

SUMMER 2010

# TANGENTS

THE JOURNAL OF THE  
MASTER OF LIBERAL ARTS PROGRAM  
AT STANFORD UNIVERSITY



## IN THIS ISSUE...

*Essays by* David Blazeitch, Clay Hamilton, Aarti Johri,  
Pat Nicholson, Julia Roever

*Fiction by* Cheri Block Sabraw

*Poems by* Jennifer Swanton Brown, Robert Brown,  
Andy Grose, Stan Chism

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VOLUME 9

IN THIS ISSUE...

- 4 Story: Stevie, the Footstool  
*Cheri Block Sabraw*
- 6 Town Hall Meeting or Mob Scene:  
Mill and Tocqueville on Direct Democracy and  
Representative Government  
*David Blazevoitch*
- 12 Poem: Freefall  
*Robert Brown*
- 13 Earthquake Politics in California:  
Lessons for Today  
*Clay Hamilton*
- 18 Shari'a Law in Western Societies:  
Pluralism and the Liberal Political Order Versus  
Equal Protection of Rights  
*Julia Roever*
- 25 Poem: Autumn Garden  
*Andy Grose*
- 26 The Rani of Jhansi: Woman Warrior Queen of India  
*Aarti Johri*
- 31 Poem: Persephone  
*Stan Chism*
- 32 Poem: (Suddenly) The Doe  
*Jennifer Swanton Brown*
- 33 The Source of Our Discontent: Nietzsche and Freud  
*Pat Nicholson*
- 36 Contributors

## PUBLISHING NOTES

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## LETTER FROM THE EDITORS

We are proud to present this issue of *Tangents, the Journal of the Stanford Master of Liberal Arts Program*. This ninth edition presents a diverse group of works by students and alumni that deal with the following questions:

- ✦ What effect does the modern "mob scene" town hall have on civilized dispute in the U.S.?
- ✦ What happens when politics distorts the science concerned with public affairs?
- ✦ Can Muslim Shariáh law be accommodated in civil law?
- ✦ Who was the woman warrior who fought the British to save her state?
- ✦ What is the source of an individual's discontent?

In addition, there are the works of four poets.

✦ ✦ ✦ ✦

Although we indicated that last year's issue would be the last, we have been able to continue publication. If there is a group of MLA alumni "angels" who would like to take *Tangents* under its generous wing during these difficult financial times, please contact the MLA office.

✦ ✦ ✦ ✦

We hope that *Tangents* will continue to showcase the varied talents of the MLA participants in the years to come.

# STEVIE, THE FOOTSTOOL

by Cheri Block Sabraw

Bath time at our house was routine and stimulating.

Three children needed a daily scrubbing, but Mom had only two hands, so Stevie and I took a bath together. It saved water, and Mom felt secure in leaving her son in the custody of her first-born daughter. She was right on the first count: bathing two kids in one tub did save water.

But having a bossy older sister could not have been easy, especially one who asked her younger brother to be her Footstool.

*Dr. Levitt: Stephen, have there been any childhood experiences that may have contributed to your free-floating anxiety and psychosomatic aches?*

*Stephen: No. My childhood seemed happy.*

*Dr. Levitt: I realize this is our first meeting, but I want you to go home and keep a journal this week. Let your thoughts meander back in time to your childhood.*

*Stephen: OK. Sounds good. Will do.*

Bath time went like this:

Mom turned on the water, put the stopper in the tub, added some pink bubble bath crystals, and told me and Stevie to get in, wash up, and get out. This we should do while she put the baby, Cindy Lou, to bed.

Dad had put in a full day at the dental office and was out shooting hoops with the neighborhood big kids. In the Division of Labor at our house, bathing the children fell into Mom's corner.

Looking back, I now admit that I liked control.

Stevie and I splashed and roughhoused like two baby sea otters. The soap bar became an abalone, so we bounced it off our bellies. Where was our mother? From the kelp bed that was Cindy Lou's room, Mom yelled, "Finish up your bath and I will be there in a second. Cheri, make sure Stevie is squeaky clean."

*Dr. Levitt: Stephen, your face looks pinched.*

*Stephen: Yes, in my meandering this week, many repressed memories, almost like bubbles, are beginning to work their way to the surface.*

*Dr. Levitt: Excellent.*

*Stephen: In the shower this morning, I had thoughts.*

Lingering in the tub, forestalling nightly prayers and room cleanup, I grabbed all of the plastic bath toys from the Tupperware container. Like Andy Rooney, my bubble encrusted eyebrows arched in a magnificent moment of glee. Stevie must be decorated with bubbles as well.

I gave him a moustache and a goatee. The bubbles began to disappear into the water; I could see the drain with its holes and silver. A small baby bottle from my No More Tears doll lay by the drain.

I wondered out loud, "Stevie, do you think this bottle would fit on your pee-pee?"

Stevie didn't know, so he shrugged.

"Come here, Stevie. Let's see if it does."

*Dr. Levitt: Thoughts about what?*

*Stephen: The time my sister put a baby bottle on my, well, my, shall we say, my Johnson?*

*Dr. Levitt: And what happened to your Johnson?*

*Stephen: My memory gets stuck at that point.*

Time was running out. I could hear Mom singing baby Cindy Lou a lullaby.

"Rock-a-bye baby, in the tree top..."

I grabbed Stevie's pee-pee and popped that bottle right on it, just like I'd seen Dad do with PVC pipe when he was fixing our sprinklers last week.

Stevie stood up, a mini cuckoo clock, with his plastic appendage rotating left, then right. He wailed and said, "Off."

I tried to pull it off, really I did, but it stuck there in a suction that only a gifted plumber could break.

*Dr. Levitt: Stephen, this week, I want you to concentrate on the effects that bath time with your sister may have had on you, physically.*

*Stephen: Well, I am happy to say that as a father of four sons, I have had no residual problems with my Johnson.*

*But my relationship with my sister Cheri throughout the years has been strained.*

*Dr. Levitt: Yes, sometimes our birth order does contribute to our reaction to life's twists and turns.*

*Stephen: My fear of Cheri has nothing to do with birth order.*

"When the wind blows, the cradle will rock..."

From Cindy Lou's room, we could hear Mom's soft voice as she enjoyed the nightly maternal routine.

Stevie howled, not so much from pain, but from embarrassment.

The front door slammed, vibrating the bathtub. Dad was in the house, drawn to the shrieks of his screaming son.

"What the hell? Cheri, what the hell have you done?"

I retreated to the south side of the tub while Dad, the dentist he was, told Stevie to relax while he pulled the bottle off (with a pop!). "Jo-anne," he yelled to Mom, "Cheri needs to be punished."

"When the bough breaks, the cradle will fall..."

Bath time was over. The timer chirped on the counter. The bubbles evaporated. The water cooled.

Two large terry towels, placed by the tub, waited for wet bodies. A practice, known only to us, came next.

In his kind and obedient way, Stevie got out of the tub, one chubby leg at a time. The small space heater in the corner glowed orange behind its metal grate.

*Stephen: All my life, I have felt the weight of the world on my back. Especially in the lumbar region.*

*Dr. Levitt: Tell me more.*

*Stephen: I sleep in a fetal position, my body locked into a crouch.*

OK, Footstool. Into position, please. Stevie understood the drill. Covering him with the fluffy terry, I sat on him, and he became my Footstool. He said, "I look like a ladybug with a towel over it!" He complied, curling up compactly. His limbs, thick and able, became furniture legs and his back became my seat. All that was missing was the seat's embroidery.

There I sat, drying between my toes and admiring my knees. Every last molecule of moisture must be absorbed before Footstool may arise.

Eventually, leisurely, the routine ended. Footstool stood up and changed back into Stevie.

*Dr. Levitt: Stephen, I suggest that you take your sister out to lunch and release these angry feelings. What will you tell her?*

*Stephen: That I am her Footstool no more. I will blame her for my back problems, my free-floating anxiety, and my sleep disorder. However, because of her abuse, I have made some sound life decisions.*

*Dr. Levitt: And what are those?*

*Stephen: I became a collegiate wrestler and made many opponents my Footstools. I have avoided a vasectomy and thus have brought four sons into this world. My home boasts Ottomans in every room, and we have only showers in our bathrooms.*

"And down will come Ba-by, cradle and all." Mom was so clueless.

# TOWN HALL OR MOB SCENE:

## MILL AND TOCQUEVILLE ON DIRECT DEMOCRACY AND REPRESENTATIVE GOVERNMENT

by David Blazeovich

A woman wearing an American flag T-shirt and a cardboard Uncle Sam top hat stands outside a town hall meeting holding a poster depicting the President of the United States with a Hitler moustache and swastika armband. “No fascist Obamacare!” she screams with wild anger into each passing camera. A man openly carries a loaded gun outside a town hall gathering at which the President is speaking and holds a sign with one of Thomas Jefferson’s more Jacobin<sup>1</sup> quotes in bold lettering: “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants” (Jefferson Entry 4665). A prominent Congressman

constituents, including racial fears after the election of the first African-American President.<sup>2</sup> One thing, however, seems clear: while reasonable people might certainly have disagreed about the most effective and expedient way to improve healthcare in the United States, few such individuals could be heard over the din.

One particularly disconcerting aspect of these town hall gatherings was the manner in which ordinary people — of every political persuasion — began to imitate the language and tone of the contentious, profit-driven media that they consume. As important political and civic information is disseminated through an increasingly fragmented and complex media environment, a cacophony of images, voices, and opinions competes for market share in order to gain ascendancy. Since the most antagonistic and belligerent media personalities consistently attract the largest audiences and consequently generate the greatest advertising revenue, the tenor of civic discourse in the media is far more likely to be influenced by profit margins than by a genuine concern for advancing sound public policy.<sup>3</sup> The divisive town hall meetings of the summer of 2009 stand as evidence that this media dissonance has now dangerously infected everyday public discourse and has begun to significantly erode what eminent nineteenth-century British political thinker John Stuart Mill (1806–73) called the “fellow-feeling” necessary among citizens of a democracy to support and maintain “free institutions,” which he claimed are essential to the proper functioning of representative government (*Considerations* 428).

But what did Mill, the author of the revered political treatise *On Liberty* mean by “free institutions,” and why did he believe that their existence was so crucial to a well-constituted democracy? To address these questions, it is first important to recognize that Mill remained, throughout his lifetime, keenly aware of a reality that is all too frequently overlooked today: democracy is not liberty. Despite Rousseau’s optimism

about the inviolability of the popular sovereignty (Rousseau), there is, in fact, nothing inherent in a government based on majority rule to protect individual rights and freedoms. A simple plurality of citizens in a direct democracy can, and sometimes does, vote to eliminate either their own rights or the rights of a minority. With the devolution of the spirit of liberty, equality, and fraternity during the French Revolution and into the Reign of Terror and the Napoleonic Wars, popular sovereignty in the nineteenth century remained, not unjustifiably, closely associated with mob rule and the rise of dictators. Even many progressive nineteenth-century thinkers like Mill were therefore reticent about extending voting rights, particularly to individuals who had received little or no formal education. Ultimately, Mill’s belief in the primary importance of individual liberty in achieving the “ultimate prospects for humanity” led him to conclude that democracy was to be welcomed only after the citizens of a nation had proven themselves able to combine popular will with political wisdom (*Autobiography* 133).

There was, however, a nascent democratic society across the Atlantic that had not yet collapsed into populist chaos: the United States. In 1835, a twenty-nine-year-old Frenchman, Alexis de Tocqueville (1805–1859), published a remarkably insightful book analyzing the system of democracy that he had witnessed on a 271-day journey through the country. Tocqueville’s book, *De la démocratie en Amérique* (*Democracy in America*), became an instant sensation. The work was reviewed by a number of prominent figures of the day, but Tocqueville himself believed that John Stuart Mill had written the best review.<sup>4</sup> Mill focussed special attention and praise on Tocqueville’s discovery of an invaluable instrument through which Americans received a practical civic education, one that fostered the development of critical thinking skills, a love of liberty, and inclusiveness of public spirit needed to sustain a healthy democracy. Tocqueville located this instrument in the “free institutions” that Americans naturally developed to administer the general affairs of townships and municipal bodies in New England, noting “Local assemblies of the citizens constitute the strength of free nations. *Town-meetings* are to liberty what primary schools are to science; they bring it within people’s reach, they teach them how to use and enjoy it” (Tocqueville 67). Ultimately, Mill was so taken with Tocqueville’s insight about the importance of broad, ongoing civic participation in free institutions — town meetings,

running for local office, the election of local officials, and the like — that he incorporated it into the foundation of his theory of representative democracy in his influential work *Considerations on Representative Government*.<sup>5</sup>

This essay argues that the recent repurposing of town hall meetings into venues for mass protests of national policy, or worse yet, into public spectacles to meet the growing need for compelling media content, robs them of their ability to fulfill the vital original function that Tocqueville identified and Mill advanced; that is, to provide a practical civic education to the electorate of a free society. Moreover, a close examination of Mill’s remarkable 1835 review of *Democracy in America* presents a particularly salient analysis of the danger that distorting the intent of these gatherings poses to the development of an enlightened, rational, and measured form of public spirit and civic engagement in a democracy.

### SUBSTITUTING BLIND INSTINCTS WITH TRUE INTERESTS — THEN AND NOW

For Tocqueville, identifying effective correctives to the dangers of unchecked popular sovereignty was not merely an abstract exercise. As members of the French aristocracy, Tocqueville’s parents were arrested during the French Revolution and held in prison for almost a year. Only the fall of Robespierre in 1794 saved them from execution. Tocqueville was born during Napoleon’s reign and subsequently spent his formative years in the most conservative and reactionary circles in post-revolutionary France. But given the perennial political instability in his home country and, indeed, across much of Europe, Tocqueville eventually became convinced that the progress of democracy neither could nor ought to be stopped. In the eloquent introduction to *Democracy in America*, the author — taking no small degree of poetic license — cites all of post-medieval western history as evidence of the inescapable advance of democracy. Tocqueville notes, “In perusing the pages of our history, we shall scarcely meet with a single great event, in the lapse of seven hundred years, which has not turned to the advantage of equality” (Tocqueville 6). The chief aim, then, of Tocqueville’s analysis of American democracy is, as Mill describes, “not to determine whether democracy shall come, but how to make the best of it when it does come” (Mill 1835 *Review* 50).

“NO FASCIST OBAMACARE,” SHE SCREAMS WITH WILD ANGER INTO EACH PASSING CAMERA.



shouts at a woman during a town hall meeting in Massachusetts, “Ma’am, trying to have a conversation with you would be like trying to argue with a dining room table; I have no interest in doing it.”

What is the significance of memorable, often

disturbing images like these from the healthcare town hall meetings of the summer of 2009? Two conflicting narratives have emerged in the media. Conservative pundits claim that the town hall demonstrators represented democracy in action, that we were witnessing genuine American patriots rising up to prevent an unnecessary, even tyrannical, expansion of government power. Left-leaning commentators assert that the protests were the result of a well-financed campaign of misinformation orchestrated by insurance companies to protect profits, and by right-wing politicians seeking to regain power by stoking the darkest fears of their

It is toward the same ends then that Mill engages his acute capacities as a logician in the 1835 review and lays out the themes of the *Démocratie* with a swordlike precision that almost transcends Tocqueville's own style (Brougan 291). Thus, it is notable that, early in the review, Mill gives special attention to Tocqueville's observation that "the light of intelligence" inevitably spreads with the march of equality. In support of Tocqueville's thesis, Mill points to the rapid increase in literacy rates in Western Europe during the mid-nineteenth century. However, Mill notes that literacy alone does not actually guarantee the development of political wisdom. In fact, he goes farther, suggesting that a proliferation of literacy without a corresponding growth in the development of a sense of civic obligation and public-spiritedness can be downright dangerous. He notes:

Reading is power: not only because it is knowledge, but still more because it is a means of communication—because, by aid of it, not only do opinions and feelings spread to the multitude; which of itself suffices, if they continue to be held, to ensure their speedy predominance. The many, for the first time, have now learned the lesson, which, once learned, is never forgotten—that their strength, when they choose to exert it, is invincible (*Review* 51).

Here, Mill acknowledges that the advance of literacy greatly enhances the power of the people. Yet he writes nothing about such power being advantageous to good government in and of itself. Literacy, like democracy, has a contingent value for Mill. It is a tool that can be used either toward productive or destructive ends.

A similar thesis is explored in detail in Robert Darnton's book *The Literary Underground of the Old Regime*, 1982. In this groundbreaking work, Darnton explores the cultural and political impact of the large number of ambitious writers who crowded into Paris in the eighteenth century seeking fame and fortune. Finding themselves shut out of *L'Académie française*, these writers both vented their frustrations and discovered a way to earn a living by creating in an illicit literature of vitriolic pamphlets, *libelles*, and *chroniques scandaleuses*. According to Darnton, the manner in which these "Rousseaus of the gutter" desecrated everything sacred in the social order of the *Ancien Régime* contributed greatly not only to its fall, but also to the frenetic tenor of civic discourse in revolutionary France that gave rise to political extremism.

Striking parallels can be found between the situation that Mill identifies and Darnton illustrates and the current state of affairs in the United States. Analogous to the rise of literacy skills and the proliferation of publishing methods in the eighteenth and nineteenth centuries is the so-called democratization of media today. With an explosive growth in the number of cable and satellite channels over the past two decades, editorial control of television and radio news programming is no longer exclusively held by an oligarchy of trained journalists and educated elites. At the same time, the ability of ordinary people to find enormous audiences for their views and opinions online has eliminated the need to engage a publishing company to broadly disseminate even extreme forms of political ideology. Like-minded individuals, who were perhaps formerly dispersed broadly throughout society, are now able to find each other, harden a common world view, and organize for political action without ever leaving their homes or actually engaging in face-to-face conversations with members of the community who espouse differing views.

Ultimately, like democracy and literacy, these new, unusually powerful communication tools have neither a positive nor a negative value in and of themselves. Rather, it is the ends to which these tools are used that matters. And, just as Tocqueville and Mill recognized that the most practical question was not whether more democracy *would* come, but rather how to make the best of it when it *did* come, it is now critical to focus keen attention on how the increased democracy of a new media environment will not be "abandoned to its untutored instincts" or allowed "to grow up like those outcasts who receive their education in the public streets" (Tocqueville 8). In the same way that the rise of literacy created an urgent need for the development of effective civics education in the nineteenth century, the advent of a new media landscape has created one now. Then as now, the instrument through which political wisdom is imparted must, as Tocqueville so beautifully expressed, "educate the democracy. . . reanimate its faith, if that be possible. . . purify its morals. . . regulate its energies. . . substitute for its inexperience a knowledge of business, and for its blind instincts an acquaintance with its true interests" (8).

#### A RETURN TO THE FOUNTAINHEAD OF DEMOCRACY

Given the enormity of the responsibilities placed on such an instrument, one might expect that it would

need to be massive and complex, if it could exist at all. Yet, surprisingly, Tocqueville found this critical educational apparatus in the small and unassuming structure of the New England townships in America. Of the many profound insights that Tocqueville puts forward in *Democracy in America* about the effects of social equality on the human psyche or the American democratic system of government, Mill contends that his assessment of role of civic participation in local townships is, by far, the most important. Mill notes:

In no one point has M. de Tocqueville rendered a greater service to the . . . public, than by giving them their first information of. . . some of the most important parts of the American constitution. We allude particularly to the municipal institutions, which, as our author shows. . . are the fountain-head of democracy, and one of the principle causes of all that is valuable in its influences (*Review* 58).

Mill's review distills Tocqueville's lengthy descriptions of the workings of municipal institutions in New England townships into the following principles. First, that the country is divided into small districts or townships that contain, on average, between two to three thousand inhabitants. Second, that management of the local affairs of the township are kept within the complete control of the people of the township itself except, very notably, for all judicial business. Third, that the people themselves, convened in general assembly, vote all local taxes and decide new local undertakings. And finally, that the execution of local business is administered by a variety of paid local officers who are elected annually by the people of the township (*Review* 58).

Tocqueville and Mill contend that the most productive feature of this structure is that it engages the greatest possible number of people in working toward the commonweal. Each individual is continually reminded of his obligations to, and connections with, his fellow citizens in the fulfillment of routine, even mundane, civic duties. Mill applauds Tocqueville's assertion that local democracy is the school as well as the safety valve of democracy in the nation, the means of training people to the good use of power (63). While acknowledging that the importance of providing civic instruction in an academic setting is also great, Mill—in a somewhat surprising lockstep promotion of standard Victorian orthodoxy—asserts, "What really constitutes education is the formation of habits." Mill then goes

on to note, "As we do not learn to read or write, to ride or swim, by being merely told how to do it, but by doing it, so it is only by practising government on a local scale, that people will ever learn how to exercise it on a larger" (63).

Mill's final point here is critical. Both men strongly believed that an important feature of the New England township structure is that its influence is strictly limited to local matters, but that its

freedom within that sphere is unrestrained. They believe that periodic failures of the citizens of a township to effectively address the needs of their community are inevitable. In the long run, however, they contend that such failures help individual citizens to develop an ever more sophisticated understanding of government administration. The most important outcome of this process then, particularly for Mill, is that it ultimately improves the prospects that an effective, temperate, and stable representative government can coexist with universal suffrage on a national scale. That is, both men believe that active, ongoing engagement in

municipal affairs helps the electorate to discern the most important qualities to take into account when electing national representatives, and to develop an enlightened appreciation of the challenges and complexities that these representatives must navigate to properly govern a pluralistic society. In a lengthy passage that Mill highlights in his review, Tocqueville asserts that, in tending to local duties, individuals who are annually elected as officers of a township "acquire a taste for order," and come to "comprehend the mutual play of concurrent authorities" in determining affairs. They develop, according to Tocqueville, "clear, practical notions of the nature of. . . the duties. . . and the extent of rights" of elected representatives in a democratic society (*Review* 19). Mill tags this particular function of the township as an invaluable tool through which its citizens come to appreciate and promote what he calls "true democracy."

**MILL SUGGESTS THAT A PROLIERATION OF LITERACY WITHOUT A CORRESPONDING GROWTH IN CIVIC OBLIGATION AND PUBLIC-SPIRITEDNESS CAN BE DOWNRIGHT DANGEROUS.**



## TRUE AND FALSE DEMOCRACY – REPRESENTATION V. DELEGATION

In *Considerations on Representative Government*, Mill asserts that the greatest danger in a democracy is that its electorate will mistake representation for delegation. In Mill's "true democracy" representatives are elected based on their political skills and superior knowledge of the processes of good government. Once selected by the people, Mill believes that these representatives must then be permitted to use their own best judgment as they participate in the development of public policies and legislation. In a "false democracy" the people mistake their elected representative as a mere delegate who is obligated to do the bidding of the majority, or of the loudest or angriest faction of the minority at any given moment. False democracy quickly devolves into mob rule.<sup>6</sup> By contrast, a rational democracy or a "true democracy" is one in which the people have the security for good government. They can vote to replace representatives who prove to be untrustworthy or incompetent at election time. Yet the passions of the majority are not permitted to directly rule the nation in the heat of the moment.

Mill believes that widely distributing opportunities among the citizenry to serve as elected officers in their local communities not only increases the pool of qualified potential national representatives, but also encourages a respect for the notion that good government requires calm, careful deliberation in an environment that is protected from the threats posed by the most vitriolic or reactionary elements in society. The manner in which virtually every principle and goal of Mill's "true democracy" was cast aside during the healthcare town hall meetings of 2009 is striking, and his prediction of the likely outcome of doing so has proven rather insightful.

## PUBLIC SPIRIT DEFUSED THROUGHOUT THE COMMUNITY OR A RETURN TO A RUDE AGE?

Finally, however, in perhaps their weakest claim, Mill and Tocqueville contend that local free institutions inspire an inclusive public-spiritedness in the community and elevate the level of public discourse. Insofar as local affairs in a township may be accomplished exclusively by building a degree of consensus among members of the community, the two men believe that civility is likely to flourish. In the review, Mill highlights Tocqueville's insight that,

In the township. . . in the centre of the ordinary relations of life, become concentrated the desire of public esteem, the thirst for the exercise of influence, and the taste for authority and popularity; and the passions which commonly embroil society, change their character when they find a vent so near the domestic hearth and the family circle" (*Review* 57).

Here, Tocqueville gestures toward the notion that the township structure encourages a manner of conduct that contains an awareness of the potential long-term impact of one's actions. That is, individuals may be less inclined to treat those with minority opinions "brutishly" if they believe that they might find themselves in similar circumstances at some point in the future.

Yet while the outcome that Tocqueville describes is, of course, both possible and desirable, history has repeatedly demonstrated that is most certainly not inevitable. One need only call to mind images of the National Guard escorting African-American students into segregated schools in the American South during the 1950s and 1960s to recognize that Mill and Tocqueville greatly underestimated the potential dangers of unrestrained localism to the rights of minorities. In fact, it is important to acknowledge that, even in New England, local democracy may never have actually fulfilled the myriad utopian aims that the two political philosophers claimed it did with any degree of consistency. But advocates for democratic reforms in the nineteenth century, like Mill and Tocqueville, often looked to America to demonstrate the virtues of democracy, and abundant praise of the United States became their orthodox practice (Brady xviii).

It is not the intension of this essay to uncritically advocate for a wholesale nationwide adoption of the New England township structure as such. The tremendous growth of the U.S. population and the significant migration from rural areas to densely populated urban centers renders such an effort impracticable. Rather, the aim is to isolate and acknowledge that the practical civic education that Mill and Tocqueville identified as being a critical original function of town meetings in New England is now increasingly absent not only from more recent town hall gatherings, but also from the American political landscape in general. While a number of municipalities in New England continue to rely on traditionally structured town hall meetings to determine matters

of local government, according to a poll posted online by the Vermont Secretary of State, only 7.2 percent of the state's population voted in them in 2009 (Perkins 2). In much of the rest of the country, open deliberative municipal bodies do not exist at all. At the same time political strategists, looking to rally support for candidates or causes, regularly appropriate the town meeting concept to infuse campaign events with the aroma of an authentic American democratic tradition. Yet, the aim and purpose of these staged events is entirely devoid of the "one man, one vote" structure that made them productive vehicles for the genuine advance of civic literacy and a healthy democracy. Ultimately then, in an environment of ever decreasing civic responsibility, the unruly and belligerent town hall meetings of the summer of 2009 looked remarkably like what Mill and Tocqueville predicted would arise if democracy was "abandoned to its untutored instincts" (Tocqueville Ch. 1).

Studying the work of these two prescient political philosophers should therefore instill a sense of urgency and purpose into efforts that develop increased opportunities for broad-based civic obligation and widely distributed ownership of local affairs. Where, given the size of the population, the township structure itself is no longer feasible, neighborhood associations must be strengthened. Broader engagement in the management and oversight of community improving nonprofit organizations must also be encouraged at all levels of society. Once lost, the kind of rational productive civic discourse and practical knowledge of the best and highest use of individual freedom, which Mill and Tocqueville so eloquently described, is not easily restored. Rather, it is only through sustained and active civic involvement in the mundane affairs of local administration that Americans will recognize through experience that, as tempting as it may be to shout someone down, real life never cuts to a commercial break, and there may come a time when simply changing the channel is no longer an option.

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## NOTES

<sup>1</sup>A Jacobin, in the context of the French Revolution, was a member of the Jacobin Club (1789–1794). At that time, the term was popularly applied to all promulgators of revolutionary opinions.

<sup>2</sup>The argument made by Glenn Beck, a popular self-proclaimed right-wing extremist, on his July 23, 2009 television program, *Glenn Beck*, claiming that healthcare reform is part of the President's larger agenda to secure reparations for slavery for African-Americans through the authority of the Federal Government, lends credibility to the claim that the anti-healthcare demonstrations were not entirely without a racial element.

<sup>3</sup>According to the *Los Angeles Times*, Mr. Beck's television audience swelled to more than 2.5 million average daily viewers in the final weeks of July 2009. *Glenn Beck* ranked third among "cable news network" programming during the period, trailing two other conservative Fox News programs, *Bill O'Reilly* and *The Sean Hannity Show*. Two programs hosted by stalwart liberal commentators, *Rachel Maddow Show* and *Countdown with Keith Olbermann*, also ranked among the top ten cable news programs. Mr. Beck's book, *Glenn Beck's Common Sense: The Case Against An Out-Of-Control Government, Inspired By Thomas Paine*, was the top-selling book in the United States in the adult, non-fiction category during the week of August 17-23, 2009 (Nielsen Media Research).

<sup>4</sup>According to Richard Reeves's recent biography, *John Stuart Mill: Victorian Firebrand*, Tocqueville was so impressed with Mill's review that he bound a copy into his own edition of the book. "Of all the articles written on my book," he wrote to Mill, "yours is the only one whose author has made himself completely master of my thought" (Reeves 113).

<sup>5</sup>Mill explicitly credits Tocqueville as the originator of his theory of decentralization in representative government in his autobiography. "A...subject on which I...derived great benefit from the study of Tocqueville, was the fundamental question of Centralization" (Reeves 134).

<sup>6</sup>In this review, Mill refers readers to his more detailed treatment of this issue in his review of *The Rationale of Political Representation* by Samuel Bailey. He explores the matter further in "Considerations on Representative Government."

## FREEFALL

by Robert Brown

Above upon the naked bridge  
With arms outstretched  
To embrace the world  
He sings the swan's song

Suddenly in flight  
He dives—  
A wingéd shadow—  
To the pool below

The sharp slap on water  
Startles  
A drowsing dragonet

She flits on wings of cellophane  
To inspect the barren bridge

Accusing cattails seem to point and stare  
But there is no one there

You are free,  
Once captive kamikaze  
Finally—  
So divinely—

free

*The very essence of civilized culture is that we... deliberately institute, in advance of the happening of various contingencies and emergencies of life, devices for detecting their approach and registering their nature, for warding off what is unfavorable, or at least for protecting ourselves from its full impact. (Dewey 16)*

## EARLY EARTHQUAKE POLITICS IN CALIFORNIA: LESSONS FOR TODAY

by Clay Hamilton

How should society balance potential hazards identified by science with the very real costs of mitigation? The debate over this question rages in areas such as environmental carcinogens, chemical contamination of groundwater, and man-made climate change. At the center of these confrontations lies the issue of scientific uncertainty, with those on one side of a proposed regulation claiming scientific justification for action, while the opposition points to competing research or potential errors in the science. These kinds of political battles have largely been avoided, however, in the mitigation of seismic hazards. California, for instance, has developed one of the world's most advanced seismic safety codes to guard against potential earthquake threats despite the financial burden. Government, businesses, and individuals largely met this challenge without serious argument even though the prediction of risk is based on uncertain scientific models.

California was only able to start developing its regulatory apparatus after a severe earthquake in the 1930s ended a political impasse caused by a heated debate between scientists and lobbyists. This dispute had all the rhetorical arguments of modern debates: that the predictive science was uncertain and ambiguous, that imposing regulation was a hindrance to the economy, that raising awareness of the risk was politically motivated, and that the fear of risk was a greater problem than the risk itself. None of the stakeholders in the dispute acted with complete integrity. Each manipulated and

misrepresented information to advance their particular position; they felt justified in doing so based on their knowledge of the situation. In the end, careers were ruined. By examining these dynamics in the historic beginnings of California's seismic safety codes, this article attempts to better understand how science becomes politicized. It looks for explanation not in the scientific process, but in how different values-based positions often use science to confuse rather than solve disputes. Society, therefore, can better understand how knowledge is generated and determine how that knowledge should be used.

Los Angeles in the 1920s was growing at a phenomenal rate. The petroleum industry was booming, Los Angeles aqueduct water was transforming the desert into an agricultural paradise, filmmaking had exploded as an economic force, tourists were flocking to Hollywood, and the financing of new industry and construction was making Los Angeles a powerful banking center (Starr Ch.4-5). Historian Kevin Starr claims that at the beginning of the decade, Los Angeles was gaining 100,000 new residents each year and grew from 576,673 to 1,470,516 residents by 1930 (69).

Such a large increase in population created a real estate boom, but to prevent the boom from going bust, Los Angeles needed to keep new residents, businesses, and money rolling in. This was accomplished by promoting the city through boosters, who took self invention and claims of civic virtuosity to new heights in their marketing



SAN FRANCISCO CITY HALL AFTER 1906 EARTHQUAKE

materials. As Starr writes, "boosterism constituted a fixed creed, a local rite, sweeping away in its inexorable rush of rhetoric any doubts whatsoever that. . . Los Angeles, California, was on the cutting edge of American experience" (100).

NONE OF THE STAKEHOLDERS IN THE DISPUTE ACTED WITH COMPLETE INTEGRITY.

The last thing these boosters wanted was for someone to publicize the danger of earthquakes. It was in this atmosphere that Professor Bailey Willis, chair of Stanford University's geology department, began calling on southern Californians to heed the threat to life and property posed by earthquakes.

California boosters had been denying the threat of earthquakes ever since San Francisco was destroyed by fire following a temblor in 1906. At that time, panic selling of California stocks broke out on Wall Street, severely impacting businesses at an already bad time. To combat this problem, business promoters used popular news and magazine releases to portray the catastrophe solely in terms of fire. The technique was extremely effective in re-establishing California as a safe place for business, but diverted public attention away from the need to mitigate the earthquake hazard.

Bailey Willis was opposed to taking such a narrow view of the hazards Californians faced. To combat the boosters' willful ignorance, he publicly stressed the need to learn from past experience and safeguard against future threats by enacting better building codes, writing, "The only safeguard against the forces of nature, whether they be lightening strokes or earth tremors, is *understanding*" (89). Willis became more vocal about the need to enact seismically safe codes after a federal mapping survey in 1922 calculated that the southern section of the San Andreas fault had deformed by as much as twenty-four feet in forty years. Since the region had not experienced a major temblor in more than a century, a large earthquake seemed imminent.

On June 29, 1925, a magnitude 6.3 quake struck Santa Barbara, the largest temblor to strike an urban area in California since 1906. Boosters immediately started downplaying the hazard. One group, the Southern California Forward Movement, sent out a widely circulated press release, stating that more people had been killed in the Midwest by tornadoes than had been killed by earthquakes in California. The release went on to urge a "truth-telling campaign" that would support claims that there was no real danger from earthquakes in California (Geschwind 77).

The arguments advanced were remarkably similar to those made by boosters after the 1906 earthquake: earthquakes are of little consequence because they don't cause as many deaths as other natural disasters; occurrences of catastrophic building failure are small and therefore acceptable; fear of earthquakes

is a greater problem than the actual earthquake; and drawing attention to seismic hazards is politically motivated.

Willis happened to be near Santa Barbara when the quake struck. His presence, along with his earlier warnings of earthquake danger, led some newspapers to claim that he had predicted the earthquake (*LA Times* June 30, 1925:3). Willis never corrected this mistaken impression but played off the notoriety to issue an Associated Press release calling for better building practices (Geschwind 87).

He also became increasingly dire in his warnings of an imminent earthquake. In early November 1925, he was misquoted in the *New York Times* and *Time* magazine:

**PROF. WILLIS PREDICTS LOS ANGELES TREMORS**

Los Angeles. . . will experience a severe earthquake, probably more violent than that at San Francisco in 1906, in from one to ten years. Dr. Bailey Willis. . . stated three years ago that Santa Barbara would feel severe earth tremors, a prophecy that was fulfilled in the past Summer. (*Time* 16 Nov. 1925)

This prediction was printed in a variety of publications, but again Willis did nothing to refute the misquotation. In fact, he stood behind it. As he explained to an area businessman:

Inasmuch as we are ignorant of the gathering forces [behind earthquakes], it is impossible to predict the time at which the [fault] may yield. But it has seemed wise to me to warn business interests that such a yielding may reasonably be expected within ten years and may not be postponed beyond three. (Willis letter)

Perhaps the intent was altruistic, but Willis's prediction relied on qualitative and incomplete evidence. Though he thought the mapping survey's calculations and the scientific theoretical framework provided a valid model

of earth movement, he failed to define or communicate the uncertainty of the data. The above quote clearly shows that he placed a higher importance on his personal agenda. Due to this overreaching, Willis opened himself up to attack. In 1927, the Board of Fire Underwriters, who had aggressively pushed earthquake insurance after the 1925 quake, grew concerned and solicited opinions from other geologists. Though not all agreed with Willis, the majority view was that Southern California was overdue for a large quake (Geschwind 87). In response, insurance companies significantly raised insurance premiums, in some cases as much as tenfold.

The business community was outraged. One booster, a trustee of the California Institute of Technology, threatened Caltech's director when he discovered two of its researchers were about to publicly support Willis:

I wonder if you have any idea how much damage this loose talk of these two men is doing to the [property] values in Southern California. . . [If you] cannot stop their talk about the earthquake problem I for one am going to see what I can do about stopping the whole seismological game. (Robinson Letter)

The Building Owners and Managers Association (BOMA), a real estate lobby group, was particularly angered by the Willis prediction. The president of the Association, A.L. Lathrop, said in a December 1927 speech:

A reputation for seismicity, once established, may never be overcome; and our whole economic structure is predicated upon a continuance of growth. The enormous drain of our present premiums, and their probable increase, is not only destructive of development, but of our present prosperity (Lathrop 1)

BOMA needed to produce an opponent who could silence Willis; they found a Texas geologist working in the L.A. area named Robert Hill. Robert Hill had known and disliked Willis since working with him in the late 1800s. He disapproved of Willis's prediction and, at the urging of C.A. Copper, the executive secretary of BOMA, announced his skepticism in a July 1927

speech, saying, "there is not a thread of evidence on which to hang a prophecy of an earthquake in this district" (*LA Times* 14 July 1927). Throughout this speech, Hill touched on the uncertainties surrounding Willis's warnings and concluded by asking "Why should Bailey Willis'[s] theoretical fear therefore upset the whole psychology and business structure of southern California?" (Marion letter)

Shortly after this speech, C.A. Copper asked Hill if he would investigate, on behalf of BOMA, Willis's "sinister predictions" and "seek data to controvert Dr. Willis' statements and offset them." (Hill 6) Hill had already done a substantial amount of unpublished work on Southern California geology, so was only too happy to comply.

Hill discovered that the mapping survey, though known for its accuracy, had made a small mathematical error that had affected subsequent calculations. The measurements of offset along the San Andreas fault were therefore being revised from twenty-four feet to four feet (Hill 55-62). This was the information Hill had been hoping for. "The good

name of Los Angeles has been deeply hurt by others who have used an error of scientific statement as the foundation for the propagation of sensational alarms," Hill proclaimed in a December 1927 speech (Lathrop 3). While he admitted that mitigation efforts should continue, he went on to claim that the risks were being exaggerated. Hill concluded:

I say let us welcome every light of scientific truth and publicity that can be thrown upon this question. . . but until the accurate data which they are seeking and which will require years to procure are obtained, let us give no heed to prophecies of disaster, for they have no scientific foundation whatsoever. (Lathrop 9)

The speech was a tremendous success and area newspapers reported Hill had declared the area safe from temblors (*LA Times* 2 Dec. 1927: A11).

Meanwhile, BOMA kept up the public relations campaign against Willis through a series of newspaper and magazine articles. A society weekly, for instance, printed selections of Hill's December 1 speech and claimed Willis's earthquake prediction was "the



PROF. BAILEY WILLIS, STANFORD UNIVERSITY

incondite ravings of a mischief maker" (*Time* 27 Feb. 1928). The centerpiece of BOMA's attack, Hill's book, was released on April 16, 1928. Emblazoned across the front cover was a blurb that made the book's purpose clear:

This book completely refutes the predictions of Professor Bailey Willis that Los Angeles is about to be destroyed by earthquakes. It proves that this area is not only free from a probability of severe seismic disturbances but has the least to fear from 'Acts of God' of any city under the American flag. (Hill cover)

The cover prominently listed the publisher as the Southern California Academy of Sciences, who had agreed to sponsor the book.

dissatisfied with Willis's overblown prophecies and his outreach efforts in general. In response to this pressure, Willis had stepped down as SSA president in 1927. By the 1930s, he had left the SSA's board of directors and withdrawn almost entirely from seismological research. By relying on increasingly dramatic statements to get his message out, Willis had fallen prey to misrepresenting science to advance a personal agenda. Moreover, by communicating uncertain data as facts, he gave adversaries a rationale for not undertaking any of the measures proposed, despite scientific consensus to the contrary. This dealt a real blow to the earthquake awareness campaign.

Willis wasn't the only one who suffered from the political machinations of BOMA. In a surprising

twist, Hill's book had actually been sent to the printer while Hill was away. Copper had meanwhile made substantial changes to Hill's text to slander Willis and to promote the idea that there was no danger of earthquakes in Los Angeles (Hill 51). On his return, Hill read the book and was aghast:

I charge that the text of my book . . . was so mutilated by changes of meaning . . . that instead of being a credit to me when published, it was a source of humiliation and disgrace . . . What [Copper] has made me say by his unauthorized changes in my text concerning the "geological security" of Los Angeles from earthquake disorder is absurd, damaging, and untrue. Not a scientific man in America would have said it or will approve of it. (Hill 72)

There was little Hill could do. He tried to print retractions in the *Los Angeles Times*, but was prevented from doing so (Hill 3). He tried to limit the damage from reviewers like William Davis. Nevertheless, it was painfully obvious that his reputation as a scientist was badly damaged (70). Although he drew up a list of indictments, the case of Hill vs. BOMA apparently never went to court, nor did Hill receive any money (Alexander 251). He left Los Angeles a short time later.

If Willis was guilty of parading issue advocacy as accepted science, Hill was guilty of overstating his skepticism. While he never denied that Southern California was subject to earthquakes, he came very close to saying exactly that in his speeches and the

unaltered sections of his book. Hill knew at an early stage that his statements were being manipulated in the press, yet he did little to reverse this misrepresentation (Hill 72). His legitimate scientific skepticism, therefore, became a tool of denial in the hands of an industry attempting to market a message of "no proof." For their part, BOMA used science as a public relations tool to achieve short-term financial goals. They didn't just exploit scientific uncertainties, they created them by trying to convince the public that there was no danger from earthquakes. Furthermore, they promulgated an idea that Willis's message was politically

motivated and was intended to negatively affect Southern California's economy. Although BOMA could have worked directly with the insurance industry to reduce rates, they instead politicized an existing scientific dispute, marketed the controversy to the public, and ruined careers through manipulation and trickery.

In 1933, an earthquake of 6.4 magnitude struck near the Long Beach area. The quake was the same intensity as the Santa Barbara quake, but it caused much more destruction. Public schools were hit particularly hard and the potential danger to children caused the public to demand action. Since seismologists and engineers had by then researched safe building techniques and gained preliminary legislative experience after the 1925 quake, they were able to effectively inform policy. A month after the 1933 quake, legislators introduced the Field Act, which required seismically safe building techniques for schools, not just in Los Angeles, but throughout California. This act started California on its path towards developing one of the most advanced seismic safety techniques in the world (Olson 115). Although the outcome of the Long Beach quake had proven Willis correct, it could not repair the damage done to his reputation. Today, he remains a minor figure in the history of seismology.

Missing from the story is the involvement of political leaders. It seems remarkable that after the 1906 San Francisco earthquake, it took state legislators twenty-seven years and two major earthquakes to take further action on safeguarding the population. During that quarter-century, lawmakers should have been developing the groundwork to mitigate seismic hazards. Instead, that task was left to the grassroots efforts of Willis and the professional groups. With no social context providing

guidance on how knowledge and predictions should be used, the BOMA/Willis dispute was only capable of becoming exacerbated as each side tried to use science to prove its respective values-based position. Once government became involved in establishing how to use knowledge generated by seismologists, the public confrontations lessened and were replaced with negotiation and consensus building. One can only hope that the same approach can be used in modern disputes over other regulatory sciences.

## IT TOOK STATE LEGISLATORS TWENTY-SEVEN YEARS AND TWO MAJOR EARTHQUAKES TO TAKE FURTHER ACTIONS ON SAFEGUARDING THE POPULATION.

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WITH THE GROWING PRESENCE OF MUSLIMS IN WESTERN SOCIETIES,<sup>1</sup> both Muslim and non-Muslim scholars have increasingly called into question modern liberal concepts of legal uniformity and the strict separation of church and state when discussing the attitude of the modern secular state towards the rights of religious minorities. Controversies typically arise on a host of issues, such as the wearing of head scarves in public schools in France<sup>2</sup> and Germany,<sup>3</sup> conflicts around the building of mosques in Germany,<sup>4</sup> minarets in Switzerland, and state funding for religious schools in England and France.<sup>5</sup> Another hotly contested issue is the introduction of certain aspects of *Shari'a* law and the formal recognition of *Shari'a* courts or councils into the legal system of Western countries.

*Shari'a* law is the custom-based body of Islamic law based on the Qu'ran, the Sunnah, and a legal tradition established over time by Islamic scholars and lawyers. It exists independently of its enactment in a particular Islamic country. Although the word *Shari'a* is often associated in the West with harsh and cruel punishments in criminal law and discrimination against women's rights, this debate is by no means confined to fundamentalist-oriented Muslim activist circles. Such renowned scholars as Rowan Williams, Archbishop of Canterbury, and Tariq Ramadan, a leading Muslim academic and theologian in Britain, have recently contributed to the debate. In a lecture<sup>6</sup> given at the Royal Courts of Justice in 2008, the Archbishop of Canterbury examined the limits of a



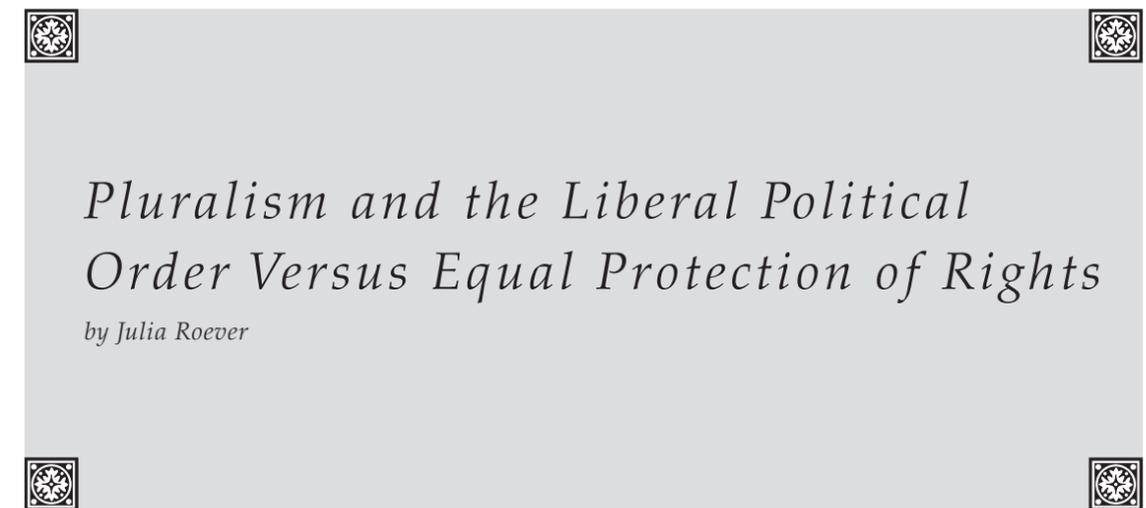
secular unitary legal system in terms of the accommodation of religious minorities and their deeply entrenched legal and moral codes.<sup>7</sup> While the Archbishop called for the greater consideration of Islamic law in the English legal system, he was careful to stress that there are "broader issues around the rights of religious groups within a secular state." He proposed,

"... a scheme in which individuals retain the liberty to choose the jurisdiction under which they seek to resolve certain carefully specified matters. This may include aspects of marital law, the regulation of financial transactions and authorized structures of mediation and conflict resolution."<sup>8</sup>

In a BBC interview on the same day,<sup>9</sup> the Archbishop observed that the application of *Shari'a* law seemed "unavoidable," a remark that sparked a fevered debate in the British media over the following weeks and months,<sup>10</sup> particularly after it was revealed that the British Muslim community had in fact, for some time, been using existing provisions within the British legal system to set up arbitration tribunals to engage in legally binding arbitration.<sup>11</sup> It should be noted that Muslims in the United Kingdom had not agitated for the recognition of *Shari'a* within the English legal system.<sup>12</sup> Nevertheless, the arguments presented in the Archbishop's lecture touch on profound issues regarding the tensions that occur in the liberal secular state when it aims to balance the idea of a uniform legal system based on the principle of equality with the rights of its citizens to autonomy and religious freedom in a multicultural society. From the perspective of a liberal secular order, the recognition of legal pluralism, particularly in family law, is not without its genuine risks: the rules of Islamic family law, as well as the rules and traditions of other sub-communities within a liberal polity, are not always substantively equivalent to the generally applicable rules of civil law. Any system of legal pluralism within a liberal polity, therefore, must establish institutional mechanisms to ensure that legal pluralism does not become a tool to deprive individuals of their rights as citizens.<sup>13</sup> Using the legal system of the United Kingdom as an example, an analysis of the current legal

parameters of British law with regards to arbitration and extra-judicial conflict resolution shows that there are practical ways to reconcile the two principles—a uniform legal system to ensure equal protection of rights and legal pluralism as an expression of individuals' freedom of choice—without sacrificing citizens' fundamental rights.

Much of the discussion both in Britain and in Canada, where a similar debate<sup>14</sup> surrounding the voluntary use of *Shari'a* arbitration occurred in 2005, has centered on the idea that there should be just one, a secular legal system, with binding rules and equal protection of rights for all citizens, and not a parallel legal system that allows individuals to "opt out" of the prevalent legal order. The idea of a uniform legal system for all is based on the principle of equality, and is usually brought into the debate with the notion that laws should be made and changed using the democratic process.<sup>15</sup> The legitimate concern in this context is that by allowing groups of individuals to make use of an alternate set of rules, members within that group might be deprived of fundamental rights guaranteed to them by the prevalent legal system, the "law of the land." Such issues as forced or underage marriages and violations of gender equality under religious laws fall into this category. While the principle of equality forms a strong foundation for the modern liberal state, it has to be balanced with the equally strong principle of individual freedom. Western liberal societies are based on the notion that civil liberties upon which

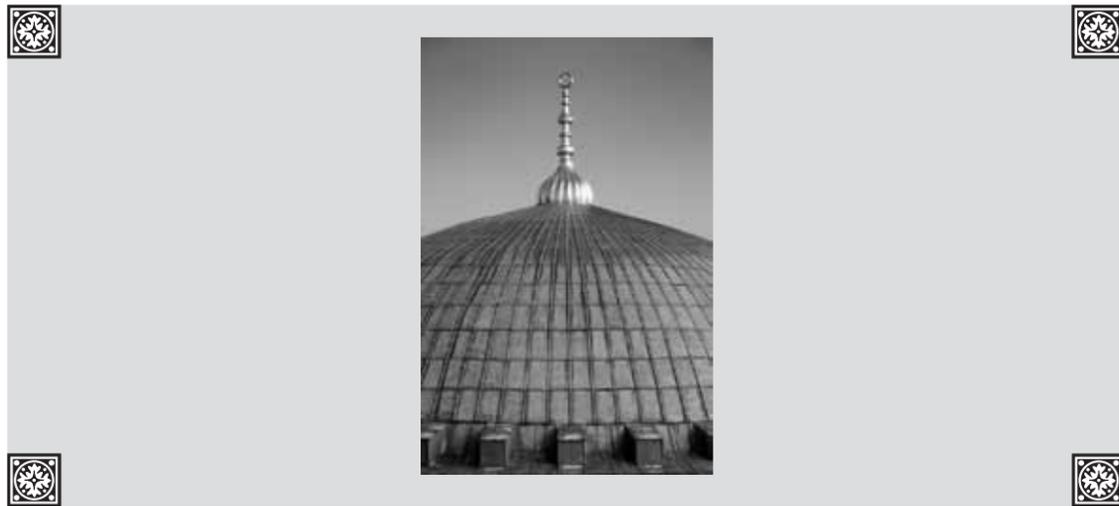


the state cannot encroach do exist and that individuals are, in principle, free to pursue their self-interest as long as they do no harm to others.<sup>16</sup> This interpretation of freedom as freedom from interference finds its expression in the ideas of individual autonomy and religious freedom. Political Liberalism does not attempt to regulate every aspect of citizens' lives based on the majority's interpretation of concepts like human rights and (gender) equality, but instead allows, within certain limits, a space for individuals to regulate their affairs according to moral or religious codes, some of which might contain rules less liberal and equal than the law of the land.

One specific manifestation of individual autonomy as understood here is the fact that most Western societies allow their citizens some freedom of choice when it comes to the resolution of legal disputes by offering an avenue that is different from the state's judicial system: the option to turn instead to an arbitration tribunal.<sup>17</sup> Arbitration not only includes the choice of an extra-judicial tribunal, but also the ability to choose freely the rules that should be applied to resolve the dispute through so-called choice of law clauses. It is therefore widely accepted that in principle two private parties entering into a contract that involves, for example, the purchase of goods, a credit, or another business transaction, can subject the resolution of any disputes arising from that contract to the legally binding decision of an arbitration tribunal and, in addition, choose the legal system (e.g., "This contract shall be governed by German Law") that governs the contract.<sup>18</sup> With regards to the use of *Shari'a* law in arbitration, it is important to keep in mind that most western legal systems already recognize a choice of a law clause that refers to sets of rules that exist independently from a national legal system, such as "principles of practical business" or "internationally accepted principles of law governing contracts." Therefore, the incorporation of *Shari'a* law, the body of Islamic religious law that exists independently of its enactment in any particular state, into a contract through a choice of law clause cannot be excluded on the grounds that the choice of law has to refer to the laws of a specific country.

For Britain, and most other Western countries, this means that without any changes to the existing legal system, in ordinary contractual relationships between citizens involving commercial or financial transactions, an arbitration clause referring to *Shari'a* as the legal system governing the contract is likely to be considered valid.<sup>19</sup> In fact, the Muslim Arbitration Tribunal, headquartered in London and with offices in several other cities in the United Kingdom, routinely handles commercial and debt disputes with legally binding results that can be enforced by the regular courts under the Arbitration Act.<sup>20</sup> Since *Shari'a* law differs from British law with regards to the earning of interest, the introduction of *Shari'a* into a business contract by way of an arbitration and choice of law clause allows religious Muslims to conduct business by the principles of their faith.

While *Shari'a* arbitration in the realm of contractual relationships in business and commerce between Muslims in the United Kingdom is considered relatively unproblematic, this picture changes when it comes to family law, the other area in which Muslim arbitration tribunals in Britain de facto actively handle cases on a daily basis. Since most schools of *Shari'a* law still treat women unequally to men with regards to certain aspects of marital relations and divorce, as well as certain inheritance rules,<sup>21</sup> citizens of Western liberal democracies tend to fear that the invoking of *Shari'a* arbitration in family matters would deprive Muslim women of their rights as free and equal citizens.<sup>22</sup>



Before discussing the impact and reach of legal pluralism in the domain of family law, it is important to clarify a number of misconceptions that have sometimes been brought into the debate by the media. Certain aspects of family law are not considered arbitrable, meaning these procedures cannot be subjected to arbitration and parties' choice of law. Some Western legal systems, e.g. that of the Canadian province of Québec,<sup>23</sup> exclude the entire domain of family law from arbitration and choice of law. After the *Shari'a* arbitration controversy in 2005, Ontario did as well. Other legal systems allow for some degree of arbitration in family law matters, particularly when it comes to such questions as division and maintenance of marital assets, while excluding from arbitration and choice of law issues relating to the legal status of a person, such as marriage and divorce, and issues that have a direct effect on third parties, such as children.<sup>24 25</sup> The same is generally true for the common-law countries of Britain and the United States, even though the mandatory nature of rules regarding the status of a person is not explicitly stated, but rather follows from considerations of public policy. The most common reason given for this distinction is that the state has an interest in keeping some minimum amount of control over the legal status of its citizens.<sup>26</sup> As a consequence, the notion that a Muslim woman in the United Kingdom could simply be divorced by her husband when he pronounces the word *talaq* three times<sup>27</sup> without any protection from the British legal system, is not entirely correct. In order for the divorce to be recognized by the British authorities, the Muslim couple would still need to obtain a divorce according to general British family law provisions or, if the divorce took place in a different country, obtain the legal recognition by the British courts according to British law.

What does this distinction between arbitrable and nonarbitrable matters in family law mean in practical terms, particularly since it is a fact that *Shari'a* arbitration councils do engage in Islamic divorce proceedings? With regards to the regulation of status issues such as entry into marriage and divorce, or the recognition of a marriage

that took place in a different country, as well as child custody and support, the state retains a quasi-monopoly over the regulation in the sense that it will only recognize as legally binding a procedure performed according to the state's legal system. But this does not preclude the parties from seeking an additional procedure from a religious council if they wish to do so. This is not a characteristic particular to Muslim minorities, but an established right of members of any religion. Practical examples include obtaining an annulment of marriage according to canon law from the Catholic Church following a civil divorce, or in the case of Orthodox Judaism, obtaining a Jewish divorce from the Jewish religious courts that operate legally both in the United States and in the United Kingdom.<sup>28</sup>

By the same token, all other family law matters governed by permissive rather than mandatory rules, such as the division of marital assets and post-divorce support agreements, are open to arbitration and parties' choice of law, including, as shown above, *Shari'a* law. Decisions taken by *Shari'a* councils operating under the rules of the United Kingdom's Arbitration Act, as does the Muslim Arbitration Tribunal, are legally binding and enforceable by the British courts. In practice, however, Islamic conceptions of the family are not always consistent with Western ideas about gender equality,<sup>29</sup> so that a ruling issued by a *Shari'a* court can substantially differ from the outcome if the parties had chosen to apply British law using regular British courts.<sup>30</sup> However, this does not

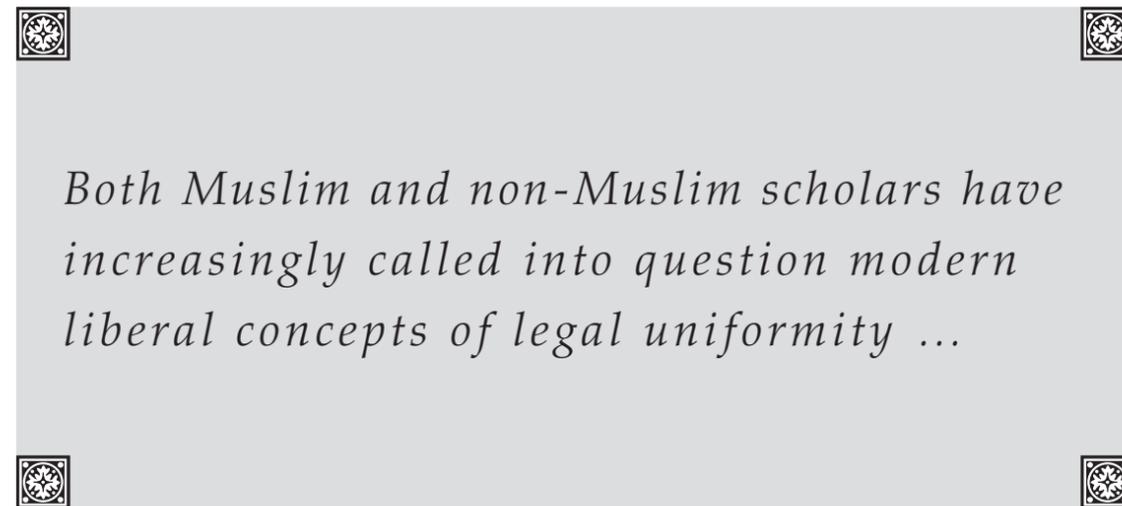
*While Shari'a arbitration in the realm of contractual relationships in business and commerce is considered relatively unproblematic, this picture changes when it comes to family law.*

mean that such decisions are necessarily invalid. In a democratic state, laws are made by a majority. There is no reason to prevent a group of individuals from voluntarily agreeing to live by a different set of rules that are not banned by the state.<sup>31</sup>

But how should the liberal state deal with the issue of individuals within a religious minority who, because of the dynamics within that group, do not have true freedom of choice with regards to the laws being applied to them? This could, for example, include women within religious minorities whose decision to opt for a different set of laws and to subject themselves to the decision of a religious tribunal rather than the judicial system provided by the country they live in, could be the result of social pressure rather than their free will. A liberal political and legal order will give effect to the autonomy of its citizens, including the autonomy of the less liberal ones, while providing enough judicial oversight to ensure that the results of such adjudication are consistent with the minimum requirements of a liberal legal order, i.e., not depriving one of the parties of his or her fundamental rights as citizens.<sup>32</sup> But protecting fundamental rights of its citizens does not require the state to ensure that the rulings of arbitration tribunals operating within religious or ethnic minorities conform to the law of the land down to the very last detail. In this context, another aspect should be kept in mind: giving religious and ethnic minorities some autonomy in regulating legal matters between group members according to values and principles of their worldview might, in the long run, have a better chance of empowering weaker individuals within these groups and thereby drawing the entire group into the liberal mainstream. Jurisdiction within these groups can then take place "out in the open," in the legal framework of officially recognized arbitration courts, which would allow the state a minimum amount of oversight, rather than driving the self-regulation of these groups underground, thereby depriving weaker individuals within the group of legal protection by the state almost entirely.

As Mohammad Fadel has shown, the successful experience of New York courts exercising indirect control of Orthodox Jewish arbitration councils by enforcing—or not—individual arbitration rulings placed before the state's courts for enforcement, can serve as a model for other pluralistic systems.<sup>33</sup> While New York's courts generally try to uphold arbitral results presented to them for enforcement, their tendency has been to review them on a case-by-case basis and strike down the ones that actually violate public policy. Two examples of cases decided by New York's courts with regards to the enforcement of Jewish arbitration council rulings illustrate what the exercise of state control over arbitration court rulings could look like in practice: A court refused to enforce an arbitrator's award where the wife was compelled to participate in the arbitration proceedings by her husband's refusal to grant her a Jewish divorce. In another case, the court refused to enforce an arbitrator's order about child custody on the grounds of violation of public policy, but upheld other parts of the arbitrator's decision.<sup>34</sup>

In conclusion, modern liberal states are faced with the task of trying to balance the principles of individual freedom and freedom of religion with the notion of a uniform legal system based on equality for all citizens. Granting groups of individuals, within certain limits, the right to forego the state's jurisdiction by turning instead to an alternate set of rules applied by a religious arbitration council gives effect to their autonomy, but



raises the issue that individuals within that group voluntarily or involuntarily are deprived of their fundamental rights as free and equal citizens. While this tension has frequently been discussed with regards to *Shari'a* arbitration, it affects all religious minorities. *Shari'a* arbitration is less problematic in business and commercial contracts, because the parties entering such contracts are usually considered to be of equal or similar status and have similar negotiating power. In family law, a distinction is to be made between mandatory and permissive rules, with only the latter being amenable to arbitration. Many Western legal systems consider matters of entering and exiting a marriage, matters that affect the rights of children and other so-called status issues as nonarbitrable or mandatory, but will allow for some freedom of choice in matters that have less to do with public policy, such as post-divorce support or the division of assets. Instead of excluding the entire domain of family law from arbitration and choice of law, as the Canadian provinces of Ontario and Québec have done, this differentiated approach does not sacrifice the principle of individual freedom and autonomy in legal matters in order to prevent all possible infringements on the rights of suppressed individuals within the subcommunity. It balances the principle of individual autonomy with an appropriate protection of the fundamental rights of individuals within ethnic or religious minorities. The British Arbitration Act already allows for such arbitration by *Shari'a* councils. By enforcing only those arbitration awards and rulings that are not in violation of public policy, the liberal state can ensure that choice of law and arbitration are not used to deprive members of the religious groups of their fundamental rights. However, the state does not have to ensure the exact conformity of arbitration decisions down to the last detail with the law of the land.

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## NOTES

<sup>1</sup> There are an estimated 2.4 Million Muslims in the UK, cf. Kerbaj, Richard, Muslim Population rising 10 times faster than rest of society. *The Times*, 30 January 2009. Available online at: <http://www.timesonline.co.uk/tol/news/uk/article5621482.ece>. Germany: over 3 mio. Muslims = 3.7 % of the population, France: 4.5 Million Muslims = 7.5 % of the population, Canada: appr. 630.000 Muslims = 1.9 %, and US: appr. 7.5 Million Muslims = 2.5 % of total population (Source: Muslim Population Statistics, based on CIA World Factbook, URL: <http://www.ilaam.net/Intl/PopStats.html> - accessed 19 July 2009).

<sup>2</sup> For details on the debate about schoolgirls wearing head scarves in France: Al Sayyad/Castells, "Muslim Europe or Euro-Islam," 2002, pp. 12-15.

<sup>3</sup> In Germany, the discussion has focused not on pupils, but on teachers. For details, cf. Fetzer/Soper, "Muslims and the State in Britain, France and Germany," 2005, p. 115.

<sup>4</sup> Hüttermann, "Konflikt um islamische Symbole in Deutschland," in: Wohlrab-Sahr/Tezcan (ed.), *Konfliktfeld Islam in Europa*, pp. 201-220; Solms-Lautbach, "In Deutschland gibt es bereits 159 Moscheen," 30 May 2007, URL: [http://www.welt.de/politik/deutschland/article907312/In\\_Deutschland\\_gibt\\_es\\_bereits\\_159\\_Moscheen.html](http://www.welt.de/politik/deutschland/article907312/In_Deutschland_gibt_es_bereits_159_Moscheen.html)

<sup>5</sup> For details of state funding in the UK see Al Sayyad/Castells, "Muslim Europe or Euro-Islam," p. 124. Klausen, *The Islamic Challenge*, p. 143; Fetzer/Soper, "Muslims and the State," 2005, p. 116. For France: Klausen, p. 144.

<sup>6</sup> "Civil and Religious Law in England." The transcript of the lecture is available online at the Archbishop of Canterbury's official website at <http://www.archbishopofcanterbury.org/1575>.

<sup>7</sup> Cf. section 2 of the lecture (previous footnote).

<sup>8</sup> Cf. previous footnote, third-last section of the lecture.

<sup>9</sup> A transcript of the interview can be found at the Archbishop's website at: <http://www.archbishopofcanterbury.org/1573>.

<sup>10</sup>For example: Petre, Church members call on Archbishop to resign, Daily Telegraph, 9 Feb. 2008; Phillips, Daily Mail, 10 Feb. 2008. Further references in Botsford, Sharia unveiled, *Law Gazette* 28 Feb. 2008; Smith, "Caesar's Palace, not Lambeth's," *New Law Journal*, 15 Feb. 2008, p. 229;

<sup>11</sup>Taher, Revealed: UK's First Official Sharia Courts, The Sunday Times, 14 Sept. 2008, online at: <http://www.timesonline.co.uk/tol/news/uk/crime/article4749183.ece>.

<sup>12</sup>Interview with Mahmud Al-Rashid, Association of Muslim Lawyers, 14 Feb. 2008. He indicated his surprise by Dr. Rowan William's decision to raise the issue now, as it is an internal debate Muslims need to have first. Cf. *The Law Gazette*, online at: <http://www.lawgazette.co.uk/news/sharia-councils-regulation-call>.

<sup>13</sup>Fadel, "Political Liberalism, Islamic Family Law and Family Law Pluralism," (2009), p. 3 of the online version, with further references.

<sup>14</sup>Bakht, "Were Muslim Barbarians really knocking on the gates of Ontario?" *Ottawa Law Review* (2005), pp. 67-82.

<sup>15</sup>Tucker, The Archbishop's unsatisfactory legal pluralism, *Public Law* (2008), pp. 463-469, 469.

<sup>16</sup>Berlin, Two Concepts of Liberty, pp. 9,17.

<sup>17</sup>For the US: Federal Arbitration Act, US Code Sec. 1 et seq. available online at: [http://www.law.cornell.edu/uscode/html/uscode09/usc\\_sup\\_01\\_9\\_10\\_1.html](http://www.law.cornell.edu/uscode/html/uscode09/usc_sup_01_9_10_1.html). For Germany: §§ 1025-1066 ZPO (German Civil Procedural Code), for the UK: Arbitration Act 1996, online at OPSI: [http://www.opsi.gov.uk/Acts/acts1996/ukpga\\_19960023\\_en\\_2#pt1-pb2-l1g6](http://www.opsi.gov.uk/Acts/acts1996/ukpga_19960023_en_2#pt1-pb2-l1g6).

<sup>18</sup>In practice, the legal systems of individual countries differ widely with regards to the subject matters that they consider arbitrable, meaning that certain types of contracts or legal procedures cannot be subjected to arbitration; e.g., the German ZPO that excludes disputes over the rent of living space from arbitration because one party of the contract is considered to be in a weaker position. In some legal systems, family law in its entirety and matters of status are excluded from arbitration, e.g. Québec's Civil Code S.Q. 1991, c. 64, art. 2639. More on this in the following paragraphs.

<sup>19</sup>British Arbitration Act 1996 (cf. fn. 16).

<sup>20</sup>Official website of the Muslim Arbitration Tribunal, URL: [http://www.matribunal.com/cases\\_commercial.html](http://www.matribunal.com/cases_commercial.html) (accessed 20 July 2009).

<sup>21</sup>For a detailed explanation of the most important areas of Muslim family law, e.g. marriage contract, divorce, maintenance, dowry, post marital support etc, and the differences in interpretation between the Hanafi and Maliki schools, see Fadel, Political Liberalism, Islamic Family Law and Family Law Pluralism, (2009), pp. 24-51 of the online version, with further references, particularly in footnote 60.

<sup>22</sup>Bakht, *Ottawa Law Review* 2005, p. 67-82, p. 1 of the online version.

<sup>23</sup>Bakht, *ibid.*, p. 3, fn. 13: S.Q. 1991, c. 64, art.2639.

<sup>24</sup>Bakht, *ibid.*, p.1.

<sup>25</sup>France's Civil Code sec. 2060 is a good example: "One may not enter into arbitration agreements in matters of status and capacity of the persons, in those relating to divorce and judicial separation or on controversies concerning public bodies and institutions and more generally in all matters in which public

policy is concerned." Brekoulakis, "On Arbitrability: Persisting Misconceptions and New Areas of Concern," p. 21, fn.11.

<sup>26</sup>This view has recently been challenged by legal scholars who have put forward proposals to give parties entering into a marriage greater choice regarding the rules governing the entry into marriage, rules governing behavior during marriage and the rules for the dissolution of marriage. Brix, "Choice of Law and Marriage: A Proposal." *Family Law Quarterly* (2002) pp. 255-271, with further references. While this libertarian view has many good arguments in its favor, discussing the introduction of such a far-reaching right of choice of law and arbitration into the current legal system would go beyond the scope of this essay.

<sup>27</sup>Bakht, *ibid.* p. 1.

<sup>28</sup>Fadel, p. 72; Williams, Archbishop of Canterbury, lecture, second paragraph.

<sup>29</sup>Fadel, p. 7.

<sup>30</sup>This assessment stands in contrast to the Archbishop of Canterbury's suggestion that "no supplementary jurisdiction could have the power to deny access to the rights granted to other citizens", cf. his lecture (above, footnote 6). Tucker (Public Law, (2008), 463-469, 468) points out that supplemental jurisdictions are primarily interesting only in so far as they come to different conclusions. While this may not be true in every case, one needs to be clear about the practical consequences that a supplemental legal system can have.

<sup>31</sup>Smith, "Caesar's Palace, not Lambeth's," *New Law Journal*, 2008, p. 229.

<sup>32</sup>Fadel, p. 69.

<sup>33</sup>Fadel, introduction, and p. 69.

<sup>34</sup>Both cases in Fadel, pp. 73,74.

## AUTUMN GARDEN

by Andy Grose

Come back to the garden, lover,  
You will always find me there.  
Those are just cobwebs you feel, dear.  
No, they could not be your hair.  
Those purple lines are not blood veins.  
Those crow's feet not your soft eyes.  
Gardens grow seedy in autumn.  
There is no reason to cry.

Come back to our garden, lover,  
You will always find me there.  
Waiting alone for you, timeless.  
Far beyond hope or despair.  
Waiting where once young and supple,  
Our love-stained clothing was flung.  
With garden passion so blameless,  
Sweet shameless things could be done.

Lover, come back to the garden,  
You will find me in the shade.  
In the seed pod's gentle rattle.  
In the dry perfumes and haze.  
Where once the bee brushed the iris,  
Tickling its beard with her tongue.  
In the crushed twig on the walkway  
And every bird song left half-sung.

# THE RANI OF JHANSI:

## THE WARRIOR QUEEN OF INDIA

by Aarti Johri



THE RANI OF JHANSI

Queen Elizabeth I signed a charter in 1660 granting the "Governor and Company of Merchants of London trading into the East Indies," a monopoly on all English trade to the east of the Cape of Good Hope. This company of merchants, commonly known as The East India Company, established its earliest trading posts in India during the seventeenth century at a time when the power and opulence of the reigning Mughal court was legendary. By the eighteenth century, however, this once formidable Mughal Empire had disintegrated. Former petty rulers and chieftains, taking advantage of the situation, established power in numerous native states. The East India Company formed alliances with several of these local Indian rulers. They provided military protection to the rulers from their neighbors; in return they retained their right to trading profits and local land revenue collection,

thereby establishing what was known as *indirect rule*. However, by the beginning of the nineteenth century the East India Company had started consolidating territory under its own "direct" rule, thereby expanding British dominions in India.<sup>1</sup> One of the most notorious methods adopted by the East India Company to annex territory was the Doctrine of Lapse (formalized in 1841), and its most famous opponent was *Rani* Laxmibai, the queen of Jhansi.

According to the Doctrine of Lapse, native states would lapse to British control when no natural heir existed upon the death of the ruler. The doctrine was adopted to "unite the scattered British possessions, create a uniform administrative system across India, and increase company revenues" (Olson 653). It was used most effectively by Lord Dalhousie, Governor-General of India from 1848-1856, who believed that

Westernization would benefit the native Indians, and that British consolidation of territory was essential to improve British administration throughout India. He believed the British should

[take] advantage of every just opportunity that presents itself for consolidating territories which already belong to us, by taking possession of those States which may lapse in the midst of them; for getting rid of those petty intervening principalities which may be a means of annoyance, but which can never... be a source of strength. (Howlett 8)

Jhansi, in Northern India, was exactly the kind of territory he meant.

The territory of Jhansi, only about 30,000 square miles, but strategically located along the route for silk, cotton, and spice traders, derived a substantial income from the excise it charged for goods carried across its borders. Over the years, the British signed a series of treaties with the chieftains of Jhansi, culminating in an 1817 treaty in which the British promised to protect Jhansi, in return for guaranteed use of Jhansi's troops when needed, and the use of Jhansi's roadways for the transportation of British troops and goods. In 1832, the title of "*Rajah*" (king) was conferred by the Governor-General on the Subedar of Jhansi. Such alliances were typical of the relations that the East India Company maintained with the local Indian rulers, where they retained land-revenue collection rights, trading rights, and military control.

The last king of Jhansi, Gungadhar Rao, died on November 21, 1853, leaving no natural heir. The day before his death, he adopted a five-year-old boy, a fifth cousin of the king. The dying king had invited the resident British Political Assistant, Major R.R.W. Ellis, to witness the adoption, and handed him a letter expressing his last wishes. The king, calling attention to the treaty and ancestral faithfulness to the British government, requested that "favor be shown to this child, and that [his] widow, during her lifetime, may be considered the Regent of the State" (House of Commons 1855 8). Major Ellis forwarded the king's letter and the announcement of the king's death to the Political Agent, Major D.A. Malcolm, who forwarded the correspondence to the Secretary of the Government of India in Fort William, Calcutta. In his letter, dated November 25, 1853, Major Malcolm detailed the relationship between Jhansi and the British, adding that while "it was understood that [the king] would probably make an attempt to induce us to allow him to

ONE OF THE MOST NOTORIOUS METHODS ADOPTED BY THE EAST INDIA COMPANY TO ANNEX TERRITORY WAS THE DOCTRINE OF LAPSE, AND ITS MOST FAMOUS OPPONENT WAS RANI LAXMIBAI, THE QUEEN OF JHANSI.



leave his estate in the hands of his widow, the adoption had come as a surprise" (6). Major Malcolm had evidently expected that the adopted son would not be accepted by the British as the successor to the throne, because in his letter he requested that the king's widow be treated with the respect she deserved: "I trust that I may be allowed to assure her that she will be allowed to retain all the personal property of her late husband, and the palace situated in the city of Jhansi..." (7)

*Rani* Laxmibai, the queen of Jhansi and the widow of King Gungadhar Rao, was no ordinary woman. She was born into a Brahmin family who pledged alliance to the Maratha ruler, the *Peshwa*. Her mother died when she was very little, and she was brought up amongst boys in the *Peshwa's* court where her father was employed. Amid her male companions she learned to read and write; she also became adept at horsemanship and the use of weapons, no mean accomplishments for a woman in her time. As was customary at the time, she was married at the age of eight to the *Rajah* of Jhansi in 1842, moving to her new home at the age of fourteen. Bored with palace life, she continued practicing with her weapons, an art she is believed to have taught the other ladies of the palace (Lebra-Chapman 16). The Political Agent, in his letter to the Secretary of the Government, described her as "a woman highly respected and esteemed" and capable of doing justice as Regent of the State (House of Commons 1855 7).

*Rani* Laxmibai sent a letter to Lord Dalhousie soon after the death of the king. She again reminded the Governor-General of the faithful services rendered by her husband's family to the British government and that the treaty of 1817 acknowledged the king

“Rao Ramchand, his heirs and successors, hereditary rulers of the territory enjoyed by the Late Sheo Rao Bhao.” (House of Commons 1855) According to her, this meant that the British accepted the Hindu system of adoption of an heir by the King of Jhansi, whereby “any party whom he adopted as his son to perform the funeral rites over his body. . . would be acknowledged by the British Government as his successor.” This custom of adoption “was prevalent all over Hindustan,” and the late King of Jhansi had adopted the boy in a traditional Hindu ceremony in the presence of Major Ellis, the Political Assistant, and Major Martin, the commanding officer, “with a view of bearing witness to what had been done” (House of Commons 1855 14). *Rani* Laxmibai ended her letter by stating that she expected that the adoption would be approved for succession purposes by the British government because they had recently approved three adoptions under similar conditions in the neighboring states of Datia, Urcha, and Jaloun. Perhaps the queen, fearing a refusal from the British Government, wished to strengthen her case by using British legal precedence.

The queen’s letter was translated and forwarded by Major Ellis, who added a note concurring with the queen on the adoption-succession in two of the three states she mentioned. In a separate letter addressed to Major Malcolm, the Political Agent, Major Ellis wrote:

I beg leave to observe that we have a treaty of alliance and friendship with the Jhansi as well as the Urcha State, and that I cannot discover any difference in the terms of the two which would justify our withholding of adoption



CONVINCED THAT RANI LAXMIBAI WAS CONSPIRING WITH THE REBELS, BRITISH TROOPS WERE SENT TO JHANSI TO ARREST HER...

from one State and allowing it to the other. (House of Commons 1855 16)

He also noted that “the right of the Native States to make adoptions is most clearly acknowledged” by a “despatch from the Honourable Court of Directors” in 1839.

While Major Ellis, who was resident in Jhansi, appeared sympathetic to the royal family, the British government in India had a differing viewpoint. The Secretary to the Government of India, J.P. Grant, in his letter to Governor-General Dalhousie, stated that Jhansi “falls into the class of those who hold [power] by gift from a sovereign or paramount power” (House of Commons 1855 18), and whose grants therefore could fail in the absence of male heirs. “There is now no male heir of the body of any *Rajah* or *Sobedar* of Jhansi,” he stated. Secretary Grant also called attention to the fact that Gungadhar Rao and his predecessors were incompetent rulers. In the decade from 1828 to 1838, the revenue of Jhansi had fallen from 1,800,000 to 300,000 rupees because of “gross mismanagement.” Under British management, beginning in 1839, it had already risen to 700,000 rupees. Lord Dalhousie, responding to the correspondence, declared that “a dependent principality. . . cannot pass to an adopted heir without the consent of the paramount power” (20). Repeating Grant’s assertion that there was now no male heir of the Jhansi royal family, he claimed that “the adoption of a boy by any man when he is almost in the last agonies is liable to suspicion” (21). In response to the adoptions of the three states mentioned by the *Rani*, he proclaimed the British right to accept or deny successions in the Hindu princely states using ad-hoc judgment:

in Jaloun, a dependent state, an adoption was allowed; but it is to be observed, that a concession by the British Government of the privilege to adopt on any particular occasion, from motives of friendship or of policy, by no means involves the admission of the right to adopt, on the part of the rulers of that or of any other State. ( 22)

Lord Dalhousie claimed that Jhansi’s revenue was inconsiderable “but as it lies in the midst of other British districts, the possession of it as our own will tend to the improvement of the general internal administration of our possessions” ( 22). Lord Dalhousie was clear about his motivation to include Jhansi in the British territories, but the *Rani* was not willing to give up so easily.

In a second letter, dated January 16, 1854, *Rani* Laxmibai again reminded the Governor-General of the services rendered by the previous kings of Jhansi, as their part in honoring the treaty. During the Burmese war, grain had been carried to the British troops at no cost to them; at other times weapons and soldiers had been provided to help the British. Having established that Jhansi had always displayed the utmost loyalty to the paramount power, the *Rani* deftly argued on the legal terms mentioned in the treaty. She contended that the treaty used the term “*warisan*” referring to natural heirs, and “*janishinan*” referring to “the party adopted as heir and successor,” and granted succession to both. “Treaties are studied with the utmost care before ratification,” she reminded the Governor-General, “and it is not to be supposed that the term *janishinan* used in contradistinction to *warisan* was introduced in this document. . . without a precise understanding of its meaning” (House of Commons 1855 25).

The queen’s arguments were unaddressed and her pleas went unheeded, and Lord Dalhousie and his council ordered that Jhansi be annexed. Although Lord Dalhousie refused to accept an adopted heir to the throne of Jhansi, he claimed that the adopted son was the rightful heir to the personal property of the deceased king. Referring to Major Malcolm’s request to treat the queen of Jhansi respectfully, and “in compliance with her husband’s last request, all the State jewels and private funds. . . should also be considered as her private property” (House of Commons 1855 28), Lord Dalhousie responded that

it is beyond the power of the Government so to dispose of the property of the *Rajah*, which by law will belong to the son whom he adopted. The adoption was good for the conveyance of private rights, though not for the transfer of the principality. (31)

The queen was offered a pension of 5000 rupees per month, which was equivalent to 6000 pounds per annum; Lord Dalhousie’s income as Governor-General was 25,000 pounds per annum. The queen initially refused the piteous amount, outraged that she had been asked to pay her husband’s debts from her pension, and had been refused the inheritance of his private property.

Jhansi was annexed in 1854. The queen continued to reside in one of the palaces, while the British administration installed Captain Skene to administer Jhansi. A few years later, the British administration

THE RANI OF JHANSI HAS REMAINED A LEGENDARY AND MOTIVATIONAL FIGURE IN THE HISTORY OF INDIAN INDEPENDENCE.



accused *Rani* Laxmibai of being one of the main conspirators of the Mutiny of 1857. The Mutiny, or First War of Indian Independence, primarily a rebellion of native army soldiers against their British commanding officers, took an ugly turn in several cities, including Jhansi. In Jhansi, the rebels brutally massacred the estimated sixty-six Europeans in the city, including women and children. Historians differ on the role that *Rani* Laxmibai played in the massacre. Some contend she was innocent, based on the appeals for help she sent, asking for British troops to control the rebels and to stave off the neighboring threats of invasion faced by Jhansi. She also sent letters of apology for the deaths of the European civilians. One of the theories professed in her defense is that she was probably unable to control the rebels since she had been divested of power, but the British did not believe that. Convinced that *Rani* Laxmibai was conspiring with the rebels and was responsible for the civilian deaths, British troops were sent to Jhansi to arrest her. The *Rani* quickly put together her own troops with the help of allies, and escaped from Jhansi on horseback, pursued by the British army. After almost two months of pursuit and fighting, she was killed on the battlefield.

The annexation of Jhansi is dramatic and tragic, and a quintessential example of the imperialistic policies of the British in nineteenth-century India. The Doctrine of Lapse illustrates British disregard for their own previous treaties and alliances. While Lord Dalhousie refused to honor the claim of *Rani* Laxmibai’s adopted son to Jhansi’s throne, the adoption was considered legal for inheritance purposes. Although British administrators like Lord Dalhousie claimed to have

altruistic intent towards the native population in their decisionmaking, their policies primarily served British interests. The land-collection revenues of the princely states annexed by Lord Dalhousie totaled more than four million pounds per year, a figure he proudly proclaimed in a memorandum to the House of Commons in 1856, at the end of his tenure in India (House of Commons 1856 7). While Lord Dalhousie deserves credit for his visionary policies of modernizing India with railways and irrigation channels, the building of railroads was aimed at facilitating the transportation of goods between the ports of the British Presidencies in India (17) while the irrigation canals helped in water-borne transportation. "The channel of the [river] Indus is becoming the great highway between Europe and the North-western provinces of our possessions," stated Dalhousie in the same memorandum (28).

The *Rani* of Jhansi has remained a legendary and motivational figure in the history of Indian Independence. In 1943, the Indian National Army (INA)—a resistance army created to overthrow colonial rule—named their female regiment after the *Rani* of Jhansi, in honor of the former revolutionary. *Rani* Laxmibai has been immortalized in Indian art, poetry, and folklore. Children in modern India continue to recite Subhadra Kumari Chauhan's Hindi poem about the queen who "fought like a man."<sup>2</sup> While *Rani* Laxmibai was not the only widowed queen of nineteenth-century India who was dispossessed of her husband's kingdom and disinherited from his wealth, she stands apart because she challenged the British colonizers, both by the gift of her pen and her sword. In a country widely notorious for its bride burning and female infanticide, she is a reminder that in the nineteenth century there was a woman willing to die for her kingdom, and physically fight the injustice of the most powerful empire in the world.

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## NOTES

<sup>1</sup> In 1804, the British Government signed a "treaty of defensive alliance. . . of amity and friendship" (House of Commons 1855 3) with a local chieftain or *Subedar*, named Sheo Rao Bhow, in the principality of Jhansi, which at that time was part of the larger Maratha Empire ruled by the *Peshwa* (House of Commons 1855 3). In 1817 when the *Peshwa* ceded his territory to the British, the *Subedar* of Jhansi was Rao Ramchand, the grandson of Sheo Rao Bhow (3). That year the British Government, "adverting to the fidelity and attachment of the *Subedars* of Jhansi," signed a new treaty with Rao Ramchand, "resolved to declare the territory of Jhansi to be hereditary in the family of the Late Sheo Rao Bhow" (3).

<sup>2</sup> For the words of the song, see <http://oldpoetry.com/opoem/41054-Subhadra-Kumari-Chauhan-Jhansi-Ki-Rani--With-English-Translation->.

## PERSEPHONE

by Stan Chism

photo Persephone Awaiting Springtime

Rest now, sweet Persephone,  
For soon you will leave this tomb,  
Your budding bounty is wanted above.  
Blue sky, love, and a land of green are promised but awhile.  
Listen as your mother calls, for Hermes comes to fetch you.

Arise now and shine your shimmering aura,  
Throw off the decay of that cold, wintry grave,  
Your seeds are stirring, desires mounting, and the birds are mating.  
Unfurl your arms of corn, for the earth beckons your flowering beauty.  
Come, sweet Kore,  
Bask again in the warmth of the sun.

Return now and bring youth's lusting caress,  
Sow your seeds and uncurl your leaves,  
Sweep away the brown, kiss the buds,  
And color the leaves with green.  
Push the crocuses into the sun,  
Give the roses their scent of delight.  
Savor again the renaissance of spring,  
And transform the flower to woman!

Bloom now, fertile woman,  
Bring forth the spring from your womb,  
Plant the spores of your beauty anew,  
Bring back abundance to the land.  
Leave your crown in the wintry underworld.  
Dance now, Persephone, ere green turns to brown,  
And your petals fall aground.



## (SUDDENLY) THE DOE

by Jennifer Swanton Brown

After his baseball jersey, number 10, dries—old Gatorade splotch, ketchup smeary and grass-stained, fresh dirt scrubbed out quickly in cold water—I open the front door to move against the house the pink folding chair on which I had dried it—or on which it lay while April’s sun dried the damp places—and step into the yard, where I see her leap up—too awkward to leap neatly, it’s more of a slosh stumbling—she heaves herself just as a dinghy (the Joy)—too heavily laden with life-jacketed children, a canvas bag full of lunches, and a blanket, soft blue and oyster-shell plaid—I remember that blanket—bumps against the side of the bigger motor boat (Dorcas) as the last kid steps in and falls into his seat, before they all lumber and glide toward their lunch on the beach—an unfolding upward onto her sharp black hooves, butt and tail caught momentarily in old holly. She backs away and escapes through torn chicken wire and fallen fencing—long ineffective against her and so many of her kind, the dusty deer who continue to thrive at the edge of the city of Cupertino in shady garden corners, like this one where she rested until I came—with her burden in her brown belly—with my clean clothes.



## NIETZSCHE AND FREUD: *The Source of Our Discontent*

by Pat Nicholson

From the Renaissance through the Enlightenment, reason has been regarded as the defining attribute of man, elevating him above his animal nature. In this tradition, the products of reason are moral choice and civilization.

But Sigmund Freud forever changed the notion that the conscious mind and reason sit at the core of man’s internal being, asserting that our conscious thoughts and actions are determined by the operation of irrational forces in our unconscious mind. Frederick Nietzsche, writing one generation earlier, anticipated several of Freud’s key psychological concepts. Both writers regarded man, first and foremost, as an animal driven by unconscious instincts, an idea that runs counter to centuries of Western thinking.

In *Genealogy of Morals* and *Civilization and Its Discontents*, Nietzsche and Freud, respectively, redefine morality and civilization as forces that oppose man’s natural instincts of aggression. The two thinkers emerge from different disciplines, employing different methods, and developing different theories to explain the state of civilized man. But both start from a similar premise: man is an animal with aggressive instincts. And, in the end, they both arrive at the same diagnosis: civilized man is a sick animal.

Because both Freud and Nietzsche both regard man as an animal with aggressive instincts, there is a tendency to conflate their views. The discussion will explore interesting differences in their respective conceptions and conclusions.

### AGGRESSION AS A UNIVERSAL

Though their theories on aggression differ, both Nietzsche and Freud view aggression as a universal and inherent trait in man. But the key concept in Nietzsche’s view of human nature is *will to power*. He argues that there is no essential aspect of the human psyche, like a soul, to which we can attach values like good and evil. These traditional concepts and values are merely social constructs that exist only after the fact. When you peel back all the nonessential layers, what is left is *will to power*.

Every animal . . . instinctively strives for an optimum of favorable conditions under which it can expend all its strength and achieve its maximal feeling of power; every animal abhors, just as instinctively and with a subtlety of discernment that is “higher than all reason,” every kind of intrusion or hindrance that obstructs or could obstruct this path to the optimum. (Nietzsche 543)

The *will to power* then is a fundamental life force that expresses itself through all animals, including man. Nietzsche believes that it is the original instinct in man and the source of his aggression.

Freud’s theory of aggression differs significantly from Nietzsche’s, but it also finds the source of man’s aggression in his most basic instincts. In Freud’s earlier works, he focuses exclusively

on instincts that promote life, such as sex and survival. He terms the life instincts *eros*. The key concept to understanding all human behavior is the pleasure principle, which drives man to seek pleasure and avoid pain. However, in his psychiatric practice, Freud observed a tendency in patients recovering from trauma to replay disturbing life episodes again and again in their minds. This behavior was inconsistent with the pleasure principle and led Freud to hypothesize a second instinct that opposes *eros*.

I drew the conclusion that, besides the instinct to preserve living substance and to join it into ever larger units, there must exist another, contrary instinct seeking to dissolve those units . . . (Freud, 114)

This contrary force is the death instinct, which expresses itself as aggression and destruction. It is the drive that seeks to negate and put an end to the ceaseless pursuit of sex and security. It explains “the ubiquity of non-erotic aggressivity and destructiveness” Freud observes in humanity (115). Hence aggression cannot be reduced in some way to a libidinal impulse. Based on this, Freud concludes that the “inclination to aggression is an original, self-subsisting instinctual disposition in man.” (118)

While Nietzsche agrees that man is inherently aggressive, he would not concur that it is a symptom of man’s wish for death. On the contrary, the *will to power* is a life-affirming force. It is only if this original instinct gets distorted by society that man wishes for death (*will to nothingness*). Freud, on the other hand, would argue that Nietzsche ignores man’s fundamental nature as a social animal. Freud believes that man has opposing drives, to create social organization and to tear it down.

Both Nietzsche and Freud agree that man’s aggressive instincts are at odds with civilization. Hence, each offers a similar theory on how aggression becomes internalized. And for both, this internalization of aggression is the cause of man’s sickness and unhappiness.

#### MASTER-SLAVE MORALITIES

Nietzsche sees this state of modern man as the historical result of a struggle between master and slave moralities. He believes that in prehistoric times, and in the earlier stages of history, the prevailing master morality was consistent with man’s natural aggressive instincts. Master morality prevailed up through the ancient Greco-Roman world, when men were still “semi-animals” who reveled in spontaneous acts of cruelty, destruction, and change. The master value-equation is: “good = noble = powerful = beautiful = happy = beloved of God.” (Nietzsche 470) In its simplest terms, might makes *right*.

Over time, as humanity and civilization evolved, a new mode of valuation arose in opposition to the master morality. Nietzsche calls this the *slave revolt in morality*. It occurred when the priest class turned the *ressentiment*<sup>i</sup> of the slave class against their masters. This new morality inverted the master value-equation, and redefined the slaves “alone as the good and beloved of God,” and the masters as “the evil, the cruel, the lustful, the insatiable, the godless to all eternity” (Nietzsche 470). This, of course, is Judeo-Christian morality.

This morality denies man’s basic instincts and compounds the restrictions that society already places on man’s animal nature. Man still has the aggressive impulses, but he is forced to redirect them inward. Nietzsche calls this “the internalization of man,” which has had two profound effects. First, it gives man an inner life and powers of the intellect and imagination he has never possessed before; secondly, it makes man an interesting animal. But these gains are won at a steep price.

In this new world (man) no longer possessed his former guides, the regulating unconscious and infallible drives: they were reduced to thinking, inferring, reckoning, coordinating cause and effect, these unfortunate creatures; they were reduced to their “consciousness,” their weakest and most fallible organ! (Nietzsche 520)

FOR FREUD, CIVILIZATION IS THE STRUGGLE OF LIFE AND DEATH THAT IS INHERENT IN MAN'S NATURE.

The vital powers of instinct turned back against man himself. Man converts this aggression to censorship and punishment of his animal impulses, and becomes ashamed of his animal nature and is filled with guilt. Nietzsche calls this disposition “bad conscience.” It is the “uncanniest illness, from which humanity has not yet recovered” (Nietzsche 521).

#### INTERNALIZATION AND BAD CONSCIENCE

Freud offers a similar, but more developed, theory of internalization and “bad conscience.” But he sees the sickness of modern man as a symptom of two opposing drives in the human psyche. By necessity, civilization inhibits our aggressive impulses by redirecting them back towards the ego. This process creates an agency in the ego, which Freud terms both *super-ego* and *conscience*. Conscience internalizes the mores of civilization and religion and stands guard over the ego “like a garrison in a conquered city” (Freud 121). Man cannot escape his animal instincts, nor can he wish his conscience away. It is a cruel fate: the more aggression is internalized, the stronger conscience becomes. Thus, “civilization obtains mastery over the individual’s dangerous desire for aggression by weakening and disarming it” (121). The internal dynamics of the psyche undermine man’s vital energy and produce feelings of guilt and shame. This theory describes the same consequence for man as does Nietzsche: “bad conscience.”

For Freud, this conflict between civilization and the individual is not an historical development. Instead, it is a conflict between opposing forces within the psyche. Civilization rises out of the requirements of the psyche but it is also threatened by that psyche. The life instinct *eros*, whose purpose is to organize man into ever-increasing unities, from couples through to nations, is opposed by the death instinct, whose byproduct, aggression, is a constant threat to this unity. This conflict exists in every individual’s psyche. Freud views this as the condition of man, the way that man is, has been, and always will be. This diagnosis is terminal. Civilization becomes the struggle of life and death that is inherent in man’s nature. And it is man’s fate to suffer. While this is a pessimistic outlook, it does foster an attitude of compassion. Everyone suffers and no one is really to blame.

#### NIETZSCHE’S SUPERMAN

For Nietzsche, the diagnosis is terminal for most people, but not all. This illness arises out of historical circumstance and one can imagine a past and a future that is different. Nietzsche envisions a select few who can synthesize the new powers of their psyche to channel their vital nature, rather than thwart it. This would produce the *Urbemensch*, the *over man* or *superman*, who rises above “bad conscience” to assert his own value. The new model for the *Urbemensch* is not the warrior, but the artist who defines himself through authentic self-expression. Nietzsche’s vision, while more optimistic than Freud’s, is also more harsh. Most ordinary people cannot overcome bad conscience, and Nietzsche offers them nothing but disdain.

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#### NOTE

<sup>i</sup>*Ressentiment* is a sense of resentment and hostility directed at that which one identifies as the cause of one’s frustration, an assignation of blame for one’s frustration. The sense of weakness or inferiority and perhaps jealousy in the face of the “cause” generates a rejecting/justifying value system, or morality, which attacks or denies the perceived source of one’s frustration. The ego creates an enemy in order to insulate itself from culpability. A term imported by many languages for its philosophical and psychological connotations, *ressentiment* is not to be considered interchangeable with the normal English word “resentment”.

## CONTRIBUTORS

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