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**BEHIND *THE NYLON CURTAIN*: SOCIAL COHESION, LAW,  
AND THE DISAGGREGATION OF AMERICAN CULTURE**

*Rebecca Roiphe*\* and *Doni Gewirtzman*\*\*

**I. INTRODUCTION**

In September 1982, Billy Joel released what he has since called his favorite album: *The Nylon Curtain*.<sup>1</sup> The album marked a major departure from Joel's prior work; it is his most politically conscious and ambitious record, "a concept album"<sup>2</sup> that used external elements — sounds of factory whistles, jet engines, and helicopter rotors — to "bring out the painterly side of [Joel] that has always identified with that master of American light, Edward Hopper."<sup>3</sup> As *Rolling Stone*'s review put it, the album found Joel for the first time "tackling subjects farther from home and larger than his own neighborhood."<sup>4</sup> Instead of piano bars,<sup>5</sup> suburban restaurants,<sup>6</sup> and Mr. Cacciatore's on Sullivan Street,<sup>7</sup> songs like "Allentown" and "Goodnight Saigon" focused on seemingly forgotten communities of men in the Rust Belt and Vietnam confronting social dislocation, the lasting effects of epic political and economic change, and widespread disillusionment.

In this Essay, we use *The Nylon Curtain* to provide a snapshot

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<sup>1</sup> BILLY JOEL, *THE NYLON CURTAIN* (Columbia Records 1982); *Here's the Thing With Alec Baldwin: Billy Joel*, WCNY RADIO (July 30, 2012), <http://www.wnyc.org/story/225651-billy-joel/>.

<sup>2</sup> Stephen Thomas Erlewine, *Billy Joel Biography*, BILLBOARD, <http://www.billboard.com/artist/284376/billy-joel/biography> (last visited Jan. 27, 2016).

<sup>3</sup> Stephen Holden, *The Nylon Curtain Album Review*, ROLLING STONE (Oct. 14, 1982).

<sup>4</sup> *Id.*

<sup>5</sup> BILLY JOEL, *Piano Man*, on PIANO MAN (Columbia Records 1973).

<sup>6</sup> BILLY JOEL, *Scenes from an Italian Restaurant*, on THE STRANGER (Columbia Records 1977).

<sup>7</sup> BILLY JOEL, *Movin' Out (Anthony's Song)*, on THE STRANGER (Columbia Records 1977).

of a transitional moment for culture and law at the dawn of the Reagan Revolution, a moment where hyper-individualism and atomization caused many to abandon the idea that national character, collective industry, or social cohesion could give meaning to individual lives. During the 1960s and 1970s, a shared sense of national purpose that had been forged in the aftermath of World War II broke apart under the pressure of deep cynicism about national institutions and a celebration of self-discovery. The result was a disaggregation of American culture, with different corners of society wrestling with the proper social framework in which to anchor a sense of self: Should Americans define themselves as individuals unmoored from any sense of national or communal identity or as members of smaller communities based on shared cultural traits or normative beliefs?

Just as these questions emerged for Billy Joel within the context of popular culture, they emerged in law as well. Legal systems operate as engines of social cohesion and national identity, while also creating space for opposing forces of dissent and individual expression. As courts began to encounter a stronger and more assertive vision of American pluralism, they were forced to consider how law should balance these competing objectives, and the extent to which legal norms should respond to the culture's overall move towards disaggregation.

## II. THE DISAGGREGATION OF AMERICAN CULTURE

### A. Liberal Universalism in the Post-World War II Era

Up until the 1970s, "liberal universalism" or "social liberalism" shaped most political and social dialogue. This version of twentieth century thought simultaneously embraced a commitment to the common good and a faith in individual liberty. According to this worldview, individuals, despite their variations, shared a common core and an essential humanity. This collective essence allowed for the discovery of unified goals to inform and shape our social and political structures. In turn, society's central pursuit was to design a world that embodied shared values and allowed individuals to thrive within the confines of those principles.

The first two decades after World War II were the embodiment of this collective national ethos. The country celebrated American ingenuity and embraced the national mission to bring economic

and social progress through carefully coordinated expertise, putting the New Deal in motion. Individuals, for the most part, felt they were part of a larger and grander whole where responsibility and self-sacrifice were expected to serve a communal mission and purpose. While there was significant disagreement over the nature of that collective goal, all sides of the political divide believed that such a goal existed, and there was a sense of progress and worthwhile endeavor in pursuing it.<sup>8</sup>

Liberal universalism animated the early civil rights movement and the ideal of racial integration. Leaders, like Dr. Martin Luther King Jr., insisted that the country fulfill its promise by bringing all mankind together in a world in which black and white people could share in a rich common culture. In his famous speech delivered in Washington, D.C. in 1963, King insisted that his agenda was “deeply rooted in the American dream.”<sup>9</sup> Rather than concede fundamental differences, King imagined a world of shared social lives and values that drew on and fueled the mission of social liberalism: “I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.”<sup>10</sup>

It is not that the country was perfect. Racism, poverty, and social disruption marred the images of white picket fences and prosperity, but these forces of discontent were subsumed in a general culture of optimism, national mission, and unified purpose. A belief in inevitable progress towards a better world created room for grand plans for inclusion and social welfare, fulfilling America’s promise by extending wealth and opportunity to all.<sup>11</sup>

## B. Transition and Co-Existence

The gradual recognition that America had deceived its citizens and had dragged them through an unimaginable and unjustifiable war permanently transfigured the country and its attitude toward government, structures, institutions, and power in general. Mass war

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<sup>8</sup> HOWARD BRICK, *TRANSCENDING CAPITALISM: VISIONS OF A NEW SOCIETY IN MODERN AMERICAN THOUGHT* 1-22 (2006).

<sup>9</sup> Martin Luther King Jr., *I Have a Dream*, Address Delivered at the March on Washington, D.C., (August 28, 1963), in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 217 (James M. Washington, ed. 1991).

<sup>10</sup> *Id.*

<sup>11</sup> *See generally id.*

protests, a growingly intense civil rights movement, feminism, youth culture, and other increasingly radical social movements replaced the optimism and celebratory tone of the previous era. Social conflict and dissent marked the new national mood: fear, skepticism, and distrust of government institutions and other hierarchical structures drove a culture of protest. Moreover, the economic recession of the 1970s, an unprecedented combination of inflation, unemployment, and stalled economic growth, created conditions of scarcity that undermined a sense of national confidence and purpose.

Confronted with widespread unrest, social thought in the late 1960s gradually abandoned its focus on grand unifying theories, faith in scientific principles, and the inevitability of progress and success. Driven by a sense of collective revolt against the social conformism of prior decades, the liberal universalist ideals of social equality and community began to coexist with a new focus on individualism, self-expression, and self-exploration.<sup>12</sup> Indeed, the human capacity to experience and create became critical to the achievement of utopian social goals—individual creativity and the search for authenticity, rather than a monolithic sense of community, would lead to a better world for all.<sup>13</sup> The catch phrase, “the personal is political,” popularized by Carole Hanisch in 1969, brought a sense of urgency to the project of individual self-liberation.

Perhaps it was a kind of Jungian ideal in which the individual psyche merged seamlessly with that of others: the external world would gradually reflect the beauty of an unleashed internal life.<sup>14</sup> But more than that, there was a faith that an exploration of the self would liberate individuals to identify and pursue social justice.<sup>15</sup> Corrupt institutions drew their power from a complacent populace trapped in false material images of happiness. Once each individual located his or her authentic self and set it free, that individual would inevitably see that social justice and equality were universal social goods. The psychological freedom of the individual was inextricably linked to

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<sup>12</sup> Carol Hanisch, *The Personal is Political*, in NOTES FROM THE SECOND YEAR: WOMEN'S LIBERATION; MAJOR WRITINGS OF THE RADICAL FEMINISTS 76 (Shulamith Firestone & Anne Koedt eds., 1970).

<sup>13</sup> Edward A. Purcell Jr., *Social Thought*, 35 AM. Q. 80, 83 (1983).

<sup>14</sup> Gregory Mitchell, *Carl Jung & Jungian Analytical Psychology*, <http://www.mind-development.eu/jung.html> (last visited Jan. 25, 2016).

<sup>15</sup> Susan Wyatt, *So You Want to be a Change Agent*, 9 J. JUNGIAN SCHOLARLY STUDIES (2014), [http://jungiansociety.org/images/e-journal/Journal\\_2014/Wyatt%20-%20PDF%20-%20Oct%2022.pdf](http://jungiansociety.org/images/e-journal/Journal_2014/Wyatt%20-%20PDF%20-%20Oct%2022.pdf).

the political freedom of the country.<sup>16</sup>

### C. The “Me Decade” and the Disaggregation of American Culture

The tenuous alliance between the exploration of individual identity and a shared vision of social justice proved to be short-lived. The legacy of the Vietnam War and Watergate was a rebellion against hierarchy and organizations—the social institutions necessary to provide a collective and inclusive vision of the future.<sup>17</sup> The result was a partial fracturing of American culture, as social categories migrated from national to ethnic and racial identity, and from class to neighborhood and church.<sup>18</sup> The definition of the self became more fluid, the units of identity became smaller, and self-exploration became the central objective rather than a means to a larger social end.<sup>19</sup>

There was something almost comical about the individualism of the 1960s unmoored from the goal of collective justice. The dialectic seemed unable to hold under pressure, with the 70s inheriting only sexual liberation, middle-class narcissism, and an array of lifestyle fads. The result, as Tom Wolfe announced in August 1976 on the pages of *New York*, was “a period that will come to be known as the Me Decade.”<sup>20</sup>

Wolfe’s narrative was fairly simple: the United States had gone through an unprecedented thirty-year period of post-World War II economic expansion that had left ordinary Americans so much better off that the idea of something called the “working class” was increasingly theoretical.<sup>21</sup> “In America truck drivers, mechanics, factory workers, policemen, firemen, and garbagemen make so much money—\$15,000 to \$20,000 (or more) per year is not uncommon—

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<sup>16</sup> See Mikal Gilmore, *Bob Dylan, the Beatles, and the Rock of the Sixties*, ROLLING STONE, Aug. 23, 1990, <http://www.rollingstone.com/music/news/bob-dylan-the-beatles-and-the-rock-roll-of-the-60s-19900823> (detailing how the Beatles and Dylan both address the link between psychological and political freedom – personal and subjective truth will unleash social justice).

<sup>17</sup> Russell J. Dalton, *The Social Transformation of Trust in Government*, 15 INT’L REV. SOCIOLOGY 133, 133 (2005), <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044542.pdf>.

<sup>18</sup> *Id.* at 139.

<sup>19</sup> See generally Tom Wolfe, *The “Me” Decade and the Third Great Awakening*, N.Y. MAGAZINE (Aug. 23, 1976), <http://nymag.com/news/features/45938/#print>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

that the word *proletarian* can no longer be used in this country with a straight face.”<sup>22</sup> Along with undermining a vision of community built on shared class identity, prosperity provided the financial means for individuals to break from established social structures and pursue their own distinct, ego-driven desires. All of this was marked by the proliferation of encounter groups that promoted self-exploration, a celebration of individual sexual pleasure that threatened the institution of marriage, and a growth in cultural products that focused on a single theme: “Let’s talk about Me.”<sup>23</sup> Richard Bach’s bestselling book, *Jonathan Livingston Seagull*,<sup>24</sup> a parable about self-liberation and the transcendent nature of personal exploration, captured a national mood. This new obsession with discovering, re-making, and re-modeling the self-reflected a kind of self-indulgent narcissism. Personality was the central pursuit, a project of infinite choice.

Moreover, the social visions of the 1960s themselves were growing increasingly elusive. The movement for racial equality staggered as busing and affirmative action demonstrated how stubborn and complicated the problem was.<sup>25</sup> Like liberal universalism itself, the hope for racial integration had largely given way to a new faith in the value of diversity.<sup>26</sup> Rather than a problem to overcome, diversity became a social good to embrace. The popular television show, *The Jeffersons*, was on some level a sign of real progress – an upwardly mobile middle-class black family, an interracial couple, and a black protagonist named after one of the Founding Fathers.<sup>27</sup> But the series also depicted black and white culture as irreconcilably different and inevitably at odds. True racial integration, the original goal of the early civil rights movement, had faltered, and cultural representations had pushed beyond those seemingly naïve goals. A new

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> RICHARD BACH, *JONATHAN LIVINGSTON SEAGULL* (1970).

<sup>25</sup> The Supreme Court ushered in an era of busing when it ruled that requiring children to go to schools in neighborhoods other than their own was an appropriate remedy to segregation. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). Just three years later, however, the Court ruled that districts were not responsible for integrating schools through districts unless the segregation had been intentional. *Milliken v. Bradley*, 418 U.S. 717 (1974). This decision effectively exempted suburbs from the desegregation mandate.

<sup>26</sup> BRUCE J. SCHULMAN, *THE SEVENTIES: THE GREAT SHIFT IN AMERICAN CULTURE, SOCIETY, AND POLITICS* 70-72 (2001).

<sup>27</sup> Chiderah Monde, ‘*Movin’ on up*’: ‘*The Jeffersons*’ and the rise and fall of the black sitcom, *THE GRIO* (July 26, 2012, 3:51 PM), <http://thegrio.com/2012/07/26/movin-on-up-the-jeffersons-and-the-rise-and-fall-of-the-black-sitcom/>.

militant black separatism, led by the dynamic Malcolm X, emerged in the mid-1960s. Leaders of the Black Panthers urged their followers to celebrate difference, embrace a separate culture, and reject the ideal of universal inclusion.<sup>28</sup>

The retreat from common goals and substantive visions of inclusive community gave way to balkanization. The push for ethnic studies programs, bilingual education, and cultural centers took the place of assimilation and integration. This new vision of America as a land of many cultures rather than a melting pot pushed liberal universalism to the side. Social movements led by women, gays, blacks and others picked up on the value of cultural identity.<sup>29</sup> White ethnic groups celebrated their own unique identities. American Zionism surged, Italian Americans celebrated their culture, as did Polish Catholics and even the elderly, who labeled themselves the “Gray Panthers.”<sup>30</sup>

While the dim economic climate should have lent itself to mobilization, the mid-1970s instead saw an erosion of working class identity and a fragmentation of the labor movement. As the movie *Saturday Night Fever*<sup>31</sup> dramatized, the individual goal of upward mobility displaced political visions of a more just and inclusive society.<sup>32</sup> The iconic lead, Tony Manero, escaped his dead-end background in Brooklyn for the lights and promise of Manhattan. Dismissing his buddies as all the “assholes back there,” he pursued his own future with ambition and drive.<sup>33</sup> Hope lay not in blue-collar solidarity, but personal transcendence.

Gradually, law began to recognize this social shift from universal goals towards pluralism and atomization. In 1978, in *California Regents v. Bakke*, the Supreme Court announced that the rationale for affirmative action was the value of diversity itself.<sup>34</sup> Diversity, which had always been the means to the end of more inclusive and

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<sup>28</sup> SCHULMAN, *supra* note 26, at 63.

<sup>29</sup> SCHULMAN, *supra* note 26, at 72.

<sup>30</sup> SCHULMAN, *supra* note 26, at 80-85.

<sup>31</sup> SATURDAY NIGHT FEVER (Paramount Pictures 1977).

<sup>32</sup> JEFFERSON COWIE, *STAYIN’ ALIVE: THE 1970S AND THE LAST DAYS OF THE WORKING CLASS 15-19* (2010).

<sup>33</sup> *Id.* at 17.

<sup>34</sup> 438 U.S. 265, 314 (1978) (holding that the use of racial quotas in admissions decisions violated the Equal Protection Clause of the Fourteenth Amendment, however schools were permitted to consider race in conjunction with other qualities in order to achieve a diverse student body).



open society, instead became the goal. The school voucher program, which began as a part of President Lyndon B. Johnson's war on poverty, reflected a similar drift from larger visions of social unity, drawing on an odd alliance between cultural conservatives and Afrocentric groups. Cultural conservatives wanted to rid the school system of the cumbersome and always inefficient interference of government. They wanted to empower individuals to choose how and where to educate their children. A reaction to the failed experiment in busing, the voucher program offered parents the ability to shape the moral and cultural upbringing of their children. Some left-wing groups increasingly interested in promoting a positive sense of identity and heritage were similarly drawn to the program. Neither side spoke of the by-then quaint idea of public schools as civic incubators, educating a new generation for citizenship. On both sides of the political spectrum the image of a public commons, where children of all backgrounds could come together to learn to become members and to shape civic society, buckled under the pressure of a time in which the market captured the imagination of most everyone. In this climate, school became a good that was purchased privately to serve the individual goals of parents and families.

The feminist movement too retreated from grand theories of integration and equal rights. Most feminists in the 1960s and early 70s criticized the idea of fundamental difference, dismissing the concept as a part of the tool kit of oppression. Lois Gould's children's book about Baby X, a baby without a gender,<sup>35</sup> was a huge success within a movement that treated biological difference as a social construct, while the National Organization of Women opened its doors to men and advocated for inclusion in established American institutions. As with the civil rights movements, the feminist movement's gains in the late 1960s were substantial and in 1973, the Supreme Court recognized the fundamental right to abortion across the nation.<sup>36</sup>

By the end of the 1970s, the feminist movement shifted away from collective political action to celebrate cultural difference and ultimately, the infinite, personal, and elective nature of identity. Younger feminists broke off into cells and collectives, like the Red-stockings and the New York Radical Women, actively working to dismantle a patriarchal system of marriage and family.<sup>37</sup> A growing

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<sup>35</sup> LOIS GOULD, *X, A FABULOUS CHILD'S STORY* (1978).

<sup>36</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>37</sup> See generally ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA*

number of radical feminists found heterosexuality and family to be sources of oppression, using sexual liberation to challenge traditional gender roles, and seemed to threaten the foundation of marriage. Erica Jong's best selling novel, *Fear of Flying*, was a story about a woman who left her husband for a lover and eventually pursued her own liberation.<sup>38</sup> The book was a feat of consciousness-raising and sexual freedom that characterized this new form of feminist thought. Meanwhile, liberal feminists like Betty Friedan worried that these new groups would alienate important allies and abandon serious political action for the talk of subversion.<sup>39</sup>

Just as the Left abandoned its efforts to promote a single national vision, the Right also moved away from grand unifying social theories. Conservatives violently rejected the communes, ashrams, the New Age institutes of the 1970s, and other engines of ethnic and cultural re-discovery. But refugees from the Left, like Norman Podhoretz and Irving Kristol, recognized a hunger for authority. The new conservatives offered an antidote to the anxiety provoked by social dislocation, which left individuals unmoored from tradition, immersed in a sea of choices made worse by a world that offered few guarantees and so much potential peril. But it was no longer the nation that provided shelter from the storm; instead, it was the forces of the market and smaller traditional structures like family, neighborhood, and church that filled the void. In keeping with the times, each was valued not for its ability to create a national sense of collective endeavor, but for its ability to facilitate personal ambition and individual growth.

### III. REACTIONS TO DISAGGREGATION

By the time the 1980s rolled around, disaggregation and the inevitability of pluralism resulted in a set of conflicting cultural impulses in politics, popular culture, and law. One was a nostalgic longing for a time of deeper social cohesion and connection, embodied by Joel's "weekends at the Jersey shore" and the slow-dancing "mothers in the USO."<sup>40</sup> The other was a trend towards even greater individualism and atomization, driven by a fetishizing of markets and

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(1989).

<sup>38</sup> ERICA JONG, *FEAR OF FLYING* (1973).

<sup>39</sup> SCHULMAN, *supra* note 26, at 165.

<sup>40</sup> BILLY JOEL, *Allentown*, on *THE NYLON CURTAIN* (Columbia 1982).

a rhetoric of rights and liberty. Each provided a framework for responding to a world where diversity was no longer a problem to solve but a reality to navigate, and identity increasingly seemed to be a matter of choice rather than something assigned or collectively given.

### A. The Reagan Revolution

In July 1979, President Jimmy Carter delivered a nationally televised address called *Crisis of Confidence*,<sup>41</sup> offering a vision of a nation battered by changing visions of self, identity, and community. The speech called for shared sacrifice and a renewal of faith, condemning self-involvement as a sign of national weakness. As Carter put it, “[i]n a nation that was proud of hard work, strong families, close-knit communities, and our faith in God, too many of us now tend to worship self-indulgence and consumption.”<sup>42</sup> The speech positioned individualism and community as bitter rivals in a battle for the nation’s soul, seeing little room for peaceful co-existence.

Sworn in as the 40<sup>th</sup> President on January 20, 1981, Ronald Reagan opened a three-front response to Carter’s zero-sum explanation for America’s cultural malaise. First, Reagan embraced the Me Decade individualism of the 1970s but used it to further very different political ends. The new President professed a deep belief in the human ability to transcend all limits, seeing individuals as atomic forces of strength rather than cogs in a larger machine.<sup>43</sup> Invoking rhetoric from 1970s group encounter programs like EST, Reagan exploited the Left’s successful efforts to paint government and institutions as corrupt and sinister to open the door for individualist, market-based solutions to social problems.<sup>44</sup> He picked up on the thread of distrust of government, but rather than linger on that weakness, he channeled that cultural skepticism into a belief in the efficiency of markets and the power of individual Americans to create collective prosperity.

Second, Reagan relied heavily on nostalgia to preach a gospel of smaller community based on localism, faith, and unbridled optimism. It brought to mind Little House on the Prairie or It’s a Won-

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<sup>41</sup> President Jimmy Carter, *Crisis of Confidence Speech* (July 15, 1979) (transcript available at [www.cartercenter.org/news/editorials\\_speeches/crisis\\_of\\_confidence.html](http://www.cartercenter.org/news/editorials_speeches/crisis_of_confidence.html)).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

derful Life, depictions of a simpler era when individuals strived and succeeded in a place where neighbors helped each other. It was as if he imagined away the horrors of the Vietnam War, Watergate, and the battle cries of the 1960s social movements. He simply erased the specter of a world in which national leaders lied to their citizens and insisted that others see the country as he did: a land of victors with endless promise, with citizens embedded in smaller communities insulated from the disruptive effects of social disaggregation.

Third, Reagan capitalized on the white working class's increasing alienation from the Democratic Party and liberal politics. The anti-war protesters, who were mostly white privileged youth, alienated their working class counterparts who had returned home from the war.<sup>45</sup> The dramatic protests seemed to belittle their sacrifice. Liberal support for busing similarly alienated white working class families who had struggled to obtain their place in suburban America, only to find that their child was forced to travel for hours to an inferior inner city school.<sup>46</sup>

In response to Reagan's nostalgia and localized vision of American life, the Left largely failed to offer a coherent competing vision of the individual embedded in social context. Emerging from their own disillusionment with authority, structure, and expertise, left-wing political and social thinkers did not construct a competing view of social institutions. Instead, identity was increasingly seen as a matter of choice rather than something collectively given, where individual personality is not mandated or inherited but rather created at the intersection of different identities. In the language of 80s post-structuralism, everyone is caught in and oppressed by the binaries, which define them, like man and woman, white and black, straight and gay, and the only possible liberation lay in the personal disruption of labels and definitions. While this view of identity was radical and subversive, it undermined the power of social movements by limiting their ability to unite across these divides to create and pursue a shared vision of social justice.

Together, both ends of the political spectrum responded to the balkanized 70s by shifting even more aggressively towards a language of atomization that inspired Robert Putnam's classic account of declining civic life, *Bowling Alone*.<sup>47</sup> From the Right, the market

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<sup>45</sup> See SCHULMAN, *supra* note 26.

<sup>46</sup> COWIE, *supra* note 32, at 16-18.

<sup>47</sup> ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN*

became not just a way of understanding the economy, but a way of conceiving all human interactions as a set of individual decisions. From the Left, identity itself was seen as a product of individual choice rather than something determined by relationships, structure, or obligations to nation, state, or other institutions.

### B. The Nylon Curtain

Just as political actors and commenters were reacting to the changes brought about by the demise of liberal universalism, *The Nylon Curtain* reminds us that popular culture responded as well. In the context of Joel's own career trajectory, the album represents a counter-cultural critique of both 1970s self-exploration and the market-based individualism of the Reagan era. Joel—really for the first time in his career—stopped talking about himself and started talking about communities far from his Long Island roots. Before the album's release in September 1982, Billy Joel fell solidly within Wolfe's "Let's Talk About Me" account of American culture. Throughout his rise to pop stardom in the 1970s, Joel's themes stayed fairly close to self and home, focusing on the suburban neighborhood turf with which he was most familiar.<sup>48</sup> The cover of his previous album, *Glass Houses* (1980),<sup>49</sup> was a paean to narcissistic self-involvement. It featured an image of Joel in front of a glass house about to throw a rock at his own reflection; the back cover featured an image of Joel again, as seen through a pane of broken glass in the shape of a rock.

*The Nylon Curtain* took a different perspective, focusing on a nostalgic longing for community rather than self. The key pronouns in *Allentown*<sup>50</sup> and *Goodnight Saigon*<sup>51</sup> are "they" and "we." It is "they" that "clos[e] all the factories down," it is "our" fathers who fight World War II, and "we" are the ones who will "all go down together." The experiences are collective and communal, and the bat-

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COMMUNITY (2000).

<sup>48</sup> See, e.g., BILLY JOEL, *Scenes From An Italian Restaurant*, on THE STRANGER (Columbia 1977); BILLY JOEL, *Captain Jack*, on PIANO MAN (Columbia 1973) ("Saturday night and you're still hanging around/ Tired of living in your one horse town"); BILLY JOEL, *Movin' Out (Anthony's Song)*, on THE STRANGER (Columbia 1977) (describing a blue-collar working character struggling to achieve the American Dream); BILLY JOEL, *All For Leyna*, on GLASS HOUSES (Columbia 1980) (chronicling the challenges of romantic relationships); BILLY JOEL, *Piano Man*, on PIANO MAN (Columbia 1973) (accounting Joel's own life).

<sup>49</sup> BILLY JOEL, *GLASS HOUSES* (Columbia Records 1980).

<sup>50</sup> BILLY JOEL, *Allentown*, on THE NYLON CURTAIN (Columbia 1982).

<sup>51</sup> BILLY JOEL, *Goodnight Saigon*, on THE NYLON CURTAIN (Columbia 1982).

tles are tribal—groups of forgotten men bound together by the trauma of fighting a collective enemy. The album cover features a set of identical cookie-cutter homes, while the jacket cover is an aerial photo of a lifeless suburban neighborhood. Together, the images read as a critique of isolationism with each family trapped in its own separate box.<sup>52</sup>

Beyond its communal focus, *The Nylon Curtain* took on the cultural optimism of the Reagan era. The album's primary theme is disillusionment, a journey from soulmates to inmates,<sup>53</sup> with tales of a "Pennsylvania we never found,"<sup>54</sup> a "right on time" woman who never shows up,<sup>55</sup> and an orchestra that never arrives.<sup>56</sup> In Joel's words:

I wanted to look back and talk about how our fathers had fought the war, and how they had met our mothers in the USO, but also about how the next generation, who thought they'd have a job—a little upward mobility—saw those hopes dashed.

Look at what happened in that central Pennsylvania world that's portrayed in *The Deer Hunter*: a generation of working-class guys were sent off to fight, and it kind of blew that world apart.<sup>57</sup>

The album focuses on communities experiencing dislocation in a culture that was increasingly understanding individuals apart from social context. Indeed, the album's name, with its reference to a synthetic polymer that was introduced to deal with silk shortages during World War II, conjured images of a porous material that provides little security or clarity. As Joel noted,

We're so cut off from the rest of the world that merely bringing people closer together is a really radical

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<sup>52</sup> A. Morgan Jones, *The Other Sides of Billy Joel: Six Case Studies Revealing the Sociologist, the Balladeer, and the Historian* 32 (November 2011) (Ph.D. dissertation, University of Western Ontario) (on file with the Western Ontario Electronic Thesis and Dissertation Repository), <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1454&context=etd>.

<sup>53</sup> JOEL, *Goodnight Saigon*, *supra* note 51.

<sup>54</sup> JOEL, *Allentown*, *supra* note 50.

<sup>55</sup> BILLY JOEL, *She's Right on Time*, on *THE NYLON CURTAIN* (Columbia Records 1982).

<sup>56</sup> BILLY JOEL, *Where's the Orchestra*, on *THE NYLON CURTAIN* (Columbia Records 1982).

<sup>57</sup> FRED SCHRUERS, *THE DEFINITIVE BIOGRAPHY: BILLY JOEL* 152 (2014) (internal quotation marks omitted).

change. The title of my album, *Nylon Curtain*, meant just that. The Russians have an Iron Curtain, and we have a nylon one. It's this very sheer, capitalist haze we all seem to have. Everything looks so rosy through it, so unreal.<sup>58</sup>

The moral divide between communism and democracy, so critical to an earlier sense of national identity, had given way to a market system composed of individual success and failure.

As Joel noted, “[t]hings were really changing, and I wanted to tackle the issues that were important then . . . , I didn’t want to get up on a soapbox and become a sociopolitical songwriter, but I wanted to talk about people going through hard times.”<sup>59</sup> Yet the social dislocation of the Vietnam War and a changing economy were already well-established themes in American popular culture before *The Nylon Curtain*. Movies like *Norma Rae*<sup>60</sup> focused on union struggles, while *Dog Day Afternoon*<sup>61</sup> and *Taxi Driver*<sup>62</sup> examined the plight of dislocated white men. Musically, on *Born to Run*<sup>63</sup> and *Darkness on the Edge of Town*,<sup>64</sup> Bruce Springsteen had been exploring working class dislocation for years on the other side of the Hudson. Similarly, while *Goodnight Saigon* may be “the ultimate pop-music epitaph to the Vietnam War,”<sup>65</sup> the plight of Vietnam veterans was familiar terrain in popular culture, explored in movies like *Coming Home*<sup>66</sup> and *The Deer Hunter*.<sup>67</sup> If the album added anything new to the cultural conversation, it was by offering a deeply empathic perspective: “Everybody fails, everybody falls, everybody has something bad happen. It’s about how you recover, how you cope with it, how you deal with loss and regret and move on.”<sup>68</sup> While other cultural depictions of

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<sup>58</sup> Jones, *supra* note 52, at 22 (citing Barry Millman, *Billy Joel Talks Back*, SPIN (June 1985)).

<sup>59</sup> SCHRUERS, *supra* note 57, at 151.

<sup>60</sup> NORMA RAE (20<sup>th</sup> Century Fox 1979).

<sup>61</sup> DOG DAY AFTERNOON (Warner Bros. 1975).

<sup>62</sup> TAXI DRIVER (Columbia Pictures 1976).

<sup>63</sup> BRUCE SPRINGSTEEN, *Born to Run*, on BORN TO RUN (Columbia Records 1975).

<sup>64</sup> BRUCE SPRINGSTEEN, *Darkness on the Edge of Town*, on DARKNESS ON THE EDGE OF TOWN (Columbia Records 1978).

<sup>65</sup> Holden, *supra* note 3.

<sup>66</sup> COMING HOME (United Artists 1978).

<sup>67</sup> THE DEER HUNTER (Universal Pictures 1978).

<sup>68</sup> SCHRUERS, *supra* note 57, at 158.

working-class discontent focused on individual mobility,<sup>69</sup> finding ways to forget about it<sup>70</sup> or repressing the pain,<sup>71</sup> *The Nylon Curtain* placed social dislocation in a specific spatial and temporal context, reporting on its cost to larger communities and the pain of broken promises without offering solutions.

While Joel has specifically described the album as a response to the Reagan Revolution,<sup>72</sup> *The Nylon Curtain* also plays into a distinctly Reagan-esque narrative of America's decline and rebirth, one dominated by nostalgia for an earlier era with greater job security and national pride. Reagan was adept at using the stories of social dislocation to his own advantage, and the populist right offered "cultural refuge for blue-collar whites . . . a restoration of the glory days by bolstering morale on the basis of patriotism, God, race, patriarchy, and nostalgia for community."<sup>73</sup> Like *Born in the U.S.A.*,<sup>74</sup> the album's central themes could be effectively co-opted by the right in its efforts to blame Democrats for stagflation and the Vietnam debacle while positioning itself as the engine for American renewal. For Joel, the nostalgia extended to an older ideal of masculinity that was connected to upward mobility and a clear sense of gender roles. Rather than offering a new vision of masculinity as the movie *Kramer vs. Kramer*<sup>75</sup> did just a year before, Joel seems to long for a simpler time when men went to war and earned a living for their families.

### C. Law and Legal Theory

Law, like popular culture, reflected the move away from liberal universalist visions of justice and inclusion towards a disaggregation of national identity. From the right, Richard Posner's *Economic Analysis of the Law*<sup>76</sup> swept the academy with its argument that the most equitable answer was always the one that maximized

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<sup>69</sup> SATURDAY NIGHT FEVER (Paramount Pictures 1977).

<sup>70</sup> JOHNNY PAYCHECK, *Take This Job and Shove It*, on TAKE THIS JOB AND SHOVE IT (Epic Records 1977).

<sup>71</sup> BRUCE SPRINGSTEEN, *Darkness on the Edge of Town*, on DARKNESS ON THE EDGE OF TOWN (Columbia Records 1978); see also COWIE, *supra* note 32, at 17-18.

<sup>72</sup> Interview by Steve Morse with Billy Joel, on BILLY JOEL, THE COMPLETE ALBUMS COLLECTION (Columbia Records 2011).

<sup>73</sup> COWIE, *supra* note 32, at 16.

<sup>74</sup> BRUCE SPRINGSTEEN, BORN IN THE U.S.A. (Columbia Records 1984).

<sup>75</sup> KRAMER VS. KRAMER (Columbia Pictures 1979).

<sup>76</sup> RICHARD POSNER, ECONOMIC ANALYSIS OF THE LAW (2010).



aggregate social wealth. Society could be dissolved into its individual parts,<sup>77</sup> and justice became a matter of amassing a set of atomized cost-benefit assessments. From the Left, the Critical Legal Studies movement drew heavily on post-structuralism to critique and break apart legal categories that replicated existing power imbalances. The possibility for change lay in the subtle and individual subversion of these categories, rather than a unified vision of a more just world.

Doctrinal developments throughout the late 1960s and 1970s helped to advance the cultural project of self-discovery and individualism by removing legal barriers to self-exploration. First Amendment doctrine expanded to facilitate the project of self-discovery and expression, as courts vindicated the free speech rights of high school students,<sup>78</sup> Ku Klux Klan members,<sup>79</sup> Vietnam War protesters,<sup>80</sup> and neo-Nazis.<sup>81</sup> In the equal protection and due process arenas, the Court systematically removed obstacles to sex equality, providing women with space to explore a range of life choices outside the ones dictated by traditional gender roles.<sup>82</sup>

Other legal changes reflected the culture's declining faith in collective institutions and renewed focus on individual empowerment. Spurred by the success of the civil rights movement and the Court's gradually expanding vision of civil liberties, "America's long-standing tradition of individualism morphed into the hyperindividualism of rabid 'rights talk,' rights assertion became far more legalistic, and the American people became much more litigious."<sup>83</sup> Congress adopted citizen suit provisions that allowed individuals to enforce statutory provisions in the Civil Rights Act of 1964,<sup>84</sup> the

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<sup>77</sup> DANIEL T. RODGERS, *THE AGE OF FRACTURE* 63 (2011).

<sup>78</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>79</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>80</sup> *Cohen v. California*, 403 U.S. 15 (1971).

<sup>81</sup> *Nat'l Socialist Party of Am. v. Village of Skokie*, 434 U.S. 43 (1977) (per curiam).

<sup>82</sup> *See, e.g., Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977) (holding that a state cannot interfere with an individual's decisions relating to matters of procreation); *Craig v. Boren*, 429 U.S. 190, 191-92 (1976) (finding unconstitutional an Oklahoma statute that prohibited the sale of 3.2% beer to males under 21, but only to females under 18, because the statute denied equal protection to males aged 18-20); *Roe v. Wade*, 410 U.S. 113 (1973) (recognizing the fundamental right of a woman to receive an abortion); *Reed v. Reed*, 404 U.S. 71 (1971) (striking down an Idaho law that distinguished between male and female administrators of estates because it violated the Equal Protection Clause).

<sup>83</sup> SEAN FARHANG, *THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S.* 14 (2010).

<sup>84</sup> *Civ. Rights Act of 1964*, Pub. L. No. 88-352, 78 Stat. 241 (241 (codified as amended at 42 U.S.C. §§ 2000a-2000e (2012))).

Fair Housing Act of 1968,<sup>85</sup> the Clean Air Act of 1970,<sup>86</sup> and other major pieces of legislation. When combined with federal fee-shifting provisions enacted throughout the 1970s,<sup>87</sup> the effect was to move enforcement of statutory rights away from public agencies to private communities and individuals. The 1970s witnessed an unprecedented explosion in plaintiff-driven civil rights litigation, as identity-based interest groups capitalized on these opportunities to use the courts to negotiate their status within the increasingly balkanized world of American pluralism.

At the same time that Billy Joel was exploring how dislocated communities were responding to the breakdown of liberal universalism, legal intellectuals were wrestling with the judicial branch's role in this new world. Disaggregation allowed an ever-growing range of communities to create and assert an expansive variety of normative commitments. Increasingly and inevitably, communal efforts to validate, defend, or expand those commitments found their way into the legal system.

In back-to-back *Harvard Law Review* Forewords in 1982 and 1983, Abram Chayes and Robert Cover each described a fragmented legal landscape driven by disparate social movements and communities, with courts struggling to define their role.<sup>88</sup> In his 1982 Foreword, published two months after *The Nylon Curtain* was released, Chayes described an emerging form of "public law litigation" driven by "changes in the larger social, political, and cultural environment,"<sup>89</sup> a world where groups defined by shared experiences, interests, and values operated as "right bearers."<sup>90</sup> He positioned courts as "institutions exercising [an] oversight function on behalf of [these] interests and groups," as new federal statutory rights and liberalized class action rules provided vast new opportunities for entire communities to seek ongoing prospective relief through the courts.<sup>91</sup>

One year later, Robert Cover described a legal culture filled

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<sup>85</sup> Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. § 3604 (2010)).

<sup>86</sup> Clean Air Act of 1970, Pub. L. No. 88-206, 77 Stat. 392 (1970) (codified as amended at 42 U.S.C. §§ 7401-7642 (2012)).

<sup>87</sup> See 42 U.S.C. § 1988(b); see also Voting Rights Act, 89 Stat. 400 (1975).

<sup>88</sup> Abram Chayes, *Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4, 60 (1982); Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 13 (1983).

<sup>89</sup> Chayes, *supra* note 88, at 5, 8.

<sup>90</sup> Chayes, *supra* note 88, at 27.

<sup>91</sup> Chayes, *supra* note 88, at 60.

with “paideic communities,” groups defined by shared normative commitments and narrative traditions.<sup>92</sup> Cover treated these communal practices as a form of law, and positioned them as critical drivers of a “jurisgenerative” process by which multiple legal norms are created.<sup>93</sup> *Nomos and Narrative* delivered a powerful coup de grace against whatever remained of liberal universalism, arguing that “[t]he universalist virtues that we have come to identify with modern liberalism, the broad principles of our law, are essentially system-maintaining ‘weak’ forces. They are virtues that are justified by the need to ensure the *coexistence* of worlds of strong normative meaning.”<sup>94</sup> As Cover wrote, “the Temple *has* been destroyed—meaning *is* no longer unitary.”<sup>95</sup>

The two articles offered different prescriptions for dealing with this fragmented legal landscape. While Chayes called upon judges to use their hierarchical position to “articulate and enforce . . . public values and policies,”<sup>96</sup> Cover adopted an approach that reflected the potential benefits of a disaggregated culture. He described courts as performing a “jurispathic” function within American pluralism, using their coercive power to shut down interpretive development in a process that was often imperial and violent.<sup>97</sup> In turn, he closed with a final call for courts to “invite new worlds,”<sup>98</sup> creating room for an ever-proliferating “multiplicity of meaning.”<sup>99</sup>

While Cover’s skeptical attitude towards courts reflected his generation’s post-Vietnam suspicion of institutions, he, like Billy Joel, also made a nostalgic turn towards communal engagement and cohesion.<sup>100</sup> It was groups, not individuals, which drove the creation of legal meaning, using an “initiatory, celebratory, expressive, and performative”<sup>101</sup> process that required deep communal bonds. For Cover, the solution to dislocation lay in the ability of multiple cohe-

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<sup>92</sup> Cover, *supra* note 88, at 13.

<sup>93</sup> Cover, *supra* note 88, at 15-16.

<sup>94</sup> Cover, *supra* note 88, at 12.

<sup>95</sup> Cover, *supra* note 88, at 60.

<sup>96</sup> Chayes, *supra* note 88, at 58.

<sup>97</sup> Cover, *supra* note 88, at 40-44.

<sup>98</sup> Cover, *supra* note 88, at 68. *But see* Judith Resnik, *Living Their Legal Commitments: Paideic Communities, Courts, and Robert Cover*, 17 *YALE J.L. & HUMAN.* 17, 33-35 (2005).

<sup>99</sup> Cover, *supra* note 88, at 68, 16.

<sup>100</sup> *See* Robert C. Post, *Who’s Afraid of Jurispathic Courts?: Violence and Public Reason in Nomos and Narrative*, 17 *YALE J.L. & HUMAN.* 9, 14-16 (2005).

<sup>101</sup> Cover, *supra* note 88, at 13.

sive communities to simultaneously define and live out their own normative truths, rather than universal norms defined by federal courts or the shared space of the public sphere.<sup>102</sup>

### III. CONCLUSION

The cultural moment that produced *The Nylon Curtain* was, of course, transitional. By the late 1980s, constitutional theorists were attempting to rehabilitate a sense of collective purpose through a revival of civic republicanism and public reason.<sup>103</sup> Attorney General Ed Meese would lead a concerted effort towards governmental disaggregation with a renewed focus on state sovereignty,<sup>104</sup> and Billy Joel would complete his embrace of nostalgia a year later with his album *An Innocent Man*—a full-on homage to late 50s doo-wop and R&B.

Yet, even as this snapshot from the early 1980s fades further from view, it underscores the extent to which a given cultural moment shapes the values that guide our legal frameworks. Lawyers and legal academics often experience norms as necessary, inevitable, and unchanging; it is easy to treat our faith in the abiding power of markets as natural and constant. But by placing these assumptions in context, we are reminded that our understandings are, to the contrary, malleable and contingent. An awareness of cultural moments helps shape our sense of possibility, and also enables us to look for ways that this reality might rupture. It is, in a sense, both humbling and empowering: it places in stark relief how many factors outside the legal system constrain the potential for change, while also allowing for the possibility that the shared assumptions, values, and premises that drive law can change radically over time.

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<sup>102</sup> See Post, *supra* note 100, at 14-16.

<sup>103</sup> Post, *supra* note 100, at 10.

<sup>104</sup> Dawn E. Johnsen, *Ronald Reagan and the Rehnquist Court on Congressional Power: Presidential Influences on Constitutional Change*, 78 IND. L.J. 363, 391 (2003).