Valparaiso University ValpoScholar

Law Faculty Publications

Law Faculty Presentations and Publications

2004

Cultural Impatience

Bruce Berner Valparaiso University School of Law

Follow this and additional works at: http://scholar.valpo.edu/law_fac_pubs

Part of the <u>Law Commons</u>, and the <u>Politics and Social Change Commons</u>

Recommended Citation

Bruce Berner, Cultural Impatience, The Cresset, Sept. 2004 (Michaelmas), at 51.

This Article is brought to you for free and open access by the Law Faculty Presentations and Publications at ValpoScholar. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

cultural impatience

S WE APPROACH ANOTHER PRESIDENTIAL ELECTION, IT is fitting to reflect on the health of the American polity. While no reasonable person could deny that the great Madisonian experiment remains one of the authentic political marvels in the history of the world, many voices express unease with aspects of current American culture. Diagnosticians of every stripe advance theories: loss of moral center or of religious commitment, mass undifferentiated anger, a "culture of fear," government that's too big, or too small, or both at the same time, television, left-wingers, right-wingers, etc. Communists are off the list. I possess neither the formal training nor the chutzpah to float a formal diagnosis of my own, but I do wish to identify an overlooked yet troubling symptom in our current culture. This symptom is a pervasive cultural impatience. I will first present three exhibits from the governmental/legal realm to suggest the flavor of what I mean by "cultural impatience." Then I'll hazard a few guesses about its roots and its effects.

But first a preliminary note: The instances discussed below all involve the interplay between the American public and the American media. Unraveling whether media content is dictated by public demand or, instead, produces and conditions that demand, is difficult and beyond the cope of this piece. However, the mainstream media, dependent as it is on persuading advertisers that it reaches substantial numbers of people, can reasembly be assumed represent the concerns of a large segment of the general public.

Exhibit A. When I was in England for eight weeks in 1991, the lead story the night I arrived was the arrest in London of alleged multiple murderer together with lurid, if wetchy, details about the deaths of his victims. There was a mief account the next morning in the papers. Then . . . so thing in the mainstream media! For eight weeks! To be use, one could track this case in the tabloid press along with stories like "Hampshire Man Legally Married to 2,000 Weasels," but the broad-readership media let it alone. The point is the could be used to the media itself, may be more the wishes of the general British public. The point is that the culture did not generate frenzy about it. Can you magine this in the United States? We would, for at least a

Bruce Berner

week, get the prisoner's breakfast, lunch, and dinner menus; we'd quickly see fourth-grade photographs of the victims; neighbors would tell us that the arrestee was a "quiet man" (Don't ever fear a loudmouth—it's the "quiet men" that get you!); CNN would give us droning voices over the perpetually "live" aerial camera coverage of the top of the police car that possibly might, within the next few days, drive the defendant to court. Fox News would blame it on the Democrats; NPR on the Republicans. Do not blithely assume that this incessant coverage (which is both born of our impatience and produces more of the same) has no effect on the participants in the legal drama. Many decisions about charging, pleading, filing pretrial motions, trial strategy, etc. are driven by concerns about public reaction not only to what the parties, lawyers, police, or judges do, but to how fast they do it. Did you perhaps detect that the O.J. trial participants were aware they were being watched? When the press and the public lose patience with the ponderous pace of judicial proceedings, the process itself is forced to dance to the accelerated rhythm. We try cases in the media because it's faster!

Exhibit B. This effect of the observer on the observed was made most vivid in connection with the storming of the Branch Davidians at Waco some years ago. You will remember the basic facts of the standoff: hundreds of serious and potentially volatile Branch Davidians inside a compound with no hope of receiving supplies from the outside; scores (at least) of federal, state, and local agents surrounding the compound with enough firepower to annihilate even the ants that eventually crawled out. The agents wanted the Davidians out. The Davidians were not coming out. What to do? Now, whatever you think of David Koresh and his band (you can sample all the way from "community of committed religious observers" to "dangerous whackos"), can there be any doubt as to what a reasonable person would advise the agents? Or is it just us wimps who would say, "Patience. Soon they must come out." Once the assault went tragically wrong, various reasons were advanced to defend the decision to press the action. Some seemed more plausible than others and I don't know if any of them were true. But I suspect that, in our culture, the assault was inevitable regardless of the obvious downside risks. What was the upside? One could hardly assign "Davidians come out" as an upside to assault since

that was bound to happen in any event. The upside of pressing the action was precisely, and solely, to quell the cultural impatience. The pressure to act was enormous and growing each day. One can assign many causes for this pressure—the press, the public's frenzy for a resolution, and the default posture of many law-enforcement personnel to "make something happen." But the pressure—the impatience—was in fact irresistible. Imagine, for example, that CNN had been around on a Tuesday night in Europe in 1648. Here's the lead story—over an accompaniment of ominous harpsichord riffs, a deep baritone voice announces, "THE THIRTY YEARS WAR: DAY 10,938!" A friend of mine who spoke with ATF agents who were in Waco reports that the impatience of public and press feeding the ATF's own well-known fondness for "wildwest" action forms a "total explanation" for the tragedy. Impatience, and impatience alone, wrought a horrible result.

Exhibit C. My last exhibit is less obvious but, ultimately, more dangerous. It is a pervasive intellectual impatience. We are, as a culture, not only impatient about acting; we are impatient, too, about deciding what we have "learned" from any action. We are so quick to announce what "lesson" we are to take from an event that we never learn lessons, we impose lessons on events before those events fully take place. Take, for example, the criminal trial of O.J. Simpson. Before this case was tried—indeed many months before it was tried-I heard, in the same week, three editorials each of which announced what we would learn about our system of criminal justice from the O.J. trial: (1) Can African-Americans get a fair trial in this country?; (2) Will battered women get a fair shake in this country?; and (3) Can rich people buy their way out of trouble in this country? One didn't have to wait one more day to know one thing: The Criminal Justice System would fail. It had to! No single result in O.J.'s case could have vindicated the system against all three implicit charges.

In some cases, those who pre-impose the lesson we are to learn from a pending case have a transparent personal or political agenda. But whether or not a product of such an agenda, imposing lessons ahead of time produces an unfortunate casualty—the particular facts of the individual case are rendered irrelevant. The person aiming to demonstrate that black criminal defendants in general cannot get a fair trial would, if forced to do so in the context of a particular case, have to ignore the fact that this particular defendant, say, committed the crime on videotape. The advocate for date-rape victims could have no patience with evidence that, in a given case, the alleged victim actually consented to sex. Both of these advocates have valid concerns-far too often black defendants are disadvantaged in our system and far too often women are sexually exploited. But individual cases are very poor vehicles for examining these social issues because cases come with these annoying appendages called facts. If we would, like my British friends, just wait until the process has sorted out those facts, then we could have a fine discussion of the larger issues. Then we could decide what we learned from the experience at its end, not its beginning. Can we do that?

We're off to a bad start in the Kobe Bryant episode, aren't we? That trial should be strictly about what happened in that hotel room and immediately before. Even evidence about the past behavior of the defendant or the alleged victim is admissible, if at all, only because it drives inferences about what happened that night. Will we let it stay that way or will the case simply become a convenient metaphor for all the racial, gender, and economic artifacts present therein? A good, thoughtful friend of mine said, "Hey, it's easy to see what happened. These athletes have so much money and adulation they begin to think they're above the law." Others are surely saying, "Hey, it's easy to see what happened. These groupies want to have a good time with famous people and then extort money." And, of course, either of these things might be true in this case. Theoretically, both could be true. But the case should be about what did happen. And finding that out takes some patience. In America, however, patience is a lost virtue. In most cultures, critical social issues are aired out in legislatures, in hearings before Executive-branch bodies, in educational institutions, in public discourse generally. Only in America do we invariably look around for the judicial dispute closest to the problem and ask it to serve as proxy for the debate. And if it turns out not really to be that close to the subject of our concern, we just ignore that fact.

ET ME SUGGEST A BOLDER IDEA—THAT IMPATIENCE, whether personal or cultural, may be a real cause of violence. Violence is, of course, an expression of anger which is itself typically rooted in fear, ignorance, and mistrust. But violence can also be viewed as the strongest and most unmistakable expression of impatience. To do a bad paraphrase of Ogden Nash, "Debate is dandy, but killing is quicker." Violence saves time. Might that, in an impatient culture, be a subconscious justification or excuse for violence?

The cultural impatience in America is, in part, a function of America's position and of its credo. The world's only remaining superpower often sees itself as in control of events, indeed feels an obligation to exert such control. Controllers cannot afford to be patient. The illusion which produces the feeling of control impels action because the action feeds the illusion. (Many nights I go outside and scream for the North Star to appear. And it does. *Res ipsa loquitur*.)

Every summer, I spend four days in Stratford, Ontario at the Shakespeare Festival. Talking to Canadians is both delightful and revelatory. They are far more savvy about geopolitics than most Americans. But they have no illusions about control. They patiently await events. They seem

neither particularly impressed nor offended by their current political leaders, or ours. Mainly just amused. And they seem willing to postpone a decision on a leader's effectiveness until after she or he has acted. The danger, of course, is that this wonderful philosophical attitude could at some point be a mask for simple resignation. But I don't sense that. I think they're just patient. I wish I could be. I wish you could be. And, if you don't get more patient within the next two minutes, I'm gonna come over there and....

Cultural impatience creates an insane environment for public and political discourse. It chases the thinkers from the arena and ushers in the sloganeers. Because our patience holds out for only ten seconds, we get only tensecond solutions to serious problems. Instead of a criminal trial, we get a circus. Instead of a nice, quiet mass arrest in

Waco, we get inferno images that time will not erase. Instead of James Madison, we get Madison Avenue.

What is the cure for cultural impatience? I suspect that jettisoning the illusion of control is a major part of the therapy. Once we admit we are not in control of everything, we can both turn our attention to those endeavors in which we can make a real difference and seek, each in her or his own way, to identify who really is in control and deposit our impatience on that altar. I'd like a bit more time to think about it. Maybe I'll write it up. Maybe not. Maybe the gentle *Cresset* editor will run it. Maybe not. Please be patient. \$\psi\$

Bruce Berner is the Louis and Anna Seegers Professor of Law at the Valparaiso University School of Law.

DESCENT

They were climbing in the Himalayas up those jagged peaks, twenty five thousand feet above the sea assaulted by sharp snow and ice, and, oh, the wind, keening, as the men crept skyward, breath coming hard (you can imagine) when suddenly a gorge appeared, bottomless, or so it seemed: but, clinging to steep tunneled rock, they struggled down four thousand feet into a hidden holy place cupped and lit by slivered sun where water flowed and green grew wild in blossoming pine-scented air. How could it be? And yet it was, for here the gentle tapir lived, a sacred beast they thought extinct until they dared to enter in the deep and tender heart of things.

Sarah Rossiter