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How Does the Constitution Secure Rights?

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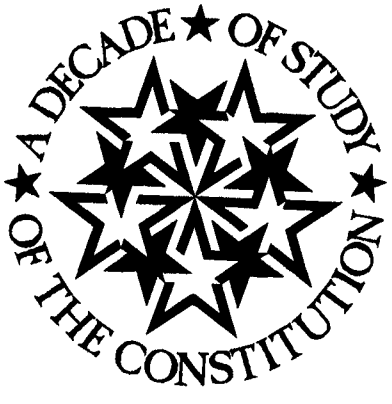
editors



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Two Models of Adjudication

Owen M. Fiss

Rights are not premises, but conclusions. They emerge through a process of trying to give concrete meaning and expression to the values embodied in an authoritative legal text. The Constitution is the great public text of modern America, and adjudication is the preeminent—though perhaps not the exclusive—process by which the values embodied in that text are given meaning. Adjudication is an interpretive process through which rights are created and enforced.

In my judgment this has always been the function of adjudication, clearly embraced and legitimated by Article III of the Constitution and continuous with the role of courts under the common law, but within recent decades a new *form* of constitutional adjudication has emerged. It is largely defined by two characteristics: first, an awareness that the basic threat to our constitutional values is posed not by individuals but by the operations of large-scale organizations, the bureaucracies of the modern state; and second, the realization that unless the organizations threatening these values are restructured, the threats to constitutional values cannot and will not be eliminated. For this complex task the traditional legal remedies—the damage judgment and the criminal prosecution—are inadequate. The injunction is the favored remedy, though it is used not as a device for stopping some discrete act, as it might have been in other times, but as the formal medium through which the judge directs the reconstruction of an ongoing bureaucratic organization.

This new mode of litigation, which I call structural reform, con-

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This essay builds upon and to some extent extends the ideas contained in "The Forms of Justice," *Harvard Law Review*, vol. 93 (1979), p. 1, and "The Social and Political Foundations of Adjudication," *Law and Human Behavior*, vol. 6 (1982), p. 121.

stitutes an important advance in the understanding of modern society and the role of adjudication in the larger political system. The bureaucratic character of the modern state and the public dimensions of the judicial power are properly acknowledged. But it is also important to recognize that this new mode of litigation raises a number of problems. One is instrumental. Simply stated, the question presented is how to do the job of structural reform and do it well: How shall the bureaucratic organization be restructured to remove the threat to constitutional values? A second problem, and the subject of my concern, is the question of legitimacy: Is structural reform an appropriate task for the judiciary?

The instrumental issue is of enormous importance and difficulty and must be given its due, but I believe the question of legitimacy is primary. I say this in part because I believe the dictates of legitimacy impose limitations on the means that can be used by courts to achieve their objectives. A blinding commitment to remedial efficacy, an exclusive concern with the instrumental problems, may well call into question the legitimacy of the entire judicial enterprise. I am also moved by historical circumstances to focus on the issue of legitimacy.

Structural reform emerged as a distinctive form of constitutional litigation largely in response to the dictates of *Brown* v. *Board of Education*.[1] It emerged in the 1960s and reflected the special imperatives of school desegregation. Its scope was broadened in the late 1960s and early 1970s to include challenges to unconstitutional practices of the police, prisons, mental hospitals, institutions for the mentally retarded, prosecutorial agencies, public housing, and public employment. Its scope became as broad as the modern state itself. By the late 1970s, however, history took a different turn, and structural reform came under attack; today its legitimacy is being questioned with an energy and an urgency that are indeed remarkable. That questioning is not confined to structural reform, or to any particular mode of adjudication, but extends to the 1960s in general and the conception of state power implied by those times.

Dispute Resolution and Structural Reform

The distinctive features of structural reform can best be understood by contrasting it with a model of adjudication that has long dominated the literature and is often used as the standard for judging the legitimacy of all forms of adjudication. This model, called dispute resolution, is associated with a story of two people in the state of nature who

[1] 347 U.S. 483 (1954).

each claim a single piece of property. They discuss the problem, reach an impasse, and then turn to a third party, the stranger, to resolve their dispute. Courts are viewed as the institutionalization of this stranger and adjudication as the process through which the judicial power is exercised.[2] Although this story is used not as an argument for the primacy of dispute resolution but only as an illustration, it does reflect the various premises that inform that model and that are challenged by structural reform.

The Absence of a Sociology. Dispute resolution depicts a sociologically impoverished universe. There is no room in the story for the sociological entities—social groups and bureaucratic organizations—that are so familiar to contemporary litigation. Social groups such as the inmates of a prison or patients in a hospital have no place in the story. Nor is there recognition of the existence of groups that transcend institutions, like racial minorities or the handicapped, groups whose social identity and reality are as secure in our society as the individual's in the state of nature. Furthermore, there is no room in the story for bureaucratic entities such as the public school system, the prison, the mental hospital, or the housing authority. The world is composed exclusively of individuals.

The party structure of the dispute resolution lawsuit reflects this individualistic bias; one neighbor is pitted against another while the judge stands between them as the passive umpire. The structural lawsuit defies this triadic form. Not two but a multiplicity of parties are involved. Moreover, the groups or organizations denominated parties are likely to be internally divided on the issues being adjudicated, and thus the antagonism between parties is not binary. What we find in a structural lawsuit is an array of competing interests and perspectives on a number of issues, organized around a single decisional agency, the judge.

Dispute resolution also implies a unity of functions in party structure: the plaintiff is simultaneously the victim, the beneficiary of the remedy, and the spokesperson. Similarly, in dispute resolution the individual defendant functions as the wrongdoer, as the one who bears the expense and trouble of the remedy, and also as the spokesperson for those interests. In the structural lawsuit, however, a fragmentation of roles occurs because the parties are sociological entities. The victim may be the blacks of a particular community; the beneficiaries of the decree, the entire community; and the spokes-

[2] See, for example, Martin Shapiro, *Courts* (Chicago: University of Chicago Press, 1981).

persons, the officers of several competing civic groups, a national civil rights organization, and various units of state and national government. We also typically find in structural litigation such participants as special masters and litigating *amici*; they are neither victims nor beneficiaries, but are often appointed by the court to represent important perspectives, sometimes of the victim groups, sometimes of the ostensible beneficiaries of the court action, otherwise likely to be slighted.

A similar fragmentation of party structure occurs on the defendant side: various entities—the school board, the housing authority, the police, for example—must shoulder the burden of remedy, and a large number of officials, local, state, and federal, must speak on behalf of all the interests affected by the remedy. Moreover, in structural litigation there is less and less emphasis on identifying the wrongdoer. Since the function of the lawsuit is not to punish nor compensate but to eliminate threats to constitutional values, the judge is able to think in wholly prospective terms. He is able to place the burden of remedy on institutions that could not properly be considered "wrongdoers," even in a metaphoric sense, but are deemed responsible for the remedy because they are uniquely able to further the constitutional values at issue. The transportation authority, for example, may not have "caused" the segregated schools in the first instance, but it may be joined as a party and required to participate in the remedy because the desegregation plan could not succeed without that participation.

In addition to altering the party structure, the introduction of sociological entities in the structural suit changes and complicates the remedial process. In contrast to dispute resolution, in which an individual is both victim and spokesperson and also the beneficiary of a court decree, the remedial task in the structural suit is much more complex because the victim and beneficiary are social groups. The judge must, for example, determine whether the victim and beneficiary groups should be coextensive and must also establish criteria for determining which individuals are to be included within those groups. Similarly, because the constitutional threat is posed by a bureaucratic organization rather than by an individual and because such an organization is likely to have an internal dynamic that at once diffuses responsibility and magnifies the severity of the threat, a remedy such as the issuance of a narrow injunction addressed to some identifiable individuals and aimed at some specific act is unlikely to be efficacious. The constitutional values can only be protected by restructuring the organization. This is a complex and difficult task; it is wholly alien to

the dispute resolution model and requires a measure of activity on the part of the judge that is at odds with the picture of him as a passive umpire, simply choosing between the two neighbors. In the structural suit the judge becomes the manager of a reconstructive enterprise.

Private Ends. In the hypothetical state of nature where the dispute resolution story takes place, there are no public values, only the private desires of individuals—in this instance, the desire for property. Peace appears merely as a precondition of satisfying private ends. The story postulates that the judge (the stranger) settles a property dispute between neighbors, but it does not tell us how the judge resolves the dispute, only that it is resolved. The judge could even settle the dispute by flipping a coin. He may resolve the dispute according to any procedure that will minimize disputes or, more generally, maximize the satisfaction of private ends.

Structural litigation does not begin with indifference toward public values or ignorance of them. It proceeds within the framework of a constitution; and the Constitution that we know today, and that stands vindicated by *Brown* v. *Board of Education*, is a constitution that does far more than simply establish a form of government. It identifies a set of values—equality, liberty, no cruel or unusual punishment, due process, property, security of the person, freedom to speak, for example—that inform and limit the function of government and constitute the principal source of our public morality. These values transcend the private ends of dispute resolution and serve as the substantive foundations of structural litigation, which is intended to give expression to those values and protect them from the threats of the bureaucratic state.

This perspective on the social function of litigation implies that one of the central tasks for the judge is to interpret the public morality embodied in the Constitution. He does that by rendering that morality concrete and specific, by articulating what that morality means in the situation he confronts. It is here that rights are created. This perspective on the social function of adjudication also explains the remedial aspirations of the judge. His task is not to produce quiescence or peace, though that may occur and may be a necessary condition of effective relief, but rather to bring the operation of the state and its bureaucratic apparatus into conformity with the public morality. The remedy in a school desegregation suit is not intended to end the squabbles between whites and blacks in the community, though that may be a necessary condition for any desegregation plan to work, but rather to bring the school system into conformity with the dic-

tates of the ideal of racial equality embodied in the Civil War Amendments.

In the dispute resolution story, the judge stands neutral between the ends of the feuding neighbors and is uncommitted to them: they are private ends. He is to be fair and impartial in enforcing the established rules, much as an umpire must be. In structural litigation, however, the claim is that public values are being threatened, and the judge's commitment to those values supplements his commitment to procedural fairness. He is devoted to serving public values and should be willing to rely wholly on the initiatives and strategies of the various parties, often reflecting their private motives and limitations, to vindicate those values. Additional pressure is thereby created for the judge to abandon the posture of a passive umpire and to take an active role in the proceedings, to make certain that the facts and the law are fully presented and that the defendant complies with whatever decree may be entered.

Natural Harmony. A third supposition of the dispute resolution story, reflecting either its individualism or its indifference to public values, is that without the intervention of courts or other government agencies, society is in a state of natural harmony. As suggested by the concept of a "dispute" itself, the story assumes that the subject of adjudication is an abnormal event that disrupts an otherwise satisfactory world. It also suggests that the function of adjudication is to restore the status quo. Structural litigation denies that assumption and reflects doubt whether the status quo is in fact just. It reflects a healthy skepticism about the existing distribution of power and privilege in American society: maybe neither neighbor is entitled to the property . . .

This skepticism helps to explain two features of structural litigation. The first concerns the requirements for initiating a lawsuit, which have generally been lowered. In the structural context, requirements concerning pleading have become more liberalized, and access to discovery has become freer: it is unnecessary for the plaintiff to be fully informed of the facts before filing the suit, and once the suit is filed, far-reaching discovery mechanisms become available, not simply for the parties to exchange information but to allow the plaintiff to investigate and substantiate his claims. Doctrines concerning standing have also become more permissive and objections of mootness less decisive. These developments reflect a growing distrust of the premise of the dispute resolution story that posits a harmonious and just status quo; the need for judicial intervention is no longer

seen as an aberration, and procedural rules that require the plaintiff to be aggrieved and to present an actual controversy have been adjusted to facilitate the challenge to the status quo.

Doubts about the justice of the status quo are also reflected in the special nature of the remedial process. The goal of dispute resolution is to set things back to "normal"; the remedy is short and discrete because it simply undertakes to reestablish the world that existed before the dispute. But this is clearly not a valid conception of the remedial process in structural reform because the goal of that process is to create a *new* status quo. Restructuring a prison or a school system cannot be understood as an attempt to return to a world that existed before some dispute; it is an attempt to construct a new social reality, one that will be more nearly in accord with our constitutional ideals. And the judiciary's commitment to monitor the remedy may have to last almost as long as the social reality that the remedy seeks to create.

Isolation of the Judiciary. The dispute resolution model also depicts the judiciary as an isolated institution. The courts are not viewed as an integral part of a government. The quarreling neighbors ask the stranger—any stranger—to resolve their dispute. This mythical account of the process by which courts are created implies that courts can be understood apart from the larger system of government. It also suggests that the legitimacy of courts is derived from the consent of the citizenry specifically conferred on the courts as an institution. The neighbors agree to take the dispute to the stranger and to abide by his decision. The legitimacy of the judiciary stems from this initial agreement between the neighbors.

In modern society, this act of conferring authority on the judiciary through agreement among the disputants is impossible to imagine, but the consensual foundation of judicial power is nevertheless preserved through more subtle forms. Professor Lon Fuller, for example, tries to found the legitimacy of adjudication on the individual's right of participation in that process, a right that might be viewed as a way of guaranteeing a highly individual though somewhat attenuated form of consent.[3] The right of the individual to participate in adjudication is the source of its legitimacy, just as the right to vote legitimates legislation and the right to bargain legitimates contracts. Other scholars, reflecting the *Carolene Products*[4] tradition,

[3] Lon Fuller, "The Forms and Limits of Adjudication," *Harvard Law Review*, vol. 92 (1978), p. 353.

[4] United States v. Carolene Products Co., 304 U.S. 144, 152–53 n. 4 (1938).

have attempted to found legitimacy on the ability of courts to represent the disenfranchised and powerless as a means of perfecting the political process whereby American society as a collectivity consents to its government.[5]

In my view, courts should be viewed not in isolation but as a coordinate source of governmental power, as an integral part of the larger political system. Democracy does in fact commit us to consent as the foundation of legitimacy, but that consent is not granted separately to individual institutions. It extends to the system of governance as a whole. Although the legitimacy of the system depends on the people's consent, an institution within the system does not depend on popular consent, either in the individualized sense suggested by Fuller or in the collective sense suggested by the *Carolene Products* tradition. Rather the legitimacy of a particular governmental institution stems from its capacity to perform a distinctive social function within the larger political system. In America the legitimacy of the courts and the power judges exercise in structural reform, or for that matter in any type of constitutional litigation, are founded on the unique competence of the judiciary to perform a distinctive social function, which is, as I have suggested, to give concrete meaning and application to the public values embodied in an authoritative legal text such as the Constitution.

It is not at all necessary, when speaking of this special competence of the judiciary, to ascribe to judges the wisdom of philosopher-kings. The capacity of judges to give meaning to public values turns not on some personal moral expertise, of which they have none, but on the process that limits their exercise of power and constitutes the method by which a public morality must be construed. One feature of that process is the dialogue judges must conduct: they must listen to all grievances, hear a wide range of interests, speak back, and assume individual responsibility for what they say. Another is independence: the judge must remain independent of the desires or preferences both of the body politic and of the particular contestants before the bench. Other agencies may engage in dialogue and may achieve a measure of political independence, but this is the process preeminently and traditionally identified with the judiciary and the source of its claim to competence. It is the foundation of judicial authority.

In this scheme, popular consent to a specific institution is minimized. The judiciary's competence and thus its legitimacy depend on

[5] John H. Ely, *Democracy and Distrust* (Cambridge, Mass.: Harvard University Press, 1980).

adherence to these two qualities of process—dialogue and independence—not on the willingness of the people to consent to particular outcomes or on their capacity to appoint and remove from office those who exercise the judicial power. The people's consent is required to legitimate the larger political system, of which the judiciary is an integral part, and the capacity of the people to respond to judicial decisions—for example, through constitutional amendments—preserves the consensual character of the system as a whole. A tighter, more particularized dependence on popular consent would deprive the judiciary of its independence and thus its competence to speak the law.

Threats to the Legitimacy of Structural Reform

The dispute resolution model is at odds with the social and political reality of modern society, and yet it has rebounded from relative invisibility in the 1960s to enjoy a renewed popularity in the 1980s. This resurgence cannot be attributed to the rather banal poetry of the dispute resolution story or even to some nostalgic longing it may evoke for an oversimplified world. The resurgence is, I believe, due to the internal contradictions engendered by structural reform and also to the emergence of a vision of social life that privatizes all ends.

Internal Contradictions. At the heart of structural reform is a conception of the judiciary as a coordinate source of governmental power that derives its legitimacy from a distinctive process. The authority of the judges to give constitutional values their meaning stems from the independence of the judiciary and the willingness of judges to engage in a special dialogue over that meaning. Structural reform rests on this perception: judges engaged in structural reform invoke the interpretive authority that is traditionally possessed by all judges and that is derived from the process through which they exercise power. At the same time, however, the distinctive remedial aspects of structural reform may impair the capacity of the judiciary to adhere to the dictates of that legitimating process and thus create questions about the appropriateness of engaging in structural reform at all.

The distinctive process of the judiciary—dialogue and independence—gives judges a special competence to interpret the public morality of the Constitution, to declare rights, but there is no general connection between that process and the effort needed to transform social reality so that it comports with that morality, to provide a remedy. The judiciary claims no special competence to make the instrumental judgments that are so pervasive in providing a remedy. The

duty of formulating and implementing a remedy is, instead, entrusted to the judiciary as a way of ensuring the integrity of the judicial interpretation, since the meaning of a value derives from its concrete embodiment in practical reality (the remedy), as well as from its intellectual articulation (the right).

In dispute resolution, this allocation of power is not of any special moment, nor is the underlying theory tested, for the remedy is essentially nominal. Right and remedy virtually collapse into one: the task of the judge is to decide who is entitled to the property, and the declaration of right constitutes the remedy. The only further task of the judge is to see to it that his declaration is obeyed. In structural reform, however, the judiciary seeks to reconstruct a bureaucratic organization, and the distinction between right and remedy is sharpened. The remedial phase of the litigation takes on increasing significance and, in fact, tends to dwarf the phase in which the right is declared, at least in time, energy, and sheer intellectual absorption. The remedy often becomes the centerpiece of the litigation and the very special object of criticism and resistance.

To be sure, the judge engaged in structural reform is able to defend his authority to make instrumental judgments on the theory that such judgments are necessary to give practical effect to the right, which admittedly he is specially competent to declare; but at some point in this process, as the remedial phase grows and grows in importance, the underlying justification for entrusting him with instrumental judgments begins to seem strained. It is not that the judge is usurping the authority of some other agency, for in truth no one possesses much expertise on how to reconstruct a bureaucratic organization, but the judge must still find a source of authority for his directives. The challenge to judicial legitimacy is not one of comparative competence, but rather asks whether the judge has any authority of his own to issue his commands.

The challenge to legitimacy also arises from several dynamics created by structural reform, which tend to interfere with the process that gives courts their competence in the declaration of rights in the first place. One such dynamic, the bureaucratization of the judiciary, may be present in all forms of adjudication—for example, through the proliferation of law clerks—but it is particularly acute in structural reform because of the distinctive remedial aspirations of that form of litigation. The judge, seeking to reorganize a state administrative bureaucracy, such as an urban public school or a state prison system, often creates various adjunct institutions—special masters, for example—to formulate or implement remedial plans and to make sug-

gestions for their modification. Sometimes the intention is to tap sources of expertise, sometimes to present views not otherwise heard, sometimes to relieve the judge of the tedium necessarily involved in monitoring the performance of a bureaucratic organization, and sometimes to act as a political lightning rod, to insulate the judge from the criticism that invariably attends any significant change in the status quo. The emergence of adjunct institutions in structural reform is therefore understandable enough, but the risk is ever present that their proliferation will fragment and blur responsibility: as the judge is surrounded by adjunct institutions, all of whom share in the decisional process in various ways, it will be difficult to believe that he is truly listening or responding to the grievance or is assuming individual responsibility for the response. The quality of dialogue will disintegrate.

Structural reform may also create a special relation between the judge and the newly reconstructed institution that will compromise his independence. Since the judge serves as both architect and structural engineer in the reconstruction of an institution, he is likely to lose his detachment from it. The reconstructed institution is largely his creation, and he may well view challenges to it as challenges to him and his authority. Another threat to independence may arise from the need of the judge to engage in politics to make his remedy effective. Judges are not all-powerful, and, given the complex and far-reaching aspirations of the structural remedy and its dependence on the cooperation of many individuals and agencies, the danger is ever present that judges will temper their idealism and their commitment to justice by what is realistic. They will negotiate; they will bargain; they will become adaptive. To make a desegregation plan work, for example, the judge must transform the hostility of parents, teachers, and administrators into cooperation; he may have to goad legislators into appropriating more money. Life tenure may continue to provide him with nominal independence, but the very desire to be efficacious and the need to win broad support for the remedy may create a dependence on others that will in fact jeopardize that independence.

The existence of these dynamics in structural reform—the bureaucratization of the judiciary, the identification of the judge with the reconstructed institution, and the need for him to bargain—must be acknowledged; so must the pervasiveness of instrumental judgments for which the judiciary cannot claim any special competence. These factors strain and test the judicial power, and yet, I would insist, they do not render that model of adjudication either incoherent or beyond the reach of the judiciary. They argue for a recognition of

the limits of the judicial office and the need to find ways to modulate the strains on legitimacy, but it would be a mistake to renounce the unique remedial ambitions of structural reform. Those ambitions stem from a true perception of the nature of social reality and the entirely admirable commitment of the judiciary to make that reality comport with the values embodied in the Constitution. They stem from a repudiation of the premises of dispute resolution, and that stance is not, I suggest, an act of will, a usurpation by an imperial judiciary, but a reluctant and yet inescapable duty that arises from a proper understanding of the nature of modern society and the role of adjudication in the larger political system.

The Privatization of Ends. The internal contradictions of structural reform are not the only threat to its legitimacy. A more basic and more pervasive threat arises from sources unrelated to the special remedial dimensions of that mode of adjudication and in fact external to the judicial process itself. It arises from the fact that the courts are a coordinate branch of government and thus subject to the forces that are affecting all forms of governmental power. The resurgence of the dispute resolution model is not an isolated phenomenon: it occurs within a larger political context characterized by a renewed interest in market economics and theories of laissez faire and more generally by a reaffirmation of the minimalist state legitimated by the theory of the social contract. This context is set by a renewed belief in the private character of all ends.

I believe it significant that the story of two neighbors fighting over a piece of property takes place in the state of nature, because it was there that the social contract was formed. We can also see that social contract theory shares the premises of dispute resolution: it too lacks a sociology, and in it ends are private, power is legitimated through individualized consent, and, at least in Locke's version, natural harmony generally prevails. The conception of government enshrined by social contract theory and preeminent in America through much of the nineteenth century—the so-called night-watchman state[6] —is the analogue to the minimalist conception of judicial power implied by the dispute resolution model. The chief end of the state in the social contract tradition is security: to develop those conditions that will allow private persons to engage in commerce and to satisfy their own ends.

During the twentieth century, particularly in the decades since

[6] The phrase is from Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

the New Deal and World War II, America has seen the emergence of a different kind of state altogether. The state has become an active participant in our social life, supplying essential services and structuring the very terms of our existence. To legitimate that conception of government power, we had to develop a theory of consent radically different from the individualistic, unanimous consent exalted by the social contract tradition. We also had to develop a conception of social life sufficiently rich and purposive to render intelligible the pervasive and almost continuous interventions of a state committed to improving the welfare of its citizenry. That was largely the accomplishment of the 1960s.

The emergence and legitimation of the activist state in the 1960s parallels the emergence and legitimation of the new form of litigation that I have called structural reform. Indeed, one can go further and identify a common theoretical foundation for the two modalities of governmental power. Just as the dispute resolution model shares the assumptions of social contract theory and the night-watchman state, structural reform shares the political theory of the modern activist state. Both take account of sociological realities, reflect skepticism about the justness of the status quo, and constitute an affirmative use of governmental power. Both are grounded in a belief in the existence and importance of public values and a recognition of the need to translate those values into social reality through the use of governmental power. Equality was the centerpiece of the litigation of the 1960s, as it was for the legislative and executive action of that era, but equality had only a representative significance: it stood for an entire way of looking at social life. It denoted a sphere of values that are truly public, that define our society and give it an identity and inner coherence, and that are not reducible to an aggregation of private ends. Rights were seen as the concrete embodiment of these public values and, as such, an expression of our communality rather than our individuality.

Today we feel increasing doubts about that way of looking at our social life, and we are witnessing the resurgence of dispute resolution and the night-watchman state as an expression of those doubts. Both forms of government power are invoked by those who minimize the role of public values in our social life and reduce our public values to individual interest or at best individual morality. Such a reductionism seems deeply flawed; for a community cannot exist without public values, and individuality cannot exist without community. This reductionism is also at odds with the conception of our Constitution that stands vindicated by *Brown* v. *Board of Education* and the almost

two hundred years of constitutional litigation—one that sees the Constitution as the embodiment of our public morality. The privatization of ends that is assumed by the broad political movements of the day would debase the great public text of modern America, the Constitution, and would undermine important and valuable institutional arrangements.

Structural reform and the activist state contemplate an affirmative use of government power to protect the values that underlie and inform our public life. They face a crisis of legitimacy because the value of our public life is denied. These institutional arrangements can survive, and must, but only if we recover that vision of American social life that proclaims the importance of the public in our individual lives. We must somehow come to understand that our individuality is vitally dependent on community and that a public life can be the source of great inspiration.