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On Violence and Legitimacy*

Wilson Carey McWilliam†

Violence is more than an assault on our bodies. An act is violent because it comes unbidden, contrary to my will, inflicting on me or threatening me with what I feel to be an injury. I can suffer violence to the limits to which I extend myself; violence done to my wife, to my self-respect, or to my country is violence done to me. The psychological dimension of violence is clearly revealed in references to "violent emotions" or to "violent attacks" which are purely verbal.¹ The same phenomena, moreover, do not seem violent if we welcome or are indifferent to them. A romantic might call his strongest emotions "profound" rather than violent; a dullard may be unaffected by our most acid sallies; what is rape at one time is making love at another; and even euthanasia does not seem "violent" because it is presumed to be in accord with the will of the patient.

Violence need not make an appearance to be real; it is most effective when invisible. The most frequent form of violence, the threat, is only a *promise*, and the promise itself may be no more than a hint or suggestion, as when we "speak softly, but carry a big stick." The action itself is not the test of violence; what matters is my evaluation of it. A threat is not violent, for example, if I do not believe you will carry it out; and if I think your big stick is a cane, I will take your soft words as a sign of weakness. In fact, it is possible to inflict violence unintentionally, as when I attack someone I do not know you love, or when what seem to me harmless words or actions cause associations in your mind which touch some deep-seated anxiety.

As the foregoing suggests, violence itself cannot be rejected as immoral. Violence is "immoral" only to the degree to which the will opposing it is good. The shortcoming of violence as a form of power is that it is limited and is always the creature of the self it would command. Violence is "foreign" in that it speaks from outside what I perceive as myself.² Violence cannot *change* my values and desires; it can

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1. Charles Silberman has pointed out that the same Hebrew word denotes both murder and insult. C. SILBERMAN, *CRISIS IN BLACK AND WHITE* 53 (1964). Under an early usage of the criminal law, an attack on one of our fellow citizens is an attack on all of us because he is "ours," directly or indirectly a part of ourselves.

2. Authority, by contrast, speaks inside. Whether I accept it because I believe myself

only *use* them (sometimes, admittedly, by knowing them better than I do myself).

The threat of violence attempts to structure the alternatives open to me in such a way as to produce the desired response. To do so, it must convince me that the perpetrator can deprive me of something I value more than I dislike the conduct he desires. The threat must, in other words, prove that the desired conduct is, in a negative sense, useful to me.³ The threat will be effective only to the extent that my response has been predicted accurately—only, that is, to the extent that the perpetrator has accurately assessed my values and has been able to convince me that his threat is real and defines the only alternatives open to me. And that is a very chancy business. Many men, for example, have preferred death to dishonor, and more have sought, by responding violently, to change the alternatives if not to turn them back on their inflictor. Iago succeeded with Othello but failed with Emilia, which—aside from what it may say about husbands and wives—suggests some of the risk involved.

Yet these limitations do not prove that apparent (and especially, physical) violence is the “weapon of the weak.” The weak do not fight back, they *submit*, and the violence they yield to is no less harsh because it has been effective without being translated from threat into action. The powerless do not respond violently; the all-powerful can achieve their results without violence ever making itself evident. Those, of course, are abstract terms, and in human life no man is utterly powerless or totally powerful in relation to another. “Strength” and “weakness” in a relationship can only be calculated by weighing all the possible forms of violence and striking a balance; even the weakest have some ability to answer violence with violence.

The weak do not respond to the strong in *kind*. They answer one, more effective form of violence with another, weaker and perhaps invisible, but one which nonetheless aims to change the existing alterna-

to have “authorized” it or because I believe that I am “authorized” by it, I identify with it and presume that within its sphere I am bound to accept it. Authority has, then, some ability to change my values, and more to change my desires. Cf. Arendt, *What Was Authority?*, in *AUTHORITY* 81 (C. Friedrich ed. 1958).

3. In the extreme case of violence, premeditated murder, the perpetrator confesses a weakness, that there is no way he can use his victim because there is no desired response he can achieve. Hence the 1944 conspirators feared Hitler's power and saw no way to turn it to their own ends; they could only remove it and him altogether.

Nazi violence toward Jews was rooted in a similar fear, which despaired of using the “power” of Jews. For this reason, at least in part, the efforts of some Jewish groups to prove themselves useful to the conqueror backfired, though the same tactics might have succeeded with conquerors who were more secure in their belief in their own superiority and greater strength.

tives. At their weakest, men turn violently on themselves, seeking to remove the threat by identifying with him who inflicts it. Slightly stronger are those who resort to currying favor; theirs is a petty violence which seeks to use the self-esteem of the stronger to win more than he, left to himself, would concede. "Either give me a tip or I will not be smilingly deferential" is only a milder form of "your money or your life!"⁴

The very strong, by contrast, are often in a position to ignore apparent violence. Yet this refusal to fight back is itself a form of violence, a contemptuous reaction which may be a brutal injury to the self-esteem of the assailant. Every man convinced of his own rational and persuasive powers can be maddened by the statement, "It is pointless to argue," unless he can convince himself that it is indeed pointless because the other is so stupid. And we have all seen adults remind children that "we are only playing," a comment which, since the child was being serious—else why the reprimand—amounts to "I am only playing with you," in the adult world a clear case of contempt.⁵

Most arguments for "non-violent resistance" understand this relationship; more accurately defined, such doctrines prescribe "non-physical violence." They presume that a demonstration of one's willingness to endure physical injury will disturb the comfort and moral complacency of those who have hitherto been the acquiescent partners of the physically violent, and even, perhaps, the self-esteem of the violent themselves. The arguments state implicitly, "In order to continue depriving me of my rights, you will be *forced* to use violence; in fact, you will be *forced* to kill me. There is no threat you possess which can compel me to surrender an iota of what is mine."⁶

Frail men cannot be expected to make such arguments often or for long but that only emphasizes the strength of those who do. It is no refutation of the argument for "non-violent resistance" that the Nazis, say, would have slain those who made it; the argument envisages that possibility. The real limitation of "non-violence" is that it presumes that I am in a position to compel you to use physical violence to deny me my rights, and that to do so will injure you in some way. In the American South, as in British India, this condition was largely fulfilled,

4. For the tactics of the weak, and the price they pay, see F. FANON, *THE WRETCHED OF THE EARTH* (C. Farrington transl. 1965).

5. For many similar examples, see E. BERNE, *GAMES PEOPLE PLAY* (1964).

6. Will you not, as Plato says, study not to die only, but also to endure torture, and exile, and scourging and in a word to give up all which is not your own? If you will not, you will be a slave among slaves, even if you be ten thousand times a counsel. EPICTETUS, *DISCOURSES* 358 (G. Long transl. 1877).

for the self-esteem of most Southern whites, marginal at best relative to their Northern counterparts, depended not simply on racial superiority, but superiority which would be acknowledged in response to aggressive demands for reassurance ("Boy!" "Yassuh!"). In the early stages of the Civil Rights movement, the mere assertion of humanity, the refusal of deference, the politics of words and marches were all so powerful a psychological violence that they compelled a choice between submission and a violent physical response. And some of the predicted results, especially the activation of the complacent on the side of the "non-violent" protester, followed.

"Non-violent resistance" was, however, only the first stage of a logically escalating contest. Non-violence reflected the fact that the black was important in the mind and world of the South. Yet even in the South, as the rights asserted expanded, it became necessary to engage in the *invasion* of various white citadels, a kind of preliminary violence which made possible the "non-violent resistance" to subsequent efforts to expel the protesters. In the North, the Negro has played a far smaller role in the self-esteem of whites; racism has been more of a fact, less of a need. Even the marginal classes, for example, were not especially threatened by integrated buses and subways. In the South, the problem of blacks was never that they were not noticed—quite the contrary; in the North, it has been a vital problem. This is not to argue that life has been more degrading for blacks in the North than for their fellows in the South. Rather, it is to point out that, *relative to the white community*, and *relative to the rights he has asserted*, the Northern Negro has been and remains weaker than his fellow in the South.⁷

It is impossible "non-violently" to resist indifference and unconcern. Non-violent resistance even to police or vigilante brutality has little meaning if it goes unnoticed. Northern racism is passive and not active, and to respond passively is to reinforce and not to threaten it. The inability to offer moral violence is the measure of the need for physical violence. In a psychological sense, the Northern *white* possesses the weapons of the Southern *black*: indifference shows contempt. And if that were not enough, the Northern white has an advantage in the physical tools of sanction and reward far greater than his Southern racial brother did.

The dispute between violent and non-violent resistance results, at a tactical level, from different judgments as to the best means of my becoming significant to you, which can be reduced to different judgments

7. Cf. Friedrichs, *Interpretation of Black Aggression*, 57 YALE REV. 358 (1968).

of how effectively I can threaten you. Non-violence presumes that I am already significant enough that a non-violent assertion of my rights will force you to choose between submission and violence; the argument for violence believes it necessary to *add* the threat of physical violence to the always present non-violent potential, a concession to your greater invulnerability. Both then proceed to argue that “you have no threat which can force me to surrender what is mine,” because (1) I am psychologically freed by my sense of right and (2) I am physically free because my sense of right is stronger than my fear of injury; it is mine to suffer rather than to yield. Insofar as either argument is instrumental, it then asserts that you will be unwilling to pay the costs of injuring me, though I concede that you have the ability, whether the costs are psychological and moral, physical, or both.⁸

But more than a tactical argument is involved. We are not simply concerned to determine when violence “works”; we are equally concerned to judge its rightness and propriety.⁹ In the abstract, violence in all its forms is a wrongdoing, a violation. In the world of events, however, it often seems necessary and the wiser course. The most difficult task for those who would limit or eliminate violence lies in avoiding those situations in which men believe violence to be legitimate. And that remains the perennial challenge to political philosophy, to legislators, and to the law.

Violence is the nemesis of law-makers, for violence has a law of its own. Violence resists definition because it is protean, a thing of many forms, which may be the one lesson taught by the continuing effort to define aggression. Even when some definition is arrived at, violence evades the snares of law. The subtler, psychological forms of violence are difficult to place before the courts, requiring as they do some overt act; violence, for us, must be at least minimally apparent. But even in the case of apparent violence, the law’s procedures are after the fact; violence is supremely in the present and demands response without delay. Though they may later call us to account, legislators have felt compelled to concede that it is legitimate for us to act in “self-defense,” and we alone can judge when, and by what means, our selves need de-

8. Eldridge Cleaver told Nat Hentoff:

But if it does come to massive repression of blacks, I don’t think the majority of whites are going to either approve of it or remain silent. . . . We don’t believe that the majority in this country would permit concentration camps and genocide.

E. CLEAVER, *POST-PRISON WRITINGS AND SPEECHES* 176 (R. Scheer ed. 1969). Many advocates of non-violent resistance had less optimistic feelings, which partly shaped their tactics.

9. His neglect—to say the least—of this point is the major defect of H.L. Nieburg’s otherwise excellent *Political Violence*. H. NIEBURG, *POLITICAL VIOLENCE* (1969).

fending. Violence is the exception which speaks to the "right" and responsibility which is "inalienably"—and inescapably—ours; with resort to violence, the pleasant fiction of a "government of laws" disperses, leaving us with the judgments of men.

Legitimacy and violence are always entangled. In our usage, legitimacy is an intermediate moral term between what is "naturally right"—right under the best circumstances—and what is permitted in the situation in which we find ourselves; it is positive and not natural law. Legitimacy delineates what can be *defended*. "Authoritative" arguments are those we are *bound* to accept; "legitimate" arguments are those we would not be *wrong* to make. The appeal to what is "legitimate" is self-defense against moral criticism, and "it is legitimate" might easily be translated into "it is only human."

It was with this in mind that Rousseau asserted that the enchainment of free-born man could be "made legitimate"—that it could be defended in terms of man's condition.¹⁰ Legitimacy is casuistry, and defines the limitations of our obligations partly in terms of our power, which is the reason that appeals to legitimacy in political rhetoric so often sound like rationalization—and so often are. ("It is legitimate to cooperate with Franco because . . .")

Even if we do not agree, we are familiar with statements like "it is legitimate for me to cheat on my income tax because otherwise I would suffer relative to those who do." It would be absurd, by contrast, to argue that "I have the authority to," for authority is right in a purer sense. The argument proceeds from authority, the implicit rule for the ideal case, and declares that because the rule cannot protect me in the present case, a violation is "legitimate." In other words, "I am acting in self-defense, answering a violence with a violence." A more moralistic justification would come to the same result. The potential cheater might argue that "the letter killeth and the spirit giveth life"; the law, he would claim, did not *intend* that I should suffer relative to others, and hence paying my taxes honestly would violate the spirit of the law. By violating the letter of the law, I am defending that spirit against those who attack it.

Rhetorically, the first argument is "liberal" ("it is my *right* to defend *myself*"), the second conservative or radical ("it is my *duty* to defend the *right*"). Both, however, depend—like the apprehension of violence—on a definition of myself, of that which is properly mine and hence legitimate for me to defend. Against the individualist, for example, we

10. J.J. ROUSSEAU, *THE SOCIAL CONTRACT* 4 (G. Cole transl. 1950).

might argue that unless he identifies his pecuniary resources with himself, *he* will not suffer, and that he ought not to make such an identification. Or we might argue that he will only injure “his” government, presuming that he identifies with the state. To the moralist, we would probably answer, “two wrongs do not make a right,” which translates as “*your* role has been laid down by the letter; it is not *yours* to judge. Leave that to the law enforcement agencies (or God, or History).” And to make the moral claim that “it is legitimate to ask a man to die for his country,” we must presume not only that the country is “his,” but that his life—at least under present circumstances—is his country’s and not his own.

If no other factor is considered, the more a man feels is rightfully his, the more likely he is to feel under attack, and consequently, the more likely he will believe that a violent response is legitimate. If I create an expectation of some good result, I have allowed another to take rightful possession before the event, and if he does not receive the benefit, I must expect that he will feel robbed.¹¹ It is the expectation, not the promise, that is critical; if I am a well-known liar, the promise will have little effect. Much of the violence in our society is attributable to this growing sense of right; some of it would have been avoided if the well-advertised “credibility gap” had extended to the promise of the war on poverty, or if the pledge of racial equality had come from Senator Thurmond. Great problems, as more than one parent has discovered, arise when one makes off-handedly a promise that another takes seriously.

At least one other factor, however, must be considered. Legitimacy involves, in addition to what is properly mine, the circumstances in which I find myself and my power to affect them. If I can compel Americans to pay their taxes honestly I can no longer claim that it is legitimate for me to cheat on my return without denying the legitimacy of the tax itself. In fact, I cannot legitimately avoid any injury if my suffering is the best means to a greater good—as in the unlikely event that my suffering would shock Americans into a new state of fiscal rectitude.

Conversely, suffering which is “meaningless”—which cannot reasonably be expected to change conditions for the better—is more than can legitimately be expected. We did not hail into the war-crimes docket every private who, under threat of execution, violated a rule of war

11. Here, as elsewhere in this paper, see Davies, *Toward a Theory of Revolution*, 27 AM. SOC. REV. 5 (1962).

(though one who refused to do so would deserve our praise); we reserved that judgment for those we believed to have had some hand in shaping events and whose resistance might reasonably have been expected to have some effect.¹²

Legitimacy depends, then, on a judgment of the *significance* of our conduct, a moral chi-square test applied to the unit being judged. Morally, however, that test is difficult. Most of us would reject the legitimacy of any suggestion that we cast our vote randomly, though in most elections a single vote is neither absolutely nor even statistically significant; in other cases, including, oddly, the publishing of possibly dangerous research by scientists¹³ as well as decisions to buy or not to buy South African lobster, we accept our "unimportance" in the aggregate of individual decisions with little hesitation. The statement, "America cannot legitimately tolerate . . .," the assertion of a special significance and responsibility, is likely when used in international affairs to be classified as "arrogant" by those who themselves use it, rightly, in relation to domestic poverty, and *vice versa*. And one who, like Henry Adams's medieval men, saw his daily life as a role in a cosmic drama, might disobey Nazi orders even when threatened with what, by the standards of this world, would seem an unnoticed death. (Our evidence seems to indicate that most who did disobey had some such vision, for which humanity, in the tattered rags of its honor, may be thankful.)

The test is difficult because my "significance," my power to affect others, necessarily involves an assessment of them and of their power to affect me. My judgment of my significance, in other words, is "other-directed" in ways which my definition of my rights need not be. That fact means that my judgment of my significance is peculiarly open to my desire to excuse and rationalize bad conduct. In defining our rights, we may be prone to delusions of grandeur; in defining our significance, we are at least as prone to delusions of impotence. Impotence may excuse surrender, but it can equally excuse violence ("we have no choice but to fight").

As a general rule, the likelihood of apparent violence *increases* with our definition of our rights, but has some tendency to *fall* as our feelings of significance rise. The more we can affect the environment, the

12. Blackstone wrote that the law "does by no means *command* any opposition to a king *de jure*, but excuses the obedience paid to a king *de facto* [T]he law compels no man to yield obedience to that prince whose right, by want of possession, is rendered uncertain and disputable." 4 BLACKSTONE, COMMENTARIES *78.

13. Social scientists, because they have reason to know better, are the worst offenders, but fortunately they are partly excused by their ineffectiveness.

more we can obtain or protect what is rightly ours. As such feelings increase, we will feel less threatened and, *once we have obtained our rightful due*, we will be less likely to use violence. It is this heavily qualified fact that has led Hannah Arendt to distinguish so sharply between power and violence—in fact, to dichotomize them—a useful but misleading analysis.¹⁴ Power is the capacity to affect reality, and violence can at least do that. A declining likelihood that we will employ overt violence—that is, that violence will become apparent—*may* but need not be the result of our possession of more reliable, less limited powers (like authority). It may also reflect our confidence that we could employ violence successfully if the need arose. And in any case, violence remains present in the continuum of power, a possible means to the realization of what is mine by right.

These arguments can be reduced to a simple ratio. The structure of human confrontation is $\frac{i_2}{r_1} : \frac{i_1}{r_2}$, where i = the ability to injure and r = the sense of right of each individual or group. Thus, the basic situation in which violence will appear is, in terms of the ratio, one in which one party believes that its terms are $\frac{1}{1} : \frac{1+x}{1}$, or, “I can hurt you more than you can hurt me.” In this, the violent situation *per se*, there is not simply a conflict of rights and strengths but an *imbalance or disequilibrium of legitimacies*.

It is also instructive that in the situation where $\frac{1}{2} : \frac{2}{1}$, or where I can deprive you of what is yours twice over, but you can only deprive me of half of what is mine, the likelihood of my offering violence is great, but so is the likelihood that you will submit. The *appearance* of violence, which depends on your acceptance of my “offer,” is more likely as the relationship approaches 1:1, and hence the conclusion that *overt* violence is the weapon of the *moderately* strong.

However, as the likelihood of your accepting my challenge increases, I am likely to be more hesitant in making it. In a perfectly calculable universe, violence would never become apparent and the world of human affairs would consist of stand-offs and nominally peaceful cases of submission. But a confrontation is a relationship of *legitimacies*, not simply of power, and it is that fact which has upset the mechanistic schemes of those who dreamed of such an apparently peaceful world. The relationship can be changed to my advantage if I can increase my

14. Arendt, *Reflections on Violence*, 23 J. INT. AFFAIRS 1, 21 (1969).

ability to injure you, *or* if I can decrease your ability to injure what is "rightfully mine."¹⁵

The problem is that a disparity of moral intensity is inherently incredible until it is tested. Initially, my only means of judging your willingness to suffer is introspection, and my ego is unlikely to tell me that you are more willing to suffer, are "morally stronger," than I am without some more emphatic indication than your bare assertion of the fact. From this problem has come more than one unexpected conflict and more than one sad resort to "calculated" threats of violence. (By contrast, the major protagonists of non-violent resistance knew that their assertion of greater moral strength *would* be "tested," and they calculated on that basis.)

Up to this point, power and right have been treated analytically as separable phenomena, establishing the general tendency for the propensity to overt violence to rise with increasing feelings of right and to fall with increasing feelings of power. In human affairs, however, feelings of right and feelings of power are closely related, rising and falling together, and the problem is correspondingly more complex. As Figure 1 illustrates, the likelihood of apparent violence *rises* with

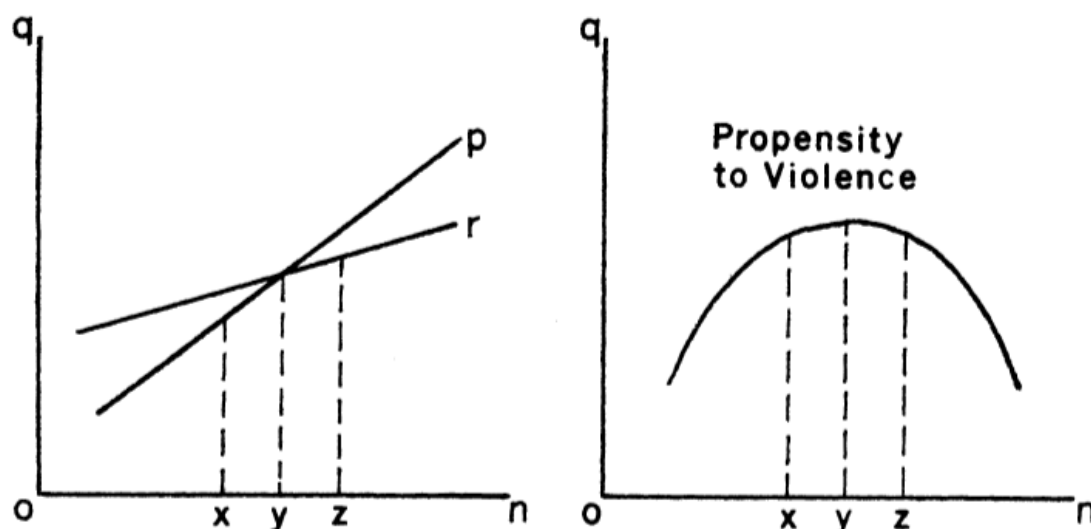


FIGURE 1

power when my sense of right (*r*) is greater than my power (*p*) to realize it, and *falls* with an increasing sense of right so long as my power to realize that right is, in my eyes, more than adequate—in a simple sense, because it gives me confidence and safety, in a slightly more complex one, because it creates and reinforces a feeling that violence is unnecessary.

15. Two kinds of defenses against your ability to injure me are possible: (1) physical,

The likelihood of violence is greatest in a situation of moderate strength in which I believe myself to have enough, but only enough, power to defend my right (point x to point z in Figure 1), or at least, where I believe this to be the case. It also makes evident that in any relationship or society where what is "mine" conflicts with what is "yours" (and where, consequently, my power to realize it necessarily conflicts with yours), violence is unlikely to appear so long as the units stand in a relationship of radical inequality (some below x , others above z). But such a society is not "non-violent": rather, it is based on an extremely successful use of threat, of psychological violence. Nor is such a relationship stable, though it may be calm for long periods. Any increase in the right and power of the disadvantaged is automatically a relative *decrease* in the power of the advantaged.

Even where there is no necessary conflict between, or even where there is agreement on, rights and powers; even where there is thoroughgoing equality, and men and groups rise and fall together; even in such cases, there is a potential for conflict wherever the units in question perceive themselves as having *less* than enough or *only* enough power to realize what is theirs (that is, all are below z). And men being men—that is, creatures whose condition is never one of perfect safety—they will demand a "safety factor," a margin which prolongs the condition of having barely enough power (from y to z) until that margin of confidence becomes an expectation of security.¹⁶

All human relationships will thus tend toward violence until all the units of such relationships are confident of their ability to realize and protect what is theirs. Violence will, of course, always be possible, but the probability will fall to the extent that such confidence exists.

Even under such ideal circumstances, however, we shall not be "safe"; and our insecurity will always be more than the minimal doubt that must always be present in human affairs. To the extent that we are forced to "retrogress" (move toward 0 on the horizontal axis in Figure 1), we will move toward a condition in which violence will appear, and since the expectation of security will—like all expectations—have become a right, we will feel robbed. The marginal effect of a backward

as in fortresses or ABM's, and (2) psychological, by increasing my "firmness in the right," the price I am willing to pay, which amounts to an increase in my sense of "right." ("I have a right to equality, provided . . ." asserts a "smaller" right than the unqualified statement would.)

16. This analysis has ominous implications for the political future of underdeveloped countries in the short term. See GARRISONS AND GOVERNMENT 303-327 (W. McWilliams ed. 1967).

step toward violence is, for that reason, greater than the marginal effect of steps away from it. Although a society may repress violence, such a course has a long-term potential of instability. The safe course when violence has appeared is to increase the sense of right and power of those who have become visibly violent, and to continue to do so for all members of the society (or at least, to stabilize their position) after the likelihood of violence has passed.

This analysis confirms one of the few propositions on which the religious and the liberal-contractarian elements of our political tradition agree: that whether society is conceived as covenant or contract, violence precedes either. God tested Noah's firmness in the faith against the violence of being thought a fool, and gave him the "rainbow sign" only after flooding the world and warning him of the "fire next time." He tested Abraham repeatedly and severely, and since He "renewed" His covenant for the last time only after Abraham proved willing to sacrifice Isaac—after a violent demand for violence—it must have been one of the original conditions. Even the unequal relations of man and God, however, are not a one-way street; God argued with Abraham, getting rather the worst of it, and bargained and later wrestled with Jacob. And that record of violence only reflects an even more ancient condition.

Men meet the world as a strange place and encounter one another as strangers, meeting fearfully but, in the beginning at least, without proof that the other is superior in that combination of physical strength and will which constitutes power. Chesterton reminded us of the ancient euphemism in which a "meeting" was a duel.¹⁷ And so it is, as anyone can verify who has watched children deal with objects or with one another; who has seen adolescents meet the opposite sex in that curious ritual in which the female, assumed by both to be of inferior physical strength, must prove her "right" to be considered a person by enduring the hazing of hair-pulling and miscellaneous swatting; who has been part of the intricate feint and retreat that is the conversation of adult strangers.

The principle with which the child confronts the world, and with which we, perennial children in part, confront the strange, is that which Locke laid down as the right of nature: that whatever I can make or shape is mine, legitimately a part of me, my "property," and hence something I claim by right and not by violence. It is an attitude sanctioned by usage: "making" a woman (curious egotism of the male) is *not*

17. G.K. CHESTERTON, *What is America?*, in *WHAT I SAW IN AMERICA* 1, 2 (1922).

using "violence" toward her because I am shaping her *will* to conform to mine, "making" her what I desire.

The discovery of other wills is painful, threatening in itself and something we would not acknowledge unless forced to do so. That which resists without violence—I think of a stone, for example—is a mystery, a power to be sure, but one which may yet be found out and made mine by being shaped. It is only those things which respond violently to my effort to shape them—which answer violence with violence—which suggest an active will separate from, because opposed to, my own.

Not for nothing have men seen anthropomorphic beings in the beasts, in lightning and the sea, and in death. The first cunning of mankind consists, in fact, in the effort to make allies of those forces which resist non-violently, which at least have not demonstrated hostility. Later, he seeks mastery of the violent forces which are predictable and less threatening when compared to the mad unpredictability of others—especially of men—and the maddeningly unpredictable certainty of death.

It is in man's violent response that we learn to see him as a will, one which, by physical resemblance, I classify with myself as "another man." Those mystics, like Emerson, who are unwilling to recognize violence ("if the red slayer thinks he slays . . .") reflect an ego which has never surrendered the dream of eliminating the other as a separate will, of shaping and becoming "one" with it.¹⁸ Not much better is the liberal's effort to "understand" violence, and no better at all the urge to "master nature"—which includes, necessarily, the desire to master men, shaping them into something incapable of violence, and hence a peaceful part of what is "rightfully mine."

Surely the most agonizing element in the conflict between parent and child, necessary as well as primordial, is that the child, which has been shaped in critical ways, must act violently to reveal itself personally. In the early years, the parents are too strong for the conflict to be serious (save to the child); in the middle years, the child who has been "mine" asserts a right to become his own, a rebellion which is *theft* to the old owner, whatever it is to the new.

It is only after violence that men recognize one another, and only after it that they recognize obligations to one another (obligations which tend to follow the degree of violence which has preceded them). One

18. "The universe," D. H. Lawrence wrote of Whitman, "adds up to ONE./One./1./Which is Walt." D. H. LAWRENCE, *STUDIES IN CLASSIC AMERICAN LITERATURE* 178 (1923).

who does not know that he most fears those he loves has not known much in the way of love. There are few other inferences to be drawn from the fact that when men become brothers they enact a symbolic death and rebirth, and even the smile—on our face or the tiger's—is a sign of well-being and a reminder of a capacity to fight with tooth and claw.

“Be at least mine enemy!”—thus saith true reverence that dares not ask for friendship. If one seek to have a friend one must also be ready to wage war for him: and in order to wage war, one must be able to be an enemy.¹⁹

What applies to personal confrontation applies in part to confrontation with the political community—if for no other reason than because so many of our ideas of the state presume that it arose out of a need to escape a condition in which violence and the threat of violence were constant, the “state of war.”

Hobbes was not the first to realize that if men feel confident of defeating another, they doubtless will try to do so, nor the last to try to taunt them into peace by raising an uncertainty as to the result.²⁰ It was wisdom, however, that led him to regard the drawn battle, the perception of a 1:1 ratio of legitimacies, as an *opportunity* for *redefining right*. When men discover that they cannot control or eliminate the other without suffering equally, they may conclude that this threat is also a possible benefit. If so, they may agree to define as illegitimate—as not part of “right”—those parts of asserted right which are necessarily in conflict, accepting as clearly legitimate only so much as is common, leaving a fairly narrow middle ground to be defined by circumstance.

It is critical to Hobbes's view that the non-appearance of violence is not equivalent to its non-existence. Only the creation of a right which excludes conflict, natural law in place of natural right, brings peace. Having, to this extent, a common view of what is “rightfully mine,” men become parts of the same person, in effect one person, though Hobbes—anticipating the resistance of the Old Adam—was careful to call this person “artificial.” In one of his most difficult passages, after proclaiming the right of sovereigns “by institution” (the qualification is critical) to judge what doctrines comport with peace and may be taught, Hobbes announces that, except by the “negligence or unskillfulness” of rulers, this cannot be contrary to truth:

19. F. NIETZSCHE, *THUS SPAKE ZARATHUSTRA* 73 (A. Tille transl. 1906).

20. “[T]he weakest hath the strength to kill the strongest, either by secret machination or by confederacy” T. HOBBS, *LEVIATHAN* 105 (H. Schneider ed. 1958).

Yet the most sudden and rough bustling in of a new truth that can be does never break the peace but only sometimes awake the war. For those men that are so remissly governed that they dare to take up arms to defend or to introduce an opinion are still in war, and their condition not peace but only a cessation of arms for fear of one another, and they live as it were in the precincts of battle continually.²¹

If, in other words, the truth results in war it is not because it affects men's ability to injure—which remains constant—but because it affects their sense of *right*. It is a proof of remiss government that it has allowed the previous, common right to disintegrate. (If it never existed, government is worse than remiss.) Peace and truth are never contraries, Hobbes argued, but truth is the enemy of violence, even violence long hidden under a seeming calm.

Hobbes was hardly sanguine; he was not predicting that battle, even drawn battle, would result in a redefinition of right, only that it *might* do so. Men could change their ability to injure one another into an ability to make claims. Men could not eliminate their frailties and follies, something only God could do; but they could create a new legitimacy, a new right and a new power, the “Mortal God” of civil society to help fill the gap.

Yet there is a hiatus in Hobbes's theory. His radically private view of man, of man whose sense of “right” is in no sense dependent on his power, meant that his citizen was one who expected, chiefly, the benefit of being let alone by others and by the law. That such men would feel an *obligation* to the state was hardly to be expected except in very minimal ways; by lowering the “power” of individual men by introducing the state as a power to “awe” them, a new relationship, Hobbes lowered what men would feel could “legitimately” be asked of them. Obligation would depend on the power of abstract reason in the minds of men, and given Hobbes's man, this could never be very high. In part, this is due to the ambiguity of Hobbes's theory of human nature. In one sense, he presumes a “new man” in civil society, able to obey the natural law which reflects the needs of his true nature. In other words, there is a teleological element in the theory despite its ontological form.²²

Locke attacked Hobbes at precisely this point of weakness. First, he argued, Hobbes's state is too strong in relation to individual men *if* it really is strong, and the fearful men of Hobbes's theory could never

21. *Id.*

22. See generally L. STRAUSS, *THE POLITICAL PHILOSOPHY OF HOBBS* (E. Sinclair transl. 1936).

have created this *new* threat, separate from themselves. Men are not such fools, Locke contended, as to "avoid what mischiefs may be done them by polecats and foxes, but to think it safety to be devoured by lions."²³ Second, however, Hobbes's government is *in fact* too weak to control men. Since men *could not* really "give up" their rights, and would not even promise to give up many, they could only be wooed into docility by advantage or threatened into it by power. Hobbes had not provided the power, apart from the force of the governors themselves, because he had not rooted the state in men's sense of their own advantage beyond the rational obligation to support a "common good," which would "make the mighty *Leviathan* of a shorter duration than the feeblest creatures . . ."²⁴

These defects, Locke argued, could be remedied by entrusting government to the majority, a violence potential greater than the rest of the society combined,²⁵ and by relying on the inherent divisions within the majority and on its desire to avoid driving the minority to desperate measures to obviate the danger of tyranny.

Agreeing with Locke that right was a constant (and not, as Hobbes had seen it, partly variable), the authors of *The Federalist* and others in the Lockean tradition also agreed that the only solution was to make the individual weak and the state strong. But they feared that Locke had failed to make sufficient provision against the possible unity—and hence tyranny—of the numerical majority. In *The Federalist*, the danger, since man's feelings of right were constant, was simply his power, and no man or group of men could be allowed to feel confident in it. Madison wrote that man himself, like his reason, was timid and cautious when left alone, and the Framers set out to make him so. The principle in government—"checks and balances"—and outside it, where the Framers relied on the greater number of groups in a large state to lessen the influence of any one of them, was *divide et impero*, the weakness of the parts guaranteeing the good of the whole. When Tocqueville spoke of the "tyranny of the majority" he was, as he knew, both praising the Framers's success and criticizing their intent. They had succeeded in avoiding most of the danger of a tyranny of a numerical majority by making all men equal because all equally weak, and in so doing, had created a worse form of majority tyranny than that which they had set out to avoid.

23. J. LOCKE, TWO TREATISES OF GOVERNMENT 372 (P. Laslett ed. 1960) (Second Treatise).

24. *Id.* 377.

25. "[I]t is necessary the body should move that way whither the greater force carries it" *Id.* 375.

They had, in fact, done more systematically what Locke had set out to do. That is, they had set the individual at the low end of the horizontal axis in Figure 1,²⁶ the "whole" at the upper. And having guaranteed, to their satisfaction, both a non-tyrannical regime and the existence of "peace," they hoped that the enfeebled individual would identify with the whole which guaranteed his private safety and prosperity.

The means they selected, however, worked against that last hope. The large state made it far more difficult to identify with the community, at least in the sense that it made the significance of the individual so small as to lessen sharply his feelings of what could legitimately be asked of him beyond the enjoyment of his private "right." (Hawthorne wrote, in terms which are much truer today, that "one twenty-millionth of a sovereign" does not delight in being within the "delegated authority of his agents.") Feelings of ability to affect the whole, the sense of significance that strengthens the sense of legitimacy, have always depended—as Tocqueville recognized—on local government and organization to develop a sense of obligation by giving the individual a sense of control over what was near and, by gradations, of what was far. But that weaning of the individual away from his status as a fearful, isolated and private being, too weak to resist the whole but unwilling to act unless forced, has always been imperfect. And in our times, as technology and modern organization shatter the old localities, it has all but disappeared.

It is for that reason that we have *always* been, in part, a violent society. When any group (or individual) has felt itself in a position of rising strength or right—of rising legitimacy—in relation to the whole, its tendencies toward violence have increased accordingly. Similarly, those who have—by being in the elite of participants or by identification vicariously achieved—felt themselves to be "one" with the society have resisted such claims violently, feeling themselves dragged back from a safe ability to realize and protect "their own." Yankee resisted Irishman, after all, with a bitter savagery; draft resistance today—not to mention desertion—is little more than a shadow of what it was in 1863. The catalogue is too extensive to complete, but must include, at least, the A.P.A., the Klan, and Anglo-Californian violence toward "Okies" and Orientals—to say nothing of contemporary examples, A. Mitchell Palmer and the bloody record that is the history of labor.

It is for this reason, too, that Americans have always secretly admired

26. See p. 632 *supra*.

the man of violence.²⁷ All nations have this problem to some degree, such being man, but rarely so explicitly, and even where Americans watch with horrified eyes, or, at least, words, the fascination betrays. The identification between me and the great state is either fairly feeble or largely spurious and something in my mind will tell me so, even if I shut it off from consciousness as too threatening to bear. The only variation is the different men of violence with whom different selves find identification easy, such as private detectives, tough cops or soldiers for the conventional, "Che," Mao and the like for others.

In this, as in many things, Rousseau was a lonely voice and one which spoke only too little to Americans. Rousseau diverged from the presumption that the chief aim of government is to avoid overt violence, pointing out that the very existence of government is a violence to man as he originally is, that laws and institutions inevitably shape him, that he has no innate and invariable sense of "right." When Rousseau remarked that man "must" give up all his powers to the state and the community, he meant just that: that he *must*. Being born with a self and a sense of right that is at best inchoate, man receives back from the community the "self" that will be his. Government is justified when it improves on the original condition of man, when it drives private, fearful children into a broader, stronger, more confident and wiser version of self. Government, for Rousseau, was the result of a violent confrontation between the "general" and the "particular" will, and good government was the ally of the former in its effort to "force" the individual to be "free."

Rousseau was a developmental psychologist, and his argument presumes that the good society frees the individual of his particularity—and the anxiety that goes with it—precisely by encouraging and compelling identification, by making claims on the individual and allowing him to make them in turn—that is, by emphasizing his significance in relation to others. That strengthened sense of efficacy was, in his view, the best means of strengthening *both* the individual's sense of right *and* the common standards of legitimacy. (Rousseau—if it need be said—knew that there was a danger in this, the threat of spurious or totalitarian identification, which is why he favored the small state and a strong pluralism if a large one were necessary.) To weaken that sense of importance would be to weaken both; Rousseau understood "repressive desublimation" much earlier (not to say much better) than Mar-

27. Cf. Twain, *A Defense of General Funston*, in *THE DAMNED HUMAN RACE* 82 (J. Smith ed. 1962).

cuse,²⁸ commenting that a good state has few criminals and a bad one, many pardons.

It is revealing that while both Locke and Rousseau accepted the risk of violence as a check against possible usurpation, Locke justified the risk by arguing that men would be too cautious in the face of power to use violence lightly; Rousseau argued that such disturbances might give “wings to the soul.”²⁹

Rousseau’s view, in fact, paralleled that summarized in Figure 1; the emergence of violence was itself a sign of the soul taking flight, moving away from the fearful original man who was always *potentially* violent, to a civil man who is never violent from choice and rarely feels the need. It was the sign of a middle level in human development, which challenged the state to go the next stage—to make a man feel still *more* significant than violence allowed him to. His proposition reversed Madison’s: enable the governed to control the government, and the government will take care of itself.

Through most of American history, we were able to achieve a sense of significance through a faith in history itself. History became the trustee of our dignity, the justifier of our frustrations. The long term might do what the short could not, and outbreaks of violence were restricted to the times when history seemed, unaccountably, to have broken down or to have become unusually promising—the second being the far less frequent case. As few need to be told, history in our age has become suspect. Is it strange that the two most notable movements of protest speak in a note of despair so strong that the classic charge of the old—“unrealistic utopianism”—rings rather hollow?

Ours, to adapt Dickens, are not only the best and worst, but the most mediocre of times. We are threatened more in spite of, and because of, the fact that we have more; with more means to fight, in absolute terms, we fear fighting more, and with more reason to submit partly—more excess above our needs—we fear to do so. Less able to feel significant in the society, we identify more strongly with what is close and under our control; our standards of what can legitimately be asked of us decline with what we can ask of others.

In this sense, the violent potentiality of the society the Framers designed, one which divided the mind of each man into warring halves—his strong role within a weak sphere, his weaker role in a strong one—have come home to roost. These are, in this sense, violent times be-

28. See H. MARCUSE, *ONE DIMENSIONAL MAN* (1964).

29. J. J. ROUSSEAU, *supra* note 10, at 83 n.1.

cause of their ambiguity. We oscillate between wild tendencies toward permissiveness ("many pardons") when we can see ourselves as potentially subject to claim and sanction (the liberal case for civil rights still rests, largely, on the precedent they set for my case), and equally wild violence when we see ourselves threatened. All that varies is the ox.

These are also mediocre times: our goods come to us by a routine process, and, as we know, most of the great goods of man have become routine. The calm lagoon, Melville said, is a delight to those who have braved the tempest, but to those who have not it is ennui. Violence is excitement, for it involves risk, the exhilaration of winning and the threat of losing, and the boredom—and the permissiveness at private levels—of modern America does not make violence less appealing. (Though the very boredom of the goods we possess, their heavy certainty, makes the remaining threats doubly dangerous because they are, to most Americans, still goods). Many are excluded, most are bored but fear to lose, others are bored simply. Some hope and others fear violence and all delight in its fascination.

Most of our violence is private, in our small sphere—suicide, now our fourth cause of death, crime, possessiveness, marital crisis. It can be argued that these are but little more prevalent than in the past, but that would only underline the fact of our new and otherwise unexplained interest in them. It is interesting that a Presidential Commission found cause to lament that we were, in racial terms, "becoming two societies"—as if we had ever been anything else.

It is not violence we regard as an enemy, but violence directed in some sense "at us," either because it threatens us or because we might commit it. Much less attention, and fewer turgidly agonized discussions, were formerly directed at the internecine, private and semi-public forms of violence among blacks and among students.³⁰ Even ghetto riots aroused little interest except when it was suggested that they were aimed at all whites, a suggestion which prevailed even though the vast majority of those injured are still black. Millions of Americans were shocked by Chicago because police violence threatened young people who were in some sense "their own," and the language of the Walker Report—"police riot"—suggests how deep is the need to separate disapproval in this "unusual" case from the day-to-day violence suffered by black America.

In fact, the community at large has been so fearful of, and so fearfully

30. Though these last, like hazing or panty-raids, certainly disrupted the "reasoned atmosphere" of the university, they did not disturb *ours*.

attracted to, the physical forms of violence that it has seemed to demand them as the price of access to itself. The mass media, faithful in this at least, have echoed the demand, making violence the price of attention, but offering that forum and notoriety to any who would provide it, whether from the left, the marginal classes, or the right, or whether—like Sirhan—they are simply desperate men who have found the one available means to significance which comes to their hand, more rational though more unfortunate than suicide.

Students and blacks, the most visible political protesters of the time, depend for their effectiveness on the response of the dominant community, and it is clear that, having demanded physical violence as a price of attention and feeling threatened enough from other sources, that community is likely to follow the historic pattern of disproportionate and violent response to the threat of violence from rising groups. Threats aside, violent anti-violence has intrinsic satisfactions. Perhaps, as in the past, this may presage a kind of accommodation, though at the expense of a tragic waste of time, and of the final and irrevocable losses that are the real horror of physical violence. And in any case, it is hardly wise to rely on the long term.

“Confrontation” would, in the best circumstances, be necessary between black and white, old and young. Confrontation is simply that, an effort to pierce the veil and find the face, the real self of the other,³¹ not merely of the opponent, but also of one’s friends, whose devotion is put to the test, and of oneself. In one sense a threat, it is, in another, an effort to force all parties to be free, and if we respond intelligently, it may be more of the latter than the former. Though confrontation is always violent, it need not take physical forms. Picket lines and bitter rhetoric, to take only two examples, are violence too. To respond intelligently requires combat and concession at a point before either of the protesting groups turns irrevocably to physical violence out of despair of any alternative, and adequate concessions demand an adequate assessment of our weakness.

Students and blacks are not, except in a very narrow sense—for students do get older—the “wave of the future.” As David Easton has pointed out,³² they are among the last of the face-to-face societies, concentrated in localities where a high standard of legitimacy can arise

31. See Cleaver's references to the fact that white America has “brainwashed” itself, and must, presumably, be liberated. E. CLEAVER, *supra* note 8, at 134-35.

32. D. Easton, Children and Political Instability (paper presented at the annual meeting of the Western Political Science Association, Honolulu, Hawaii, April 3, 1969). The proceedings of the meeting are reported in 22 W. POL. Q. 655 (1969).

within the community itself (in this, students have a considerable advantage; the ghetto is hardly the ideal environment in which to build community and solidarity). It would be no offense under most circumstances to tell a business executive, "if you don't like it, go elsewhere." It might well be financially advantageous, and he probably has scant attachment to his fellow workers. In both considerations, he is no different from most professionals and academics. It is an offense to a student because it asks him not only to give up academic advantages, but because it asks him to leave his friends and because it mocks his devotion to his college.³³ For equally serious reasons, it is an offense to tell a black to desert his racial brothers in the interest of gain. All of this indicates community; it also indicates weakness, marginality in a world of great organizations that span continents and technology which conquers space. Who, apart from Grayson Kirk, really cares if someone seizes Grayson Kirk's office? Or whether there is a riot in a black ghetto? The face-to-face community is bounded by its own space, impotent outside the limited resources it controls.

Left to itself, that analysis of the power to inflict injury on the rest of us would be radically misleading. As in all cases involving legitimacy, there is a question of right involved, and here established society must understand its weakness. Professor Easton has attempted to explain student protest by a simple demographic analysis, which would treat protest as a function of the increasing percentage of the population who are young.³⁴ Such an argument presumes that the student standard of what is rightfully theirs is a constant which bulks larger with numbers.³⁵ But the argument does not explain why, unlike older forms of student violence, the current examples have been *political* rather than private or internecine. It is certainly important that students achieved early successes in their protests, and that an increased sense of significance, aided by media interest, has grown with time. Yet the process cannot be understood except in its relation to a rise in the student's sense of right. In part, this is a result of an increased sense of the "wrongness" of established authority. In a more important sense, it is a result of the struggles of blacks. Everyone concedes such an influence (though most are too kind to suggest that a residual element of racism was involved—"if it is legitimate for them, then surely it is for us"), but

33. The same offensiveness applies to our implicit toleration of emigration to avoid the draft while punishing resistance, which mocks devotion to the country.

34. See D. Easton, *supra* note 32.

35. The same analysis could be applied to blacks, but Professor Easton is too wise to do so.

the influence is as powerful as it is because it touches the desire for significance instead of anonymity, for a political society in which claims can be made by me, and will be made on me. Violence and affluence could turn both movements back into the petty violence of private life, but that result would be tragic, for both—however inchoately and stutteringly—have the promise, in their increasing standard of legitimacy, of a liberation for us all.³⁶

After all, the crisis of legitimacy, as it has been called, does not involve a challenge by blacks or by students to our “core values.” At most, it involves a challenge to our procedures, and often, even in this case, they only demand access to them. Yet the crisis does demand change, if only to decrease the likelihood of the worst forms of physical violence. In the simplest sense, the crisis requires a rapid expansion of the sense of right and significance among the disadvantaged, and, if violence on the part of the marginal classes is to be avoided, the crisis requires a similar expansion among them (though, obviously, at a lesser rate). In fact, the requirement is one in which all our people have a claim.

That may seem impossible, and perhaps it is. Any change, however, demands that we abandon our fascination for a government of mechanical contrivances and procedures designed to avoid conflict and to reduce politics to “brokerage” if not to eliminate politics altogether. It is necessary that we do so if only to become free of illusion; in an age of change the old procedures which were thought to give the political system a mechanical security apart from the virtue and participation of its citizens have decayed or passed away. A procedure is a path between end and circumstance, which is what gives it legitimacy, but in a time when all change accelerates, such paths become outmoded almost as soon as they are devised.³⁷

All the crises of our time insist that we aim at a politics of involvement,³⁸ and, other requirements aside, such a politics must seem exciting and important to men; it must, in other words, involve a kind of violence. There is nothing foreign to politics in this; not long ago, political scientists described politics as a “battle,” a “struggle” or an “arena.” There is even less that is foreign to the law, which is a ritualized combat, imperfectly concealing the less ritualized forms from

36. See H. NIEBURG, *supra* note 9, at 133-63.

37. I have developed this argument in much more detail in *Civil Disobedience and Contemporary Constitutionalism*, 1 COMP. POL. 211 (1969).

38. Cf. Lipsitz, *If, As Verba Says, the State Functions as a Religion, What Are We To Do Then To Save Our Souls?*, 62 AM. POL. SCI. REV. 527 (1968).

which it grew. The liberal tradition, and our own growing fears and desires for "stability," helped blind us to the fact, but even so, political scientists abandoned their "battle" rhetoric only to speak of the "rules of the game." Games, at least, are a pleasant form of violence. But games do not have rules: rules define *what* the game is, as well as who can play. And the more important the game, the more intolerable to be left out.

Since politics is the kind of game one must either play *or* watch, we must not be surprised if we are asked whether it is *worth* playing and whether another would not be better. If it is too much to ask, in the mass states of our time, that everyone be a player, politics must at least be interesting to the spectator. If it is not, they will boo or, as they have been doing, engage in the kind of protest where the cheerful metaphor of games falls short altogether. If the game of politics is to hold its own against the spectacles of the Colosseum, it must prove that the gains to be won are greater and more real and less attended by loss than they presently appear, and that the game involves the kind of violence that best enables a man to find himself, his friends, and a standard of legitimacy.