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The Shattered Mirror: Identity, Authority, and Law

Lawrence M. Friedman*

At Stanford Law School, there are a stunning number of student organizations. Some of them have been around for a while. Others come and go. We have or have had organizations of black students, Hispanic students, Native American students, Asian and Pacific Islander students, gay and lesbian students, Jewish students, Christian students, women students, older students, students interested in high technology, students interested in entertainment law. Most of these groups are identity groups. A few are groups organized around some field of law. When I went to law school, almost fifty years ago, there were (if I am remembering correctly) none of these organizations. To be sure, there were very few women or minority students in law school at that time.

It is no great mystery why so many such organizations can be found in law schools today; almost everybody would connect them with the rise of identity politics. For many people, identity politics itself is a serious national problem. Identity politics, they fear, shatters the unity of the country. There are far too many of these groups, each of them apparently demanding a place in the sun, a share in the stock of power and legitimacy. If we grant their claims, what will be left of national identity in the United States? What *is* the nation, or, is there any actual nation any more? Indeed, sometimes it seems as if the nation has disintegrated, and given way to a multiplicity of nations inside the historic borders of the actual nation. In a sense, each identity group forms a kind of nation and indeed, the very word "nation" is used. We have all heard of the Nation of Islam. A gay activist group calls itself the Queer Nation. There are even gangs that call themselves nations. It would not be farfetched to talk about the feminist nation or the Hispanic nation, or the nation of the blind or the deaf. In many countries, ethnic minorities, living in compact areas – the French speakers in Canada, for example – do constitute sub-nations within a larger nation, in a quite literal sense. But in the United

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States, the internal nations do not live in geographically compact areas. They are everywhere and nowhere.

Before I go any further, I want to make clear the thesis of my speech. It is a story of a rise and a fall. The rise is the rise of a new concept of equality, which I call plural equality. The fall is the fall of a regime of cultural dominance. My thesis is that once upon a time there was a real cultural ruling class in this country. This period lasted roughly through the middle of the twentieth century. Gradually, slowly, its position was eroded. Today, there is a much more complex cultural and moral landscape; this is the situation I call plural equality. The metaphor of a mirror can be used to describe the earlier state of affairs – smooth, uniform, glassy. But the mirror has now shattered, and cannot be put together again.

I will describe briefly a few aspects of this story which, as you can imagine, is quite complicated. I will then try to connect the thesis to other developments in American culture, law, and life.

I will begin with a California case from 1931 – *Melvin v. Reid*.¹ This was a right of privacy case. The plaintiff was a woman whose original name was Gabrielle Darley. She had led a colorful life. She came from a small town, and fell in love with an evil stranger, Howard, who lured her to New Orleans, where he put her to work as a prostitute in the red-light district. Howard then double-crossed and abandoned her; she followed him to Los Angeles, where he was about to marry another woman. There she killed him. She was arrested and tried, but the jury acquitted her. This all took place in 1917 and 1918.² Gabrielle then "abandoned her life of shame," married a man named Bernard Melvin, and began to live what the court described as a "righteous" life, earning herself a place in "respectable society."³ Her new friends did not know about her scarlet past. But in 1925, a movie called *The Red Kimono* told the story of the life of Gabrielle Darley – and it used her real name. Her cover had been blown. She brought a lawsuit against the movie-makers.⁴

The appellate court upheld her suit and expressed a sense of outrage at what the defendants had done to her.⁵ It was wrong to destroy Gabrielle's reputation – wrong to injure her standing in society by publishing the "story of her former depravity" for the sole purpose of making money.⁶ Society, said the court solemnly, had a duty to "lift up and sustain the unfortunate," not to

1. 297 P. 91 (Cal. Dist. Ct. App. 1931).

2. This information, and information about the movie, comes from Russell Campbell, "*Fallen Woman*" *Prostitute Narratives in the Cinema*, at <http://www.latrobe.edu.au/www/screeningthepast/firstrelease/fr1199/rcfr8b.htm> (uploaded November 12, 1999).

3. *Id.*

4. *Melvin v. Reid*, 297 P. 91 (Cal. Dist. Ct. App. 1931).

5. *Id.* at 93-94.

6. *Id.* at 93.

tear the unfortunate down.⁷ The court was clearly on Gabrielle's side; the legal basis of the decision was, frankly, somewhat flimsy. Rummaging about for a legal argument – anything at all – the court found a provision of the California Constitution which guaranteed the right to "pursue and obtain happiness."⁸ That would do the trick; it was "immaterial" whether one called this right a "right of privacy."⁹ The right to happiness, right there in the California Constitution, allowed Gabrielle to bring this particular suit.

Although the court said the right of privacy was "immaterial," it was in fact the foundation of Gabrielle's claim. As most law students learn in their torts class, the right of privacy owes a lot to a famous law review article, written by Samuel D. Warren and Louis D. Brandeis and published in the *Harvard Law Review* in 1890.¹⁰ In this article, Brandeis and Warren argued that the common law should protect "privacy";¹¹ in fact, there were already tools to do so in the armory of the common law.¹² A right of privacy, they said, was necessary because the press was "overstepping . . . the obvious bounds of . . . decency."¹³ Gossip had become a business.¹⁴ This was, of course, the age of the yellow press – sensational cheap newspapers, full of news of crime, divorce, and scandal. It was also the age of the Kodak, the first "candid camera," as Robert Mensel has pointed out.¹⁵ Before this, nobody could take your picture without your permission. You had to sit still to pose because cameras were slow on the draw. Now, with fast cameras, it was possible for somebody to steal your image without your permission – perhaps without your even knowing it.¹⁶ Thus, the early history of the "right of privacy" was at least in part a reaction to technology – a technology that threatened respectability. Warren and Brandeis, like the California court forty years later, assumed a certain code of morality, a certain bourgeois way of life, which, they also assumed, had pride of place in the American cultural scene and deserved legal protection.

Another emerging technology that posed a threat to the established order was the motion picture. Movies came into prominence in the early twentieth

7. *Id.*

8. *Id.*

9. *Id.* at 93-94.

10. Samuel D. Warren & Louis D. Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193 (1890).

11. *Id.* at 195-96.

12. *Id.* at 197-214.

13. *Id.* at 196.

14. *Id.*

15. Robert E. Mensel, "Kodakers Lying in Wait": *Amateur Photography and the Right of Privacy in New York, 1885-1915*, 43 AM. Q. 24 (1991).

16. *Id.* at 31.

century. In very short order, there were nickelodeons in every city. This new and marvelous form of entertainment attracted masses of people.

Very early, too, there were attempts to censor the movies. Under a 1907 Chicago ordinance, no movie could be shown without a permit from the chief of police; the permit was not to be granted to "obscene or immoral" movies.¹⁷ The chief turned down two movies, *The James Boys*, and *Night Riders*; this was the occasion for testing the validity of the ordinance.¹⁸ In *Block v. City of Chicago*, the Illinois Supreme Court held the ordinance constitutional.¹⁹ Movie theaters were cheap. They attracted not only children, but people of "limited means," people who did not "attend the production of plays and dramas given in the regular theatres."²⁰ These were "those classes whose age, education and situation in life specially entitle them to protection against the evil influence of obscene and immoral representations."²¹ The two movies in question failed the test; they portrayed "exhibitions of crime."²² In *Night Riders*, you could see "malicious mischief, arson and murder."²³ The films were "immoral" and could have "evil effects upon youthful spectators."²⁴

This was not an isolated instance. The Pennsylvania Board of Censors, created in 1911, had power to turn down films which would "debase or corrupt the morals."²⁵ In Ohio, films which were "moral, educational or amusing and harmless" were to be approved by the Ohio Board.²⁶ Many cities, including Detroit, Memphis, Atlanta, and Boston, had censorship boards of their own, for the same general purposes.²⁷

The censorship issue reached the United States Supreme Court in 1915; the case concerned the Ohio censorship law.²⁸ The Court upheld the law.²⁹ The opinion expressed the same philosophy as the Illinois Supreme Court.³⁰ Films were dangerous and seductive; they could be "used for evil."³¹ Movies,

17. *Block v. City of Chic.*, 87 N.E. 1011, 1012-13 (Ill. 1909).

18. *Id.* at 1013.

19. *Id.* at 1016.

20. *Id.* at 1013.

21. *Id.*

22. *Id.* at 1016.

23. *Id.*

24. *Id.*

25. 1911 PA. LAWS 1067.

26. OHIO REV. CODE ANN. § 871-49 (Anderson 1926).

27. RICHARD S. RANDALL, *CENSORSHIP OF THE MOVIES: THE SOCIAL AND POLITICAL CONTROL OF A MASS MEDIUM* 17 (1968).

28. *Mut. Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 231 (1915).

29. *Id.* at 247.

30. *Id.* at 242.

31. *Id.*

potentially, could appeal to a "prurient interest."³² The reasons censors gave for turning down movies in those days seem incredible to the modern reader. In 1925, the Chicago censors rejected a movie called *Deadwood Coach* because it had too much "gun-play."³³ The Atlanta board said no to *Lost Boundaries*, a movie in which a black family passed for white.³⁴ Clearly, the boards went beyond conventional ideas of obscenity. They saw themselves as guardians of the dominant morality – the bourgeois code. There was, of course, also a strong strain of elitism in all this. The masses could not be trusted; they were like children. Their entertainments had to be vetted by their betters. It was a mentality which allowed a publisher to print the shocking works of the Marquis de Sade, so long as the dirty stuff only appeared in French. The same combination of elitism, and a firm belief in the code of behavior of the majority, underlay the article by Warren and Brandeis, and the attitudes expressed in the Red Kimono case.

Censorship boards saw themselves vested with the duty of defending and upholding "traditional values." But these were not, of course, *everybody's* values; they were hardly eternal verities. Rather, they were historically and culturally specific. They were, in essence, the values and the morality of white Protestant male America. I use this label not to cast aspersions on this code, but as a simple statement of fact. And we must remember that many – probably most – elements of that code were not particularly different from the code of other people; you do not have to be a Lutheran or a Baptist to be against murder or embezzlement. You also do not have to be a Presbyterian to be against adultery. In fact, many of the new immigrant groups – Catholic, Orthodox, or Jewish – insisted if anything even more enthusiastically that respectable, decent women should be virgins until their wedding night. Yet there were differences in detail about the definition of decent, respectable behavior; these details could be, and in fact were, enormously important.

At one time, the old-American code was perhaps in fact the code of most Americans – at least white adult male Americans. Challenges to that code were understood as challenges to a whole structure – challenges to the dominance of the old-American group. In general, the period until roughly the mid-twentieth century was the heyday of what Milton Gordon has called anglo-conformity.³⁵ Americans were supposed to accept American values, that is, the values of the majority. Newcomers were expected to assimilate, to learn to speak English, to adopt American ways, to wave the flag, and to think Amer-

32. *Id.*

33. RANDALL, *supra* note 27, at 23-24.

34. *Id.* at 24.

35. See MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE: THE ROLE OF RELIGION, RACE, AND NATIONAL ORIGINS 88 (1964).

ican thoughts.³⁶ America was, to be sure, a melting pot. But this famous metaphor meant different things to different people. Israel Zangwill, who first used the phrase, was a Jewish immigrant to the United States. *The Melting Pot* was the title of a play Zangwill wrote in 1908.³⁷ For Zangwill, the melting pot meant that a distinctive nationality would emerge from the fusion of different cultures in the United States. Throw them all in the pot, they melt together, and out comes something new and wonderful.³⁸ But to most Americans already in the United States, the melting pot meant assimilation into the dominant culture. It meant rejecting "hyphen-Americans" – that is, Italian-Americans, Armenian-Americans, Hungarian-Americans and what not. These people were not to retain a distinctive identity and culture.³⁹ Rather, all of them would or should disappear into the moral and cultural world of the dominant culture.

That dominant culture was a proud culture, proud of its achievements; these achievements included freedom and a democratic way of life. The dominant culture professed great tolerance for the strangers within American gates. There was liberty and justice for all – people repeatedly intoned this mantra or its equivalent. There were no political prisoners here (well, hardly any). Religious tolerance was the norm. Nobody was burned at the stake in America. There were no heretics, no witch hunts after the seventeenth century. All religions were allowed (well, almost all).⁴⁰ The message was: You can build your churches and your synagogues and your mosques and Buddhist temples; no problem.

Toleration? Yes, but toleration meant allowing. It did not mean glorifying, or even sharing the invisible social cachet that majority status brings.⁴¹ It was always clear in the United States which norms were dominant, which culture defined the true nation, which people actually owned the house of America, and which people were the tolerated guests. Most people in the nineteenth century believed in legal and political equality, at least after a fashion. Property qualifications were dismantled, and by the middle of the century, it essentially was true that all adult white males were entitled to vote, and that one man's vote counted the same as any other man's. One man's dollar also bought

36. *Id.* at 100.

37. LAWRENCE M. FRIEDMAN, *THE HORIZONTAL SOCIETY* 171 (1999).

38. *Id.*

39. On the pressure to "Americanize," see generally GORDON, *supra* note 35.

40. Egregious exceptions were the treatment of the Latter Day Saints, see generally EDWIN BROWN FIRMS & RICHARD COLLIN MANGRUM, *ZION IN THE COURTS: A LEGAL HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, 1830-1900* (1988), and, at the very end of the period, the Jehovah's Witnesses, see generally SHAWN FRANCIS PETERS, *JUDGING JEHOVAH'S WITNESSES: RELIGIOUS PERSECUTION AND THE DAWN OF THE RIGHTS REVOLUTION* (2000).

41. And for racial minorities, as opposed to religious and ethnic minorities, there was hardly even a pretense of equality.

the same goods as another man's. The economy was relatively free and open; states encouraged enterprise, regulation was light, and (with the enormous exception of slavery) a free labor system was in effect throughout the country.⁴² Equality of honor, status, and position – social equality – was something else again, even among white people. The United States was a very egalitarian country, compared to England or the countries of the continent; but it was nonetheless abundantly clear where high status belonged, and to whom it belonged.

I. A New Society

But at the end of the nineteenth and the beginning of the twentieth century, new forces were at work in society. These forces amounted to an assault on traditional values, the traditional concept of equality, and the cultural dominance of old-American morality.

Immigration was one factor unsettling the old order. Immigration brought millions of new Americans into the country, and to a certain extent, it brought with it a clash of cultures. For example, many of the newcomers from southern and eastern Europe held different attitudes toward liquor and drinking; they liked their glass of wine, and the strong American culture of temperance was foreign to them. Obviously, they were not alone; plenty of Americans drank, and drank heavily. But intellectual, religious, and moral leaders condemned drunkenness and the culture of the neighborhood saloon; they preached a gospel of temperance or abstinence. Throughout the nineteenth century, there were spasms of revolt against liquor, and a significant "dry" movement made its presence felt. Some states passed restrictive laws – the most famous of these was the so-called "Maine Law," which began (obviously) in Maine in 1851.⁴³ As with movie censorship, and with privacy law, there was a certain elitism about the temperance movement – daddies who should be putting bread on the table and working hard were spending their time in drunken debauches in saloons. But there was also a genuinely popular element to the temperance movement. And some scholars have analyzed the whole temperance movement in terms of a clash of cultures. On one side was old-line, rural, Protestant America; on the other side were the urban, Catholic newcomers. This clash of cultures formed the background for the so-called noble experiment, Prohibition, which became law around 1920 and lasted a little more than a decade before it was consigned to the ash-heap of history.⁴⁴

42. On the development of the modern free labor system, see generally ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870* (1991).

43. LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 134 (1993).

44. JOSEPH GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* (1963). On the background of Prohibition, see generally RICHARD F.

The old culture was not just buffeted by newcomers; it was also decaying among the children of old-Americans, as new ways of thinking and new habits developed. Thus, there was a clash of generations as well; the culture was changing as Americans fled farms and towns for cities and suburbs. Cities were exciting places, but they were also immoral places, sites of vice and of danger. There were evil men in the city – many of them foreigners – who preyed on girls like Gabrielle Darley, innocents from the farm country, and brought these girls to "ruin." This image lay behind the passage of the Mann Act, the famous "white slave law," that made it a crime to transport a woman across state lines for "immoral" purposes.⁴⁵

Many of the changes in society can be summed up as the development of what I have elsewhere called the horizontal society.⁴⁶ The horizontal society is modern society; it stands in contrast to traditional society. So-called "traditional" society was certainly no monolith, but at the core was a system in which people lived relatively narrow, circumscribed lives, in family groups, and typically in small villages. In these small, local communities, there was a clear line of authority from top to bottom. Fathers generally were firmly in charge of the family. Or, there might be a more complicated kinship arrangement, with uncles, aunts, grandparents, or other relatives in positions of authority. In a peasant village, there might be chiefs, lords, or religious leaders, outside the family circle, but the population remained quite local. But in any event, rights and duties were strictly regulated, by kinship, age, and position. People generally stayed close to home. They were born into or grew into certain roles. Sex, age, birth order, and position in society were more or less fixed items, and they determined your place in society. Influences from the outside world came in only slowly and rarely. In particular, the world of the child was limited to the tight, vertical world of his family, his house, his little town.

In modern society, identity and authority are much more horizontal. New tools of communication and transportation have developed. All this makes it possible to spread ideas to like-minded people. It becomes feasible to mobilize people, for a cause or an activity, even though they are not in face to face contact – even though they are not neighbors or friends or members of the same circle of acquaintance. Technology has conquered time and space. The conquest of space does not mean putting a man on the moon. Nobody lives on the moon. I refer rather to the conquest of space and time here on earth. Jules Verne wrote *Around the World in 80 Days*, almost as science fiction. Around the world now physically takes a day or even less. And it is much

HAMM, SHAPING THE 18TH AMENDMENT: TEMPERANCE REFORM, LEGAL CULTURE, AND THE POLITY, 1880-1920 (1995).

45. On the history and enforcement of the Mann Act, see DAVID J. LANGUM, CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT (1994).

46. FRIEDMAN, *supra* note 37.

cheaper, too, than in Verne's days – with or without frequent flyer miles. Pictures and words travel around the world much faster – I suppose in a nanosecond – by way of computer satellite, or by way of e-mail, or even by means of the now old-fashioned telephone.

In a horizontal world, people are much freer to form their own kinds of relationships, and are more or less on a plane of equality. Sometimes this equality is imaginary or exaggerated. Of course there still are strata in society: higher and lower, richer and poorer, powerful and powerless. But relatively speaking, the playing field is more level than in traditional society; a person's position in society is not fixed once and for all by birth, or birth order, or gender, or the like. There is, in the Western countries, tremendous geographic mobility. Americans in particular seem unable to stay put. Even when they do not make a permanent physical move – when they stay in the same house – they may still indulge a passion for travel; they may take vacations in Bali or in Florence or in Nairobi. At one time, only the rich crossed borders as tourists; now the whole middle class can go abroad. Social mobility, too, is a reality – to say that any child can grow up to be President is true, though almost no child in fact will do so. But *no* child can grow up to be King or Queen of England, unless that child had been born into the right kind of family, of the right sex, and of the right birth order.

When I say contemporary society is relatively horizontal, it is important to emphasize the word "relatively." The old vertical relationships are far from dead. The family is still with us and perhaps always will be; I certainly hope so. But it is not the same kind of family. Authority is with us too, but it has flattened out considerably. Even in kindergarten, children are treated differently from the way they were treated in the past. Nobody in the nineteenth century knew about the institution of "show and tell." It was all tell, and no show; and the teacher did the telling. Nobody questions that daddy and mommy are still the most important influences on a child; but in an age of TV, images, ideas, nuances, and suggestions are beamed at the child's brain from outside, almost from the very beginning of life. Relationships between parents and children are, necessarily, not the same as they were before. Nor are relationships between husbands and wives the same – or relationships between leaders and followers.⁴⁷

In the world of the horizontal society, there is much more freedom to choose an identity, to choose an aspect of the self and make it the center of gravity in one's own life. For example, a man might become a passionate collector of old bottles. He goes to clubs, goes to conventions, meets other bottle collectors. Maybe he makes bottle collecting his whole world. He reads

47. It also is true that many people choose, voluntarily for the most part, to enter into new vertical relationships – with a guru or leader, for example. But these are not *ascribed* relationships.

books about it; he chats with other collectors on the Internet. His relationship with other bottle collectors, and the world of bottle collecting, basically is horizontal; these relationships are sharply different from the intense, vertical, authoritarian relationships he had as a child with his mother and father. And bottle-collecting is something he chose for himself. Nobody is born a bottle collector. There is no bottle collecting gene; if there is, nobody has found it yet.

Bottle collectors do not make much of a difference to the world. I took this example, though, because it is so obviously horizontal and so obviously voluntary – a matter of choice. And it is based on communication; it depends on finding, and reaching, like-minded people. Ways of communicating, and opportunities to communicate, change the very nature of society in drastic ways; they change the way people relate to each other. In traditional society, people related to each other in narrow circles. In small societies – for example, on some tiny atoll – everybody knows everybody else by name and by sight; everybody knows everybody inside that society, and nobody at all outside of it. Life today is lived in concentric circles, bigger and bigger circles: your family circle, then your work circle, the circle of other people who share interests or experiences, and so on. The circles that are furthest away may be dim, hardly experienced, like the orbit of Pluto, but they are nonetheless there. And you can, very often, choose to move to that further circle, and stake a claim there for yourself. The bottle collector circle is of this type.

This ability to move from one circle to another, further and further from "home," as it were, is extremely important. We can move out into the world – literally – when we travel. By the same token, even if we stay put, the world comes to us: on TV, in the movies, and now through the Internet. That this facilitates the spread of mass culture is obvious. Ideas, fashions, and trends once took centuries to diffuse around the world. Then they took years; then months; then days. Now, it seems as if they take minutes. Borders are not barriers to cultural diffusion. They are incredibly porous. You can build a fence against people, but you cannot fence out modernity – though some countries try, either in a thoroughgoing way (Iran would be an example), or selectively, like France, or Canada. Inside the United States, state borders mean nothing culturally, if they ever did. Very likely, regionalism is on the decline in the United States. Everybody watches the same TV shows, sings the same songs, wears the same clothes. Some of the small enclaves, like the French in Louisiana – enclaves that held out against the mainstream for centuries – are weakening their hold; they are slowly dissolving into the new cultural melting pot.

II. Plural Equality

One of the main events of the twentieth century, then, is the rise of the horizontal society. In the horizontal society, mass culture threatens to become

universal; regional differences get flattened out. We come to live in a chain store world – the same products, the same stores, in malls all over America. Local color disappears.

Paradoxically, however, the same forces that bind the country together culturally also permit the formation of interest groups that smash the mirror of unity. The horizontal society fosters a new, different concept of equality – one on top of the old ideology of political and economic equality. Plural equality is the rejection of anglo-conformity and assimilation. Plural equality is the idea that there is not or ought not to be a single, dominant group – no single, dominant religion, culture, gender, race or way of life. It means dismantling old assumptions and old prejudices. And to an astonishing degree, "diversity" in public life has become a reality. John F. Kennedy, a Catholic, was elected President. At one time that would have been unthinkable. Jews serve in the Senate and in the cabinet; in 2000, Joseph Lieberman, who is Jewish, was nominated for Vice President. Blacks are in the Cabinet and on the Supreme Court. Public schools are no longer thinly disguised Protestant schools, so drenched with sectarianism that they in fact drove Catholics out, and led them to create their own school systems. The public schools today try to be non-sectarian. They make their nod toward Chanukkah, Kwanzaa, and Ramadan. They are eager to treat all races with respect – Asians, Hispanics, Native Americans, and of course, the black minority.

Where does plural equality come from? Many people might find this a peculiar, even puzzling question. They take plural equality for granted. Or they think of it as some kind of inevitable development, something that was immanent in the constitutional system, in the ideals of the founding fathers, or the like. But of course this is not at all the case. Plural equality is a special, unique political and cultural development; nobody a century ago could have or would have predicted it.

I think that plural equality is, essentially, a form of individualism. I think it is culturally related to the idea of self-realization, the glorification of the self. It reflects the notion that each human being is unique and that the main job of a person is to develop that uniqueness.⁴⁸ This idea, too, is a reflex of the horizontal society. It is a message which, above all, the mass media carry, particularly television. They preach the gospel or ideology of consumption and self-realization. They spread far and wide an image of life made up of endless possibilities. They also display a world of wealth, glamor and fun. They subordinate everything else to entertainment, to immediacy.⁴⁹ Television is a "speed-of-light medium, a present-centered medium"; it packages in-

48. For this concept, expressive individualism, see ROBERT BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 32-35 (1985).

49. NEIL POSTMAN, *AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS* 136, 141 (1985).

formation, religion, everything else as entertainment.⁵⁰ It subordinates everything to the image, and that image is an image of buying and selling, an image of pleasure and self-realization.

The societies of the developed world are relatively rich societies. The average person lives far above the subsistence level. There is money jingling in the average person's pocket. There is also time. Life is no longer so harsh, so demanding; there are evenings, weekends, holidays, and vacations. There is, in short, leisure time; and the leisure has to be filled somehow. What fills it is fun and consumption: buying and enjoying and doing. Part of the ideology of the old order was hard work, thrift, and moderation in all things – moderation in drink, moderation in sex, pleasure, and so on. In fact, the rich never paid attention to this ideology; the poor followed it, in the main, because they had to. They had neither time nor money for frills; life was hard, a struggle for existence, for bread to put on the table, and for a roof to keep out the rain. Wealth released people from the tyranny of endless work, and the media helped them fill the vacuum with pleasure – with entertainment, which often translated into activities once defined as vice. There was a time, after all, when even baseball on Sunday was illegal.

A culture of self-realization, of individualism, a culture that puts the self – and the enjoying self, the consuming self at that – at the center of the world, is inherently inconsistent with traditional morality; especially those aspects of traditional morality that emphasized modesty, moderation, doing nothing in excess, saving money for the future, and so on. Of course, you can decide, and many do, to keep to this old faith; but millions of people choose not to. For them, there is nothing immoral in what used to be called "victimless crimes." Obviously, pleasure and vice are not novelties of the late twentieth century, but they are much less strictly controlled. At one time, the old morality had a tight grip on life; there were, to be sure, carnival times and holidays, when people could legitimately let themselves go. They were the exceptions. In the new world of leisure time, carnival is all year round.

There would seem to be, on the surface, little connection between the shallow hedonism preached by television, and the noble morality of, for example, the civil rights movement. But both are products of the horizontal society; both are reflections of a culture of the self, of individualism, of the breakdown of old forms of cultural dominance. Both are roughly contemporaneous. In the last half of the twentieth century, at the same time that the old morality sputtered to defeat, legally and socially speaking – the period of Las Vegas and Atlantic City, of decriminalization of consensual sex, of cohabitation, and of gay rights – plural equality surged to impressive victories in politics and legal life. Suppressed minorities demanded equality in every sphere.

50. *Id.* at 136.

Congress and the states passed vital civil rights laws. Legal segregation was ended in the South. A strong voting rights law transformed politics and gave blacks a voice and a share of authority. Of course, race still remains a burning issue in American life. But white supremacy has suffered one stunning defeat after another, most notably in public life. The idea of plural equality lies behind all the great liberation movements, not just civil rights. It is the guiding star of feminism, the Native American movement (and movements of Aborigines, First Nations, indigenous peoples, and similar groups), the revolt of the so-called sexual minorities, the Gray Panthers, students' rights, prisoners' rights, the rights of aliens, illegitimate children, people with disabilities, and many other groups. The "nation" now has to contend with all the sub-nations: the race nations, the nation of women, the nation of the deaf, the nation of the old, the Hispanic nation, the gay nation, and the Asian nation. Each of these nations now claims the same autonomy, rights, and privileges once accorded primarily to the majority nation.

In the process, the legal system, reflecting the greater social currents, was thoroughly revamped, revised, rethought, and reconstituted. This occurred in every field, including constitutional law, though not a hair of the text was changed. The Supreme Court forged doctrine after doctrine, in response to the demands of plural equality. Take, for example, the school prayer cases. The Supreme Court struck down the practice of reciting prayers in public schools.⁵¹ Bible reading in the schools also fell under the ban.⁵² The public does not like the prayer and Bible decisions and probably does not really understand them. What could possibly be wrong with innocent, non-sectarian prayer? Lawyers, for the most part, probably have a much better opinion of these cases. They understand that the justices were not against prayer or Bible reading as such; they simply realized that plural equality has made it impossible to devise *any* form of prayer or Bible reading acceptable to all of the nations – including the nation of non-believers. Protestant majoritarianism is no longer a viable approach.⁵³

Ideals of self-realization also doomed the attitudes expressed in the Red Kimono case and in movie censorship. In the second half of the century,

51. The key case concerned the so-called Regent's Prayer in New York State. See *Engel v. Vitale*, 370 U.S. 421, 424 (1962).

52. *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 205 (1963).

53. On the relative acceptance by the public, leaders, and lawyers of various issues of civil rights and civil liberties, see HERBERT MCCLOSKEY & ALIDA BRILL, *DIMENSIONS OF TOLERANCE: WHAT AMERICANS BELIEVE ABOUT CIVIL LIBERTIES* (1983). Those who understood the problems of accommodating all the "nations" show greater tolerance for dissent. So, for example, in one survey, 53% of the public felt that atheists should not be allowed to "make fun of God and religion" in "a public place where religious groups gather," but only 30% of "community leaders" thought so, and only 15% of the "legal elite" thought so. Even so, a plurality of the mass public favored the "freedom of atheists to make fun of God and religion" in general. *Id.* at 131.

traditional assumptions and norms of respectability found themselves under siege. In the end, they were discarded. On the one hand, the old concept of "privacy" is almost dead. Privacy, in the sense of a right to keep dirty secrets under cover – including dirty secrets of sex, of dark drives and of desires – is no longer a strong legal value. The Red Kimono case would have a different outcome today. Gabrielle, under such cases as *New York Times v. Sullivan*⁵⁴ and its progeny, would be classified as a public figure, if only because she was involved in a sensational trial. The public would have a right to know all about her, just as it has a right to know about politicians, movie stars, athletes – and notorious criminals.

On the other hand, the right of privacy has morphed into something quite different. In the cases that followed *Griswold v. Connecticut*,⁵⁵ a "right of privacy" emerged which, as has been often pointed out, is entirely different from the privacy right in the law of torts.⁵⁶ The constitutional right is the right to choose, freely and openly, one's own private life. Private life does not mean "private" in the sense of secret or undercover. There is nothing "private" about the sale of contraceptives in drug-stores, about a gay-pride march, about two celebrity women who announce they are lovers, about the huge mass of unmarried people who choose to live together without getting married, and so on. But they are private in the same way that private property is private: There are definite boundaries, and a kind of invisible sign has been posted, telling the state, the government, the criminal justice system, and nosy neighbors – Stay out. There is no public compulsion to conform, no legal condemnation of non-conformers.

As the elite attitudes underlying the censorship cases vanished, so did censorship itself. In the movies today almost anything goes (slightly less so for television). Pornography is freely available in most large cities, and in many small ones too. Sunday laws are largely a memory. Adultery has been decriminalized almost everywhere. Gambling is open and notorious. What began in Las Vegas and Atlantic City is now almost universal. Most states have lotteries, and riverboat casinos cruise up and down the Mississippi. The moral monopoly is only a memory. Of course, every step of the way has been contested. Every step is still contested. Millions of good people are appalled at this or that aspect of contemporary life: the sex, the hedonism, the emptiness.

54. 376 U.S. 254 (1964). The Court in *Sullivan*, as is well known, ruled that no suit brought for libel against a public official could succeed, even if the publisher failed to tell the exact truth, unless the lie was deliberate or in "reckless disregard" of the truth. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271-73 (1964). Later cases extended the doctrine to all public figures, whether they were officials or not.

55. 381 U.S. 479 (1965).

56. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Court concluded that a state prohibition on the use of contraceptives violated the right of marital privacy. *Id.* at 485-86.

They are, however, gallantly swimming upstream, against a mighty, almost irresistible current.

III. *Am I Right? Some Possible Objections*

I have argued that legal culture in the United States has changed fundamentally in the last half of the twentieth century. Particularly significant have been group movements that fought for plural equality, with considerable success. Behind these developments, I argued, was a strong form of individualism.

And yet, the civil rights movement, and the other movements that followed it, were concerned with rights of *groups*, not individuals – at least it appears that way. Identity politics is the politics of groups. Affirmative action, much controverted, gives bonus points to members of minority groups. Yet, in my opinion, what seem to be group rights are really, at their core, individual rights. Feminism means, if nothing else, the right of each woman to choose her own path in life: to decide to be President of the United States, or a big-league umpire, or a coal miner, or, perhaps, to stay home and cook and darn socks. Each *group* movement for rights, is, at base, a movement to gain for members the right to be treated as *individuals* – the right to choose a life-course, free from stereotypes and discrimination. Perhaps paradoxically, identity politics is really the politics of self-realization; and identity politics for this reason breaks down into the politics of individual rights.

But am I overdoing the stress on individualism? Am I claiming that everyone marches to his own personal drummer? Isn't the reality otherwise? Aren't we suffering from a plague of conformity, of mindless herd-behavior? Children run in packs; they form cliques; they clump together in groups. Most people, and especially young people, seem to be terrible conformists. They dress the same, listen to the same music, follow the same fashions and trends. They are, in David Riesman's phrase, "other-directed"; they have no inner gyroscope running their lives – everything comes from the group, the pack, the herd.⁵⁷

Young people are indeed conformists; they gather in flocks like sheep, and adults are not much better. There are few true "individualists," in the strongest sense of the word. But all these "other-directed" sheep do have a choice of what flock to join. Nobody talks about "conformity" in a tribal society. Everybody there in fact conforms. Conformity to group norms is taken for granted; there is no option to be different. Indeed, the very word, the very concept of "conformity," belongs to *our* kind of society; it implies the option *not* to conform, or at the very least, to pick your kind of conformity. So, in a high school society, there are cliques and groups and divisions and

57. This, of course, is the thesis of David Riesman's famous book, *THE LONELY CROWD* (1950).

gangs; within each, there is a large measure of conformity, but students choose or drift towards or are recruited into one particular group.

Another apparent paradox exists: I have talked about the rise of a culture of self-realization, a culture of choice. But many of the most significant affiliations in our society – race, gender, ethnicity, age, sexual preference – do not, for the most part, seem voluntary at all. Still, I would argue that they are voluntary in one important sense. Of course, nobody can get up in the morning and decide to be white or black or a man or a woman or a Chinese-American or gay or straight or young instead of old; but it is possible to decide what to make of your identity. You can decide to be militant or active, and you can decide to ignore this or that aspect of the self. You can certainly decide which aspect of your identity to put in first place. Suppose you are a sixty year old woman, a member of the Bahai faith, with impaired vision, and a job as a school teacher. You can decide which one of these labels is your *central* identity, the one that really counts. Or, you can decide that none of them really matter and choose something else; or you can devise your own combination. You can ignore the way society boxes and packages you. At one time, old ladies did not ride bicycles, black children did not aspire to become professors, people in wheelchairs stayed off buses, and women had no role in the Army and Navy.

Now these are matters of choice: subjective, personal decisions. Or, to be more accurate, they *seem* to be matters of choice, they *seem* personal and subjective. In fact, they are, in considerable part, socially determined. To begin with, the ideas have to be in the air. Nobody was a feminist, as far as we can tell, in ancient Egypt. It was not on the agenda in the age of Akhenaton, or Charlemagne, for that matter. It is on the agenda today. This is because of the way the world itself has changed. Life today promotes ideas of personal equality; and also furnishes ways to spread these ideas. The ideas come to individuals from outside; they have to be beamed into house and head. Those who receive the messages have to be able to form affiliations. Movements like feminism depend on a world that permits horizontal identification, and horizontal affiliation.

"Choice," as I said, is meant here to convey or describe a *feeling* people have about the roots of their own actions; but the freedom to choose is almost always within certain limits, and those limits often are both unconscious and quite restricted. We are nowhere near as free as we think. Everybody is a prisoner of time and place and culture. The average person, I am afraid, is not much of an anthropologist or sociologist; most of us fail to understand the customs, practices, ideologies, and mindsets of our very own tribe. If we go into a store and buy a blue shirt, we think of this as a purely voluntary act. But there are only certain styles on the rack. Other styles are unavailable or just unthinkable. If I name my new baby girl Tiffany or Brittany or call my boy Justin or Dustin this is, I believe, absolutely my own decision. I never ask

why all of a sudden *everybody* is naming children Tiffany and Brittany and Justin and Dustin; and no longer choosing Shirley or Sandra or Irving or Lawrence or whatever. We are manipulated by all sorts of invisible strings: strings of our environment, strings of culture, strings that tie us to our time and place. Most of us are completely unaware of these strings; they are as tasteless and odorless as the air we breathe. But they exist, nonetheless, and they can be extremely powerful.

A second point about choice: We think of choices as our own, but the actions, thoughts, and reactions of other people in society constrain and pressure our own choices. I have already argued that race, paradoxically, is in a way an affiliation; I am born into a category that is defined as white or black or some other color. I have not chosen that category, nor is the social meaning of race inborn; it is socially constructed.⁵⁸ Clearly, too, the fact that the outside world thinks of me as black, or Asian, or Jewish, or handicapped, has a powerful psychological and social effect on my modes of affiliation. An American who comes from Haiti might think of herself as primarily Haitian; she might have little in common with other dark-skinned people in the United States. Haitians speak a different language, have a different religion, different customs and foods, and so on. But most Americans fail to make these fine distinctions; they will treat Haitians as blacks; and this fact will spur black Haitians to identify with, and even melt into, the larger black community. Chinese and Japanese people, within Asia, speak different languages, have different styles of life, and are, in fact, traditional enemies. But outside Asia, in the United States or elsewhere, they find themselves lumped together as "Asians" along with Koreans and Vietnamese. People in Peru called President Alberto Fujimori "el Chino," even though he was ethnically Japanese. But if the outside world lumps all Asians in the diaspora into a common category, Asians themselves may end up defining themselves as members of a "pan-ethnicity."⁵⁹

The upshot of all these factors is that actions are, in general, less voluntary than they seem. This point should not be overdone. Within given limits, choice is real enough. The customer does pick the shirt off the rack, and nobody has forced him to do it; he does name his boy Justin or Dustin instead of William or Cecil, and nobody forced him to do it. In any event, the *feeling* of free choice is an incredibly significant social fact.⁶⁰ Most of us think of ourselves as truly free to choose and to fashion our own lives.

58. There is, of course, a large body of literature on this question — the construction of race in America. See, for example, F. JAMES DAVIS, *WHO IS BLACK? ONE NATION'S DEFINITION* (1991).

59. See generally YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* (1992).

60. LAWRENCE M. FRIEDMAN, *THE REPUBLIC OF CHOICE: LAW, AUTHORITY, AND CULTURE* (1990).

I am aware that, in general, I have ignored elements of hierarchy, power, authority, and the tyranny of government and large institutions. The whole discussion has been based on an assumption that the process of self-definition begins below, with the people themselves; this was a *bottom-up* perspective. This perspective is, I think, valid and valuable, but it is obviously incomplete. In the first place, as I noted, identity is not pure self-definition; it is also what other people think of you, how they define you. In the second place, these "other people" include those who hold positions of power. The tools of the horizontal society are not just available to ordinary people. They are available to wealth, to government, and to big institutions. These too can use tools to mold opinion, to manipulate, to infiltrate minds. The rulers and the elites communicate; they reach out and mobilize their populations. Genghis Khan did not have radio and TV at his command; contemporary dictatorships do, as do modern democracies. Modern despotism, no less than modern democracy, depends on reaching people, on getting messages across. In contemporary society, the interaction between those who govern and those who are governed surely calls for a more elaborate treatment than I have given it, but that is another, and quite complicated story.

IV. Immigration: A Case Study

The shift from anglo-conformity to plural equality had a powerful impact on every field of law, and could be illustrated in every field of law. A particularly good example is the law of immigration. The United States is a so-called "immigration" country, like Canada, Australia, and Argentina; all of these countries, during the nineteenth century, were eager to recruit bodies from overseas. It is usually said that there were no restrictions on immigration in the nineteenth century in the United States, and this is basically correct.⁶¹ The first serious restrictions came at the end of the century, in the form of the Chinese exclusion acts. The Chinese were not allowed to enter the country (with some exceptions), and resident Chinese were not permitted to become naturalized citizens.⁶² In the late nineteenth century, there was heavy immigration from eastern and southern Europe, immigration which threatened to change the demographic face of the country. In response, in 1924, Congress enacted a very racist and restrictive immigration law. This law set up a system of national quotas – a number which fixed how many people could enter in any particular year, from Greece or England or Italy or Germany or wher-

61. There is a large body of literature on immigration and immigration law. For example, see generally THOMAS ARCHDEACON, *BECOMING AMERICAN: AN ETHNIC HISTORY* (1983), and MALDWIN ALLEN JONES, *AMERICAN IMMIGRATION* (2d ed. 1992).

62. On this and related issues, see generally BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990* (1993).

ever. A formula, based on the census of 1890, provided the basis for the quota. The thrust of the law was to restrict the number of Greeks, Italians, and Jews, and to encourage good Protestants from northern Europe to enter the country. Asian quotas were zero or close to zero. The underlying idea was to protect the beleaguered majority, that is, old-line Americans.

Strangely enough, under the 1924 law, there was no western hemisphere quota at all. This law, so worried about a flood of Greeks and Italians, in theory allowed every last Bolivian or Panamanian who wished to come to do so. In the case of Mexicans, of course, the demand for cheap Mexican stoop labor was a complicating factor, but why no quota for Guatemalans or Dominicans?

It was certainly not because these people were welcome; they were, after all, mostly not white and not Protestant. The most likely answer is that nobody was worried about them. They were worried about Greeks and Italians because Greeks and Italians were actually coming; Bolivians and Nicaraguans were not.

Well, why not? What kept them away? For one thing, truly poor people, and truly traditional people, do not migrate. Despite the famous phrase on the Statue of Liberty in New York Harbor – about the tired, the poor, the huddled masses yearning to be free – you can not be too poor or too much of a huddled mass, or else you would lack the means to get here, or to Canada, or to Australia, in the first place. The Chinese who made Americans nervous in the nineteenth century were mobile, outward-looking coastal Chinese. Indeed, the fact that there were no restrictions in 1830 or 1840 – even on the Chinese – was not because Americans were lovers of all races; they most certainly were not. But until travel was cheap enough, only the right sort of people were coming. Cheap travel gave Greeks, Slavs, and Sicilians their chance to move.

Later in the twentieth century, Dominicans and Nicaraguans also found ways to emigrate. Cheap, safe, and easy transportation was important, but the more significant factor was culture – the culture of the horizontal society. Travel, television, and general mobility brought the world and its messages into small and remote villages. The media spread the global culture of consumption, the culture of ambitions and desires. Traditional societies began to disintegrate. The poor of many countries saw, on their screen, the glittering world of El Norte; and they learned to want what they saw. As they modernized, as they were absorbed into the world of consumption and self-realization, the thought of emigrating, of leaving home, of moving to the United States, or Canada, or Germany, or Italy, or any wealthy country, became less distant, less alienating, less unthinkable.

The process then begins to feed on itself. Once there is a colony of Tongans in Los Angeles, once somebody from Pakistan has a cousin in New York, once a Jamaican has relatives in Toronto, it becomes less traumatic to

move; there is an enclave, a neighborhood, a group, a cot to sleep on, and a possible job washing dishes in a restaurant or mopping the floor. Still, the key fact has been the spread of a single, converging culture. Even at the turn of the century, when immigrants were primarily Europeans, one heard complaints that immigrants were primitive, that they understood nothing of American life. They had no idea (according to one common stereotype) what to do with a bathtub; they used them to store coal. For new migrants, today, even migrants from very poor countries, the way has been prepared by movies and television; they know all about the trappings of modernity, and they want these very badly for themselves.

Many forces combined to undermine the older, restrictive immigration laws. Since they were based on assumptions of anglo-conformity, the rise of plural equality knocked out this pillar of their power. The Second World War, too, was a war against racism; a racist system of immigration came to seem somewhat discordant. Moreover, the children and grandchildren of the Greeks and Italians had now entered the mainstream: What was the point of discriminating against them? Besides, they had gained some political power. And, what is often forgotten, old-line Americans had also lost the battle against themselves – the battle to preserve their distinctive moral code. Their own children abandoned it in droves. It survived, most powerfully, in the American South, in the so-called Bible Belt; even there, it was under siege. The national quota system was abandoned in 1965; millions of recent immigrants have come from Asia and Latin America. The majority saw its share of the population steadily shrink.

To be sure, immigration remains a controversial subject; so too does the so-called sexual revolution, or, for that matter plural equality. Immigration provokes nativist feelings. It generates job jealousies. It fans racist embers. The sheer numbers involved are daunting. After all, the forces of modern society unsettle patterns of living. They set millions of people moving – migrating, or trying to migrate. Rich countries see migration as a cultural and economic problem. In Europe, most notably, immigration and naturalization laws have moved to center stage; the issue is politically explosive. In the nineteenth century, European countries exported bodies; countless numbers went abroad, to find their fortune in the immigration countries. Now the shoe is on the other foot. Millions from poorer countries are knocking on the doors of countries like Germany, Italy, or Spain. European countries – even such homogeneous ones as Norway or Sweden – are, in fact, becoming multicultural.

Immigration creates diversity; it alters the demographic recipe. The streets of big cities – New York, London, Rome – become rainbows of skin color and Babels of tongues. In any event, immigration is one great source of "multiculturalism." Yet, paradoxically, the melting pot is alive and well.

There is, more and more, a single mass culture in the United States (and, for that matter, to a degree, a single mass culture in the world). As we have said, it is a consumption culture, a culture of pleasure and entertainment. Soccer, pizza, rock and roll are universal, or almost so. The same menu of fun and activities is shared. Everyone shops at the same chain stores, in the same type of mall or shopping centers. Identity groups proliferate, but the more they proliferate, the more they are the same. In the age of plural equality, there appear to be more choices – of identity, of life style; and more acceptance of other peoples' choices. There is a pluralism of modalities of moral life. But all of this takes place within a general culture that is increasingly homogenized.

It is homogenized, but under the banner of plural equality. Many aspects of the old moral code have lost much of their bite. A society of consumption and entertainment legitimates pleasures, and takes the moral sting from practices that were once defined as perversion or vice. Vice in fact has been redefined – narrowed, in the main. Of course, it is far from true that today anything goes. In fact, one can argue that the core of the moral code is still very much alive. The classic crimes are still condemned by both law and society. Mostly, it is the lifestyle part, the sexual part, the hedonistic part, that has changed. And even that part of the code has not *completely* changed. But the palette has been broadened; colors have been added to what was once a kind of monochrome.

V. Conclusion

I have tried to show a connection between certain powerful trends in American society, and changes in American law – connections which, on the surface, may seem somewhat obscure. I tried to bind together modern civil rights, the decline in traditional legal morality, and the refashioned right of privacy, among other things. Underlying all of these trends, I argued, is a single, huge shift in the social and legal climate, roughly dividing the first half of the twentieth century from the second half. It is a shift from assimilation and anglo-conformity to plural equality; from a single, dominant moral code, to a multiplicity of codes. Complex social forces lay behind these changes: it is enough to mention the technological revolution, the rise of the horizontal society, advertising, the media, individualism, and the culture of the self.

My goal was not to pass judgment, but to describe and explain. Many people disapprove of the transformations in society. To them, the moral world seems upside down and inside out. Can anything be done? Should anything be done? William Faulkner supposedly said that the past is not dead, it isn't even past. Heraclitus, the ancient Greek philosopher, had a different view. According to Heraclitus, you can't get into the same river twice. I feel that

Heraclitus, not Faulkner, got it right. The river is not what it was yesterday, or what it will be tomorrow. There is never any turning back. Even those movements, events, and situations that *seem* to return to the past, that seem to be a turn of a wheel, are nothing of the sort. There are those who hunger for traditional ways. But "tradition" is often itself an invention of the present day. The past cannot be recaptured; trying to do so involves, invariably, nothing more than reconstitution of the present.⁶³ Even "fundamentalism," paradoxically, is essentially modern; it is, in fact, *modern* fundamentalism. It cannot be otherwise. The world of the first century A.D., or of the seventh century, or of *any* century besides the twenty-first, is gone forever and cannot be reclaimed.

The world as it is – indeed, *any* new state of the world – can seem strange and unsettling. Change (including legal change) is rapid and universal. Old values seem to be crumbling; indeed, some of them *are* crumbling. They are replaced with new values, new norms, new ways of thinking. It is not surprising that so many people want to cling to the wreckage of the old, vertical society; that they seek refuge in a vision of a world that no longer exists.

In some ways, this world never did exist, at least not in the way some people imagine it – a world of strong, noble, firm and unsullied values. The old world was in many ways a world of bigotry and suppression. Those who long for the good old days, for whatever reason, have simply forgotten what the good old days were like. Imagine how few of us would really want to live in a world without antibiotics and air conditioning, or even a world without television or the movies. Few of us, I hope, would want to live in the world before women voted and before African-Americans were treated as full human beings – the world in which people aimed to destroy native languages, religions, and cultures, and in which the only good Indian was a dead Indian. How many people today would want illegitimate children to carry a stigma for life? How many really find ramps for people in wheelchairs offensive? How many would like to see the Ku Klux Klan revitalized? In any event, going back is simply not an option. Our values are the values of our times: the values of plural equality and the horizontal society.

Values change; so do concepts of identity. At one time, the American elite looked inside the mirror and saw nothing but the reflection of its own smooth, shining face. But now the mirror has shattered into fragments, each with its own separate image, its own strand of light. No one can solder the mirror together again.

63. On this point, see generally *THE INVENTION OF TRADITION* (Eric Hobsbawm & Terence Ranger eds., 1983).

ARTICLES
