and lesbian rights with those of transgendered people, increasingly using the term LGBTQ. For instance, during the 2016 presidential race, Hillary Clinton's campaign stated she had "plans to protect the rights of women, workers, minorities, and the LGBTQ community" (Clinton 2016).

In 2013, California passed a law allowing transgender students to use bathrooms aligned with their identity rather than their gender at birth. In 2015, the Charlotte City Council voted to expand the city's nondiscrimination ordinance to allow people to use bathrooms that correspond with their gender identity. In March 2016, however, House Bill 2 (HB2), also known as the Public Facilities Privacy and Security Act, was passed by the General Assembly in North Carolina, to pre-empt the Charlotte bill. HB2 requires people to use public restrooms (the law does not apply to private universities or businesses) in accordance with the sex listed on their birth certificate.

In response, the US Department of Justice asserted that HB2 is a violation of federal civil rights law, including under Title VII, which protects against workplace discrimination on the basis of race, color, religion, sex or national origin, and Title IX, which protects against sex-based discrimination in education. In May 2016, it notified North Carolina of HB2's violation of the Civil Rights Act. In response, North Carolina filed a lawsuit against the DOJ. A few hours later, the DOJ filed a lawsuit against North Carolina. The Obama Administration announced that it was considering withholding federal aid to North Carolina for schools, highways, and housing (Apuzzo and Blinder 2016).

In February of 2017, the Trump Administration retracted the federal guidelines issued by the Obama Administration, which stated that students had the right to use the restroom that corresponds to their gender identity. Oral arguments before the Supreme Court for the case of Gavin Grimm, a transgender high school student from Virginia prevented from using the boys' restroom at school, had been scheduled for March 2017. However, after the Obama-era guidelines were removed, the Supreme Court decided to remand the case to the Fourth Circuit.

From a globalist, human rights viewpoint the minting of a new right, through an extended interpretation of Titles VII and IX, is but one more step in a long progressive development of rights. Indeed, much of American history can be told as an expansion of rights, beyond those understood as enumerated in the Bill of Rights in its original form. These include extending the right to vote and to run for office to people without property; extending the same to women; ending slavery and provid-

ing African Americans both a de jure and a de facto right to vote; forming the right to privacy; extending rights to people with disabilities, and extending the right to marry to gay couples.

From a liberal communitarian viewpoint these developments went a long way to correct an imbalance, to correct a social world in which values that prescribed obligations were strongly etched but protections of the individual were weak. However, communitarians raised the question whether extending these developments serves both the individual and the community well, and if there other ways to respond to newly recognized needs and articulated grievances. Communitarians point to three considerations: the effect of the inflation of rights; the merit of communal treatments; and the need for adaptation and empathy. These points are next illustrated.

In the early 1990s, communitarians pointed out that there was a strong tendency toward minting new rights (Etzioni 1993, pp. 5–6). In Santa Monica, California, men were found dealing drugs in women’s restrooms near public beaches and parks. To combat the abuse, the city council passed an ordinance that prohibited men and women from using the opposite sex’s facilities unless they were in urgent need (which was defined as a line of three or more in front of them). A local activist, Gloria Allred, saw in the ordinance a violation of a woman’s right to urinate in any public facility, at any time. Referring to a similar ordinance in Houston, Texas, she stated: “Little did I know that such a nightmare might soon be reenacted in this fair city.” Ms. Allred warned: “This is the first step down a long dark road of restricting women’s rights in the name of public safety” (Reinhold 1991).

Death-row inmates at San Quentin have sued to protect their reproductive rights to provide artificial insemination. An attorney in the case reports that “these inmates believe that they are being subjected to cruel and unusual punishment because not only are they being sentenced to die, but future generations of their family are being executed also...” (Seligman 1992).

Lisa Dangler, a mother in Yorktown, New York, sued the local school district for not admitting her son into the high school honor society. She argued that his rejection reduced his chances of being accepted by a select college and medical school. She further claimed that he was being punished because the Dangers were outspoken critics of the school—and hence his rejection was actually a violation of the family’s right of free speech. A jury rejected her suit. The presiding judge stated that if the jury had ruled in Ms. Dangler’s favor, he would have overturned the verdict. He added: “By attempting to elevate mere personal desires into constitutional rights and claiming denial of their civil rights whenever their desires are not realized, these persons are demeaning the essential rights and procedures that protect us all” (New York Times 1991).

The American Bankers Association took out a full-page ad in *The Washington Post* (when Congress was considering putting a cap on the interest banks may charge credit card holders) that bore the headline, “Will Congress deny millions of Americans the right to keep their credit cards?” (American Bankers’ Association 1991).

These examples illustrate that one can trivialize rights by claiming that whatever one seeks—is due to one because it is a constitutionally protected right, and hence should be enforced by courts, and if need be, by the full force of the federal govern-

ment. Like with other currencies, such an inflation of rights undermines the value. In a *New York Times* editorial entitled “Tempest in a Toilet,” Frank Bruni (2016) asks rhetorically, “What species of sentry or manner of inquisition would assess the external and internal anatomy of the bathroom-bound? Shall we divert government spending to this? We skimp on money to repair America’s infrastructure, but let’s find funds to patrol America’s lavatories.” He notes that male sexual predators going into women’s restrooms (the concern of many who advocate for bathroom bills) would already be breaking other laws against lewdness, harassment, and molestation. Bruni writes “I understand the anxiety that many Americans feel. I get their confusion. I’m not immune to it myself...Let’s navigate these waters calmly. Let’s flush away the nonsense” (Bruni 2016).

David Benkoff (2015) writes,

The Bathroom Battle can be easily resolved if respectful people focus on practicalities rather ideology [*sic*]. Options include communal showers with individual stalls, alternative private bathrooms for gender nonconforming children, and special hours for changing and showering. The idea that such accommodations will draw negative attention to transgender kids is frankly silly. Do we really think kids don’t already know which of their peers is transitioning?

I am not arguing that the transgender people’s quest for using the facilities they prefer is a trivial one, but ask whether it should be treated as a constitutionally protected right or if there is some other way to address it.

Communitarians point to the value of drawing on communal treatments of new issues rather than rushing to involve the courts. Communitarians see an advantage in alternative dispute resolutions (and integrative justice) such as arbitration and mediation over using courts, especially for ‘lighter’ offenses. Good divorce lawyers urge couples to work out their differences about custody of children and distributions of assets rather than rely on lawyers and courts. These recommendations are based on the realizations that the advocacy model characteristic of American courts tends to increase antagonism between the parties and make amiable, civil community-building outcomes much less likely. In this model there are only two sides, and each side presents its interpretation of the facts in the way that most strongly supports its position. The advocacy model assumes that the clash of two strong one-sided views will lead to a just conclusion, reasonable judgments and sound public policies. This is rarely the case.

In the case at hand, various accommodations were proposed to deal with the special bathroom and locker needs of transgender people. For instance in 2015, Illinois’s largest school district offered a separate room to a transgender student as a place where she could change. This proposal was rejected by the US Department of Education (Eldeib and McCoppin 2015). Harper Jean Tobin, policy director at the National Center for Transgender Equality, noted in response to the proposal, “It’s a very different thing to say ‘Here’s the facility. Here’s how everyone else can use the facility, except you. We’ve determined there’s something wrong with you that you cannot use the facility in the same way that everyone else can’” (Eldeib and McCoppin 2015).

This is similar to what the Gloucester County Public Schools opted for in the case of Gavin Grimm: offering him use of a unisex restroom in the nurse's office. The ACLU argues that such a policy is unacceptable because it singles out transgender students and subjects them to different treatment (American Civil Liberties Union 2014). In 2015, a transgender high school student in Missouri began using the girls' locker room to change for gym class, rejecting the school's offer of a separate, single-occupancy facility (Grinberg 2015).

One major reason given for the rejection of these accommodations is that what transgender people seek is a full recognition of their new sexual identity; the biological females want to be treated as males, and the biological males as females. Providing them with accommodations in which they can relieve themselves or change in private, without being stared at or subject to comments, does not meet this aspiration. The question then is not whether transgender people have a right to an accommodation, but whether their desire to have their chosen gender identity fully affirmed is a constitutionally protected right.

The answer, I suggest, lies in two parts: the size of the harm and the feelings of others. One needs differ in the scope of the harm transgender people seek to address. The civil rights movement fought for the de facto right to vote, to abolish discrimination in jobs and housing, and to fight many other forms of discrimination that inflicted serious harms on those subjected to them. The same cannot be said about those subject to what are called microaggressions, as the term itself implies. I am not suggesting that these should be ignored, but only that the harm involved is of a different order. It follows that issues of relatively low harm are particularly suitable to be addressed socially rather than legally. Assessed in this way, the desire of transgender people to fully pass does not rank as high as, for example, the desire of gay people to marry. The argument is not that the feelings of transgender people should be ignored or taken lightly, but that they may not be best handled by elevating their protection to the level of a constitutional right, protected by the full forces of the federal government.

Once an issue is framed in legal terms, it is difficult to see how the issue might have benefited from less coercive treatments, at least as a first and second cut. The following new concern, shared by some members of the LGBTQ community, may serve as a way to explore the point at hand because it deals with an issue that has not been turned into a question of rights so far.

The issue is a quest for a gender-neutral language; for example, the use of Mx. as a gender-neutral honorific. Mx. is favored as an option for transgender individuals or anyone who does not want a gender-specific identification of themselves (Petrov 2016). "I think Mx. should be adopted as the standard form of address for everyone, because the real promise of the transgender movement was not the freedom to figure out ways to become more fully male or fully female, but rather freedom from gender entirely. Loosening the gender grip on language is a step in that direction," writes Wake Forest University Professor Shannon Gilreath (Petrov 2016). In 2014, the Vancouver school board introduced a policy to recognize gender-neutral pronouns (xe, xem, and xyr for third person, plural, and possessive, respectively) for students who do not identify as male or female (Kenwood 2014). A web-designer

who uses *zie* and *hir* (to replace *he/she* and *his/her*) notes that people “seem to want to prioritize rigid linguistic rules over people’s well-being and self-identification. It’s funny because language is ever-evolving along with people, and I find it counter-productive to be so inflexible because of ‘linguistic challenges’” (Donato 2014).

Another instance of gender-neutral language is reference to parents generally, rather than using the terms “mother” and “father.” For example, the application for federal student aid uses such terminology. According to their website, “The FAFSA questions use gender-neutral terminology for married parents (‘Parent 1’ and ‘Parent 2’ instead of ‘mother’ and ‘father’).” In 2011 the State Department had planned to replace the words “mother” and “father” with “parent 1” and “parent 2,” a move that was welcomed by LBGQTQ advocates.

One may favor or oppose such moves, but they are much less of a concern as long as it left to public dialogue to agree which honorific one ought to use. Such dialogues led in the past to the shift from referring to women by their husbands’ names (e.g. Mrs. John Doe), to referring to them by their own name—and to wide acceptance of the honorific Ms. Such developments would be much more contentious if the law required a change in honorific and leveled penalties against those who used the ‘wrong’ one. This does not mean that coercive means have to be avoided in general, but that society is better served if it relies on them more sparingly and takes into account that feelings on both sides are going to be ruffled.

The feelings of others need to be taken into account, at least to the extent of allowing people time to adapt to the cultural changes involved. The resistance to the new transgender bathroom regulation is rooted in part in the sense among nationalists that their way of life and their communities are being uprooted.⁶ I do not argue that such feelings should be given a veto power over public policies that promote justice. I suggest that it is prudential to help people overcome their prejudices and adjust to the changing world order.

Nationalists are losing the culture wars, as abortion remains legal, divorce has been normalized, and gay marriages have been approved by the highest court in the land. At the same time, immigrants bring ways of life that conflict with theirs. And economic conditions prevent nationalists from maintaining the standard of living they were used to. The Charlotte ordinance seems to be, for many of them, the straw that broke the camel’s back, although one may well argue that they feel that it has already broken, repeatedly, before. As Arlie Russel Hochschild (2016) 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. (pp. 218–219).

To list these deprivations experienced by nationalists, their sense that their ways of life are being assaulted, is of course not to justify their prejudices. However, it suggests that, morally speaking, one should treat them as good people with utterly

⁶A reviewer here noted: “when that way of life is the subordination of minorities it’s pretty hard to feel like this is harm...”

objectionable positions rather than as inherently bad people—that is, as irredeemable. (Liberal communitarianism should borrow from religions that hold that we are all God’s children, and that one should hate the sin but love the sinner.) And it follows that if globalist policies are to gain ground, they will have to help nationalists to transition rather than condemn and further humiliate them. In other words, empathy is needed both for moral and prudential reasons. One should treat all people with dignity, even if one strongly disagrees with their viewpoints. (Needless to say, if they act on these viewpoints, such actions should be treated as any other violation of the law, or more severely, when they are expressions of hate, as the law calls for.)

One may argue in response that “these people,” sometime referred to as “white trash” or “rednecks”—or more indirectly as uneducated, working class whites—cannot be reached. However, the record shows that people in all parts of America have changed their minds over the years, following moral dialogues, on these issues. For instance, Gallup polling found that in only 18 years, from 1996 to 2014, support for gay marriage more than doubled from 27% to 55% (McCarthy 2014).

Empathy is a major moral value, essential for communitarians. Globalists might benefit if they consider what they would feel if the government issued regulations that violate values and habits that they hold in high regard. The argument advanced here is not based on moral equivalency. It grants that a regulation that bans particular prejudice has the moral high ground, one not accessible to a regulation that limits a right. However, in both cases, those affected feel challenged and threatened. To reiterate, extended dialogues, which provide time to grieve and time to adapt, are justified on both moral and prudential grounds.

Liberal communitarianism, by acknowledging from the start that there are inherent conflicts in healthy societies, favors compromises, especially when the rights advanced are newly minted, the sacrifices asked are relatively small for one side, and the pain for the other is considerable. In this case, however, all compromises were rejected. These included a suggestion that transgender pupils be able to use the faculty facilities in schools; or that separate, gender-neutral facilities reserved for transgender people be added. However, transgender people are reported to feel that such accommodations would defeat their purpose to pass fully, single them out unnecessarily, and subject them to unequal treatment. This raises the question of how far a right extends.

One notes that by mid-2017 there were signs that some globalists were realizing that attacking nationalism head on may not be justified, and certainly not prudent. They hence indicated that what they objected to was ‘ethnic nationalism’ or ‘white nationalism.’ As a next step they drew a distinction between patriotism, which is viewed positively, and the nationalism they perceive as troubling (Rather 2017). For instance, E.J. Dionne, Jr. (2017) reports that “nationalism rankles, partly because of its association with the evils of Nazism and fascism.” American patriotism, on the other hand, “is not a loyalty to blood or soil. It is an embrace of a series of powerful propositions,” a quality “central to our identity.”⁷

⁷ Dionne adds that “Mona Charen of the Ethics and Public Policy Center had it exactly right when she argued: ‘Patriotism is enough—it needs no improving or expanding.’ She called nationalism ‘a

7.3.5 *Free Speech: Legal Rights and Moral Rightness*

Globalists, as champions of rights, tend to view the world through a legalistic lens, and lean toward promoting rights through legislation and law enforcement (Glendon 1991). Communitarians pay more attention to values that are expressed through norms and promoted through informal social controls. Both have their place; as in other matters, it is a question of balance. When it comes to free speech, American globalists (unlike Canadians and Europeans) tend to view free speech as the most fundamental right of all, and are particularly inattentive to said balance.

For instance, they believe that the right of free speech allows the Westboro Baptist Church to add to the agony of parents who have to bury their children killed in the wars in the Middle East by shouting at them that their children died because America tolerates homosexuality. The Supreme Court ruled in *Snyder v. Phelps* that this behavior is protected under the First Amendment. However, from a liberal communitarian viewpoint this behavior is morally abhorrent, and should be strongly condemned by public leaders, clergy, editorials, and so on. Moreover, the Court has often tolerated rather extensive limitations in speech in terms of TPM (time, place, and manner), including upholding Los Angeles' ban on posting fliers on public property, given the city's interest in "preventing visual clutter, minimizing traffic hazards, and preventing interference with the intended use of public property" (Members of City Council 1984). It upheld permit requirements that limit marches on public streets in order to protect "public convenience" (Cox 1941) rather than speech. The Court also upheld a ban on picketing outside residential homes in order to protect the "wellbeing, tranquility, and privacy of the home," an "important aspect" of protecting "unwilling listeners" from the intrusion of objectionable or unwanted speech (Frisby 1988).

In short, it seems quite clear that the Court is willing to allow the most profound sensibilities of the majority of Americans to be offended (e.g. by flag burning), to let their emotions and values be assaulted (e.g. when they bury their fallen soldiers), to tolerate speech that promotes hate in the most vile terms, and even to allow speech that may well incite violence or riots—but bans speech that may disrupt the slumber of some suburbanites or upset the tranquility of the downtown business community.⁸

To put it more generally: more attention needs to be paid to the crucial difference between the right to state the most offensive things—to use the N-word, deny the Holocaust, advocate for the Islamic State—and the rightness of saying these things. It is the difference between a constitutional right to free speech and what a community considers morally appropriate speech. People are not only citizens with a whole

demagogue's patriotism' more likely to be converted 'into something aggressive.'" Furthermore, "columnist Jonah Goldberg caught something important when he wrote that 'nationalism is ultimately the fire of tribalism, having too much of it tends to melt away important distinctions, from the rule of law to the right to dissent to the sovereignty of the individual.'"

⁸ See, e.g. Johnson, 491 U.S. at 399; Phelps, 562 U.S. at 459–60; R.A.V., 505 U.S. at 381; Rock Against Racism, 491 U.S. at 790; Cooper, 336 U.S. at 87.

array of rights, but also members of various communities made up of people with whom they reside, work, play, pray, take civic action, and socialize. These communities, in effect, inform the members that if they must engage in offensive speech—which, granted, is their right—they must understand that one or more of these communities to which they belong might in turn express its dismay and may well follow it with social withdrawal, denial of business, or other social measures. Nothing in the First Amendment promises that free speech will be cost-free. As a result, fewer people will engage in offensive speech unless they have a strong reason to proceed.

In effect, American society in this matter is much closer to a liberal communitarian balance than globalists have it. It grants ample room for unpopular speech, despite repeated claims that it has been suppressed. But American society also seeks to exact consequences for offensive speech. For example, when Lawrence Summers, then the president of Harvard University, suggested that the underrepresentation of women in the sciences somehow reflected their shortcomings, a storm of protest ensued. He argued that he was misunderstood and tried to make amends, but in the end the outcry contributed to his resignation from the job (Finder et al. 2006). Journalist Chris Hedges was disinvited from giving a lecture at the University of Pennsylvania after publishing an article arguing that the strategy of the Islamic State—its terrorism, ethnic cleansing, and religious fundamentalism—“mirrors the quest for a Jewish state eventually carved out of Palestine in 1948” (Haaretz 2014). The Philadelphia Eagles fined player Riley Cooper for using a racial slur at a concert, and the NFL suspended referee Roy Ellison for cursing at a player during a football game (Maske and Jones 2013). As a result, people maintain the right to say most anything they want to say but are also encouraged to take into account the sensibilities of their fellow community members,

To understand why this liberal communitarian balance is crucial, one needs to pay more attention to a deep social structure that is often overlooked. To outline it requires a brief digression into human nature. A study that built on the findings of several hundred empirical works found that there are only three ways to motivate people to engage in behavior that they would not engage in otherwise: force them (threaten to tow their car if they park in the hospital fire lane); pay them (as they are paid on the job); or convince them of the merit of doing what must be done (encourage them to volunteer) (Etzioni 1975). People who are coerced often resent the imposition and tend to do as little as they can get away with. Those who are paid would often rather be doing something else. However, people who are persuaded will do their new chores happily; they want to do them! True, they may not be pure altruists. They often heed the voice of the community because they are social creatures who crave the approval of others and try to avoid their disapproval. What most people overlook is the very significant amount of social transactions that are carried out in this third way. Communities set norms of conduct that define what people are expected to do, and undergird them by little else but a stream of kudos and appreciations as well as mild censorship. Thus, most of what people do for their children, their elders, their friends and neighbors, and for their community is neither coerced nor paid for but fueled by communal norms and informal social controls and mutuality.

A liberal communitarian society will seek to resolve conflicts first and foremost through moral dialogues and resort to coercive enforcement only when these fail. 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) (Etzioni 1998).

It was just over 19 years from the day President Clinton signed the Defense of Marriage Act, which defined marriage as between a man and a woman, to the day the Supreme Court approved same-sex marriage at the federal level. In those years, millions of Americans shifted sides. True, there are still millions who did not embrace the new norm, and they will face the new legal reality. However, a considerable time was given to try to sway them. In the case of transgender rights, a very new public policy issue as far as public discourse is concerned, people were given very little time to learn the issues and to be convinced of the values of the suggested changes.

Compassionate and prudent liberals will embrace the principle that when policy changes are planned for a democracy, it is not enough to garner enough votes or get a court to rule. One also needs to engage the public in a moral dialogue that will help it to see the value of the suggested shift. The employment of coercive means is justified only after such dialogues fail.

7.3.6 Coping with Conflicts of Liberal and Communitarian Principles

So far, combining liberal and communitarian principles has been attempted mainly by dividing the relevant turf. When the absorption of immigrants was examined, we found that the elements of unity can be communitarian and those of diversity, or pluralism, liberal. In studying homeowner associations, we saw that individual rights can provide a framework within which communities can follow their particularistic preferences. Moral persuasion (which communitarians favor) best precedes law enforcement (when rights are challenged). However, there are situations in which the two principled approaches come into direct conflict. Here, instead of assuming that one value takes precedence over others—for instance that liberty trumps other values, unless one can make a compelling case that liberty must be curbed—a liberal communitarian assumes that there are two set of values of equal standing: rights and the need for thick, lasting, meaningful relationships. If one can draw on the notion that one value trumps others, one must ask what criteria one uses when two values of the same standing come into conflict.

The way a liberal communitarian would deal with this is next illustrated by studying the clash in one major public domain, between security (a common good) and privacy (a human right).

Three criteria help specify the liberal communitarian approach to this domain (Etzioni 1999). First, a liberal democratic government will limit privacy only if it

faces a well-documented and large-scale threat to the common good (such as to public safety or public health). The main reason this threshold must be cleared is because modifying legal precepts endangers their legitimacy. Thus if the Supreme Court reversed itself often, it would have little credibility left. Changes, therefore, should not be undertaken unless there is strong evidence that change in the law (or public policy) is needed.

Second, if the finding is that the common good needs shoring up, one had best seek to establish whether this goal can be achieved without introducing new limits on the rights involved, such as privacy. For instance, one might provide medical records to researchers for the sake of public health without undermining privacy by removing personally identifying information (such as names, addresses and social security numbers) from those records. Third, to the extent that privacy-curbing measures must be introduced, they should be as nonintrusive as possible. For example, many agree that drug tests should be conducted on those directly responsible for the lives of others, such as school bus drivers. Some employers, however, resort to highly intrusive visual surveillance to ensure that the sample is taken from the person who delivers it. Instead, one can rely on the much less intrusive procedure of measuring the temperature of the sample immediately following delivery.

Furthermore, one must realize that any balance a liberal communitarian society achieves between individual rights and the common good is historically contextualized. It must be adapted as technological, international, and domestic developments take place. For example, the balance between rights and the common good changed after the September 11, 2001 attacks against the United States. One can argue over the severity of the threat terrorism now poses, and how severely the United States should react while seeking to protect the nation from future attacks. Few would disagree that some adaptation was called for after 9/11. Both rigid adherence to standards of a previous era (e.g. trying to deal with transnational terrorists as if they had all the rights of soldiers, and can be fought only in the areas in which the US declared war) and suspending the most basic rights to serve security (e.g. allowing torture) are unnecessary and defeat the purposes they are meant to serve. They also undermine the legitimacy of the governments involved and thus feed populism. Finally, a liberal communitarian holds that deliberations should focus both on the extent of this recalibration and on ensuring that corrective measures are neither excessive nor irreversible as historical conditions change again.

7.4 In Conclusion

Globalization (the free flow of goods, people, and ideas) combined with the promotion of human (i.e. globally applicable) rights is a factor that accounts for the rise of populism. In response, extolling the virtues of liberalism will not suffice. What is missing is recognition of the importance of communities, as small as families and as large as nations, for people's flourishing and their ability to resist demagogues. Hence, communitarian considerations are needed for both analysis and policy

making. They help understand how communities that are under attack can be maintained and shored up. However, given that communities can be oppressive, they need to be leavened with liberal principles: hence the merit of a liberal communitarian philosophy. While in such a combination, both liberal and communitarian principles protect each other from undervaluing one core element of what makes for free and open communities, one cannot ignore that the two sets of principles cannot be fully reconciled. The chapter provides several major examples of ways that liberal and communitarian principles can be combined and their differences curbed.

References

- American Bankers Association ad. 1991, November 17. *Washington Post*, A13.
- American Civil Liberties Union. 2014, December 18. *Complaint to United States Department of Justice against Gloucester County Public Schools on behalf of Gavin Grimm*. Available at: <https://acluva.org/wp-content/uploads/2014/12/141218-dojcomplaintltrGRIMM.pdf>.
- Apuzzo, M., and A. Blinder. 2016, April 1. North Carolina law may risk federal aid. *New York Times*.
- Auffray, A., and L. Equy. 2016, August 19. Le burkini interdit dans une quinzaine de communes. *Liberation*.
- Benkoff, D. 2015, November 10. Both sides in the transgender ‘bathroom battle’ are wrong. *Daily Caller*.
- Berlin, I. 1991. Joseph de Maistre and the origins of fascism. In *The crooked timber of humanity: Chapters in the history of ideas*, ed. H. Hardy. New York: Alfred A. Knopf.
- Brooks, D. 2016, November 11. The view from Trump tower. *New York Times*.
- Bruni, F. 2016, April 23. Tempest in a toilet. *New York Times*. <https://www.nytimes.com/2016/04/24/opinion/sunday/tempest-in-a-toilet.html>.
- Chozik, A. 2016, September 10. Hillary Clinton calls many Trump backers ‘deplorables,’ and GOP pounces. *New York Times*.
- Chrisafis, A. 2015, October 13. Pork or nothing: How school dinners are dividing France. *The Guardian*.
- Clinton, C. 2016, October 29. *Chelsea Clinton Campaigns in Michigan*. <https://hillaryspeeches.com/tag/equality/>
- Cox v. New Hampshire. 1941. 312 U.S. 569, 574.
- Daly, M. 1994. In *Introduction to communitarianism: A new public ethics*, ed. M. Daly. Belmont: Wadsworth Publishing Company.
- Dionne, Jr., E.J. 2017, April 17. Why we don’t call it nationalists’ day. *Washington Post*.
- Donato, A. 2014, November 25. He and she, ze and xe: The case for gender-neutral pronouns. *Plaid Zebra*.
- Eldeib, D., and R. McCoppin. 2015, October 15. Feds reject school district’s plan for transgender student, locker room. *Chicago Tribune*.
- Etzioni, A. 1975. *Comparative analysis of complex organizations*, Revised ed. New York: The Free Press.
- . 1993. *The spirit of community*. New York: Simon & Schuster.
- . 1998. *The new golden rule: Community and morality in a democratic society*. New York: Basic Books.
- . 1999. *The limits of privacy*. New York: Basic Books.
- Finder, A., P.D. Healy, and K. Zernike. 2006, February 22. President of Harvard resigns, ending stormy 5-year tenure. *New York Times*.
- Fratiglioni, L. et al. 2000. Influence of social networks on occurrence of dementia. *The Lancet*.

- Frisby, V. Schultz. 1988. 487 U.S. 474, 484.
- Galston, W. 2016, November 22. Immigration reaches critical mass. *Wall Street Journal*.
- Glendon, M.A. 1991. *Rights talk: The impoverishment of political discourse*. New York: The Free Press.
- Goldstein, A. 2017. *Janesville: An American story*. New York: Simon & Schuster.
- Grinberg, E. 2015, September 5. Bathroom access for transgender teen divides Missouri town. *CNN*.
- Haaretz. 2014, December 28. Journalist Chris Hedges disinvented from U. Penn over Israel-ISIS comparison.
- Haidt, J. 2016, July 10. When and why nationalism beats globalism. *American Interest*.
- Helliwell, J.F. 2003. Well-being, social capital and public policy: What's new? *Economic Modelling* 20: 331.
- Hochschild, A.R. 2017. *Stranger in their own land*. New York: The New Press.
- Hornberger, J. 2016, August 25. There is only one libertarian position on immigration. *Future of Freedom Foundation*.
- Kenwood, J. 2014, June 19. Vancouver school board adopts progressive transgender policy. *Vice News*.
- Levin, Y. 2016. *The fractured republic: Renewing America's social contract in the age of individualism*. New York: Basic Books.
- Lilla, M. 2016. *The shipwrecked mind: On political reaction*. New York Review of Books.
- Lind, M. 2016, May 22. This is what the future of American politics looks like. *Politico*.
- Long, H. 2016, March 29. U.S. has lost 5 million manufacturing jobs since 2000. *CNN*.
- Maske, M., and M. Jones. 2013, November 22. NFL umpire Roy Ellison suspended for incident with Redskins' lineman Trent Williams. *Washington Post*.
- Mayet, F. 2015, March 31. Laïcité à Montpellier: Des jupes longues font débat au collège des Garrigues. *Midi Libre*.
- McCarthy, J. 2014, May 21. Same-sex marriage support reaches new high at 55%. *Gallup*.
- McKenzie, E. 1994. *Privatopia: Homeowner associations and the rise of residential private government*. New Haven: Yale University Press.
- Members of City Council of L.A. v. Taxpayers for Vincent*. 1984. 466 U.S. 789, 789.
- Mishra, P. 2016, August 1. How Rousseau predicted Trump. *New Yorker*.
- Monbiot, G. 2005, August 8. The new chauvinism. *The Guardian*.
- Morgan, L.J. 2013. Gated communities: Institutionalizing social stratification. *The Geographical Bulletin* 54 (1): 24.
- Mudde, C. 2004. The populist zeitgeist. *Government and Opposition* 39 (4): 541.
- Mulhall, S., and A. Swift. 1992. *Liberals and communitarians*. Cambridge: Blackwell.
- Müller, J.W. 2016. *What is populism?* Philadelphia: University of Pennsylvania Press.
- New York Times*. 1991, November 23. Mother scolded for suit over son's honors.
- Nussbaum, M.C. 1996. In *For love of country?* ed. J. Cohen. Boston: Beacon Press.
- Petrow, S. 2016, August 3. Civilities: Is it time to include 'Mx.' in the mix with 'Ms.' and 'Mr.'? *Washington Post*.
- Putnam, R.D. 2000. *Bowling alone: The collapse and revival of American community*. New York: Simon & Schuster.
- Rather, D 2017, April 12. Interview by Ana Marie Cox. *New York Times Magazine*.
- Redles, D. 2010. The Nazi old guard: Identity formation during apocalyptic times. *Nova Religio: The Journal of Alternative and Emergent Religions* 14 (1): 24.
- Reinhold, R. 1991, November 15. In land of liberals, restroom rights are rolled back. *New York Times*.
- Sandel, M. 1998. *Liberalism and the limits of justice*. 2nd ed. New York: Cambridge University Press.
- Seligman, D. 1992, February 10. Keeping up. *Fortune*.
- Singer, P. 1972. Famine, affluence, and morality. *Philosophy & Public Affairs* 1 (3): 229.

- Tönnies, F. 1957. *Community and society (Gemeinschaft und Gesellschaft)* (Trans. and ed.: C.P. Loomis). East Lansing, MI: University of Michigan Press. (Original work published in 1893)
- Walzer, M. 1994. *Thick and thin: Moral argument at home and abroad*. Notre Dame: University of Notre Dame Press.
- Wong, D.B. 1988. On flourishing and finding one's identity in community. *Midwest Studies in Philosophy* 13(1): 324–341. In *Ethical theory, character, and virtue*, ed. P. French. Notre Dame: University of Notre Dame Press.
- Wrong, D. 1994. *The problem of order*. New York: Simon and Schuster.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

