Communitarianism is a relatively new political philosophy committed to bringing community to the center of political discourse. Communitarianism challenges Liberalism because it posits that individual rights are not singularly supreme, but that they need to be balanced by responsibilities to the larger community. Communitarians have noted a decline in community in modern America. To many communitarians, the discourse of litigation and legalism has cut against communitarian ideals and contributed to the decline of community in America. In this paper, the central question asked is what effect does litigation have on the ability of Americans to formulate stronger communities? I argue that although the rights-based discourse of litigation negatively affects community, there is some hope of accommodating legal dispute resolution with communitarian ideals. By using community mediation, community boards, and even the process of litigation itself, communitarians hope to reconcile the conflict between rugged individualism and strong community.

**INTRODUCTION**

In Robert Bellah’s *Habits of the Heart*, anthropological research shows that although Americans talk about individual liberty, their lives demonstrate a deep commitment to community and shared experience. America also has a long history of strong community-centeredness, most evident in societies like the Puritan Settlement and the Mormons, even though American political ideology has been shaped by the philosophy of Locke, Mill, Rawls and others who espoused principles of liberalism centered around a concern for the rights of the individual. Community-focused groups esteemed the good of the society above the rights of the individual, in order to foster a community where its members could participate in governance and lawmaking.

Despite the presence of community-oriented groups in American history, other influences have cut against the widespread development of community-minded values. In this paper, the question is asked, what effect does litigation have on the ability of Americans to formulate stronger communities? I argue that although the rights-based discourse of litigation negatively affects community, there is some hope of employing legal dispute resolution by using community-based practices.

The second section of this paper explores the key differences between the communitarian and classical liberal traditions. Section three takes a broader view of communitarianism, and the values it hopes to instill in the conflict resolution process. It looks specifically at two theoretical models proposed by deliberative democracy and strong democracy. Finally, section four argues that communitarian values can be brought into resolving disputes through methods using the process of litigation itself. Furthermore, communitarian values can be brought into the law itself to join contemporary legal principles with ideas of community, instead of leaving the law based solely on principles of individual rights. In this part of the paper the example of how tort law can be revitalized using communitarian values will be discussed.

The goal of this paper is to show that communitarian values can add some civility to the practice of litigation in the interest of all in a given community.

**COMMUNITARIANISM V. LIBERALISM**

**THE LIBERAL VIEW**

Communitarianism was spawned mostly as a critical response to liberalism. Liberalism is the political philosophy that seeks to establish individual liberty and democratic government on the base of an individuated self. Liberalism is grounded upon a theory of individual freedom where persons are protected from the abuses of government and other citizens. Liberalism takes this view because of a belief that defined individual liberties prevent the government from overreaching into individual lives. Liberal political theorists like Immanuel Kant
and John Rawls give priority to justice, fairness, and individual rights. The central thesis of this brand of liberalism is that a just society seeks not to promote any particular ends, but enables its citizens to seek their own ends, consistent with a similar liberty for all.

Thus Liberalism demonstrates a strong support for a broad interpretation of civil liberties for freedom of expression and religious toleration, for widespread popular participation in the political process, and for the repeal of protectionist legal restrictions inhibiting the operation of a capitalist free market economy.

In emphasizing the importance of individual freedom, liberals believe that individuals are the best judges of their own interests, and that government should be limited in scope and function by what citizens will consent to, and by individual rights. Liberals also expect that if people's rights are protected, human interaction will generate well-being or happiness for each individual.

The rule of law is another important principle of Liberalism. Liberals favor the rule of law over that of men and governments. This forces governments to act strictly according to the basis of law and not circumstantially. Classical Liberals also emphasize private property. Many of the early Classical Liberals fostered the idea that individual rights included the rights to life, liberty, and property.

Despite the assumed benefits of liberalism, communitarians find many flaws with this viewpoint. First, communitarians fault the liberal commitment to the priority of right based almost solely upon the idea of individual liberty. A priority of right view guarantees in a constitutional democracy that individual and political civil liberties take priority over any social good that can be accomplished by rescinding those rights. The priority of personal rights is rooted in the liberal notion of equal rights for all. The priority of the right means first, that individual rights cannot be sacrificed for the sake of the general good, and second, that the principles of justice that specify these rights cannot be premised on any particular vision of the "good life" (Sandel 1984, 82). Thus, the liberal commitment to the priority of right in actuality supports only one value: individual liberty. Markate Daly helps to clarify why the liberal prioritization of individual liberty poses problems to communitarians: "A form of social organization that treasures a value that is incompatible with liberty will not be able to develop under a liberal regime, even though citizens may prefer that way of life. So liberalism does not allow for the full diversity in the conceptions of the good that it claims to guarantee" (Daly 1994, xviii).

Second, communitarians see atomization resulting when individualism strengthens an individual's private lifestyle choices at the expense of the public good. This means that citizens would focus their attention on one another and, rather than participating in public affairs themselves, citizens turn over public affairs by default, to officials who are reelected every few years. The model of community "moves the emphasis from individual satisfactions to the sphere of public goods and in the process ensures citizen control" (Daly 1994, xviii).

Third, communitarians also see liberalism as devaluing commitments to others because these commitments restrict an individual's ability to realize personal goals or find self-fulfillment. Some of the most serious consequences have been realized "in family life, but this lack of commitment has weakened all forms and levels of social organization. As a result, these associations are less than capable of serving their function: to support their members' well being" (Daly 1994, xviii).

Finally, communitarians disagree with liberal values that cannot distinguish between those activities that should be protected and those activities that are harmful both to citizens and to the social fabric. Communitarians, in contrast, argue that many liberal "rights" must be tempered with a recognition that an absolute exercise of those rights can be harmful to the larger community. Daly explains: "Some substantive conception of the good—such as a general notion of human flourishing, Aristotle's eudaimonia—is needed to regulate its (principle of liberty) application. Without any restrictions, the principle of liberty protects self-destructive activities that are easily curtailed in other forms of society" (Daly 1994, xviii). For example, many Western European countries have created laws that legalize speech that incites or evidences racial hatred. These laws impose a form of censorship, limiting the liberal notion of free speech, but are not necessarily harmful to society. In most Western countries it has for a long time been illegal to incite people to murder or other types of imminent lawless behavior. Supporters of these restrictions on speech argue that such limitations are necessary to ensure the greater safety of the community. Similarly, libelous speech is also restricted in American law. Despite the value our legal system places on individual rights, laws criminalize libelous speech, based on the harm that such false speech causes.

Liberal society is seen by communitarians as "fragmentation in practice" because liberalism divides citizens in the pursuit of individual rights. In contrast, communitarians see community as the antithesis, the home of strong interpersonal relationships, togetherness and belonging. Communitarians also criticize the liberal conception of society because of its fundamental inability to "absorb ideals of fraternal community, equality, and democracy" (Nino 1996, 55). According to communitarians, liberalism fails to recognize the importance that membership in a community plays in defining individual identity and gives precedence to autonomy in negative terms protecting "formal liberty and "disregarding the claims of equality and justice" (Nino 1996, 56).
COMMUNITARIANISM

Communitarianism posits that individual rights are not singularly supreme, but that they need to be balanced by responsibilities to the larger community. Without balancing rights and duties, communitarians warn “the language of liberty threatens to take over the private sphere without reciprocal commitment to the public good” (Walker 1998, 144). These arguments seek to bring community interests to the center of decision-making rather than focusing on the language of individual rights.

“Just as the first task of liberal philosophy was to articulate a theory of individual freedom, the first task of communitarian philosophy is to develop a theory of community” (Daly 1994, xv). Communitarians, seeing a widespread decline in community across America, seek to move community to the center of political theory and political discourse and in the process, raise questions about ethics, constitutinal interpretation, obligations of citizens, and individual and group rights. Believing that the strength of the American citizenry lies within the community, Communitarians see the renewal of strong democratic principles through the revitalization of the community.

Communitarianism may be a contemporary philosophy, but community-centered philosophy is found throughout Western philosophy. Aristotle’s political theory posited that we are political beings by nature and our happiness is achieved through the social and political relationships we build with others. Aristotle’s theory of a life of virtue and his conception of citizenship in an ancient Greek polis inspired many future political philosophers such as Sandel and Dewey to write about the strength and value of community.

For communitarians such as Michael Sandel, social roles and practices are understood as “ecumbering” the individual and as constitutive of his identity whether he has endorsed them or not. Understandings of the good and its essential virtues are social facts that are antecedent to individual good, private identity and private reflection, and open to both discovery and erroneous interpretations (Lund 1993, 584). They are not matters of individual belief and choice, and the self is not an entity which can be described prior to, or independently of, the ends and purposes in which it is embedded (Sandel 1984, 85).

Other communitarians note a decline in community in modern America. John Dewey believed that this decline has grave consequences for American political society, since community is directly linked to a democratic society controlled by an active citizenry. In Dewey’s essay “The Great Community” he argued that American democracy typically functioned at the level of local communities, but with their decline, Dewey predicted a decline in the practice of democracy. He defined community in terms of “an association of free and equal citizens who join together to form a common vision of their communal life and participate in the activities necessary to achieve this common good” (Dewey cited in Daly 1994, 155). According to Dewey, participatory democracy and community must be linked to one another in order to preserve a democratic society. Therefore, communitarian theorists like Dewey are interested in the establishment of democracy by the citizens of communities and have proposed a union between the values of community and the liberal values of freedom and equality in the conception of a democratic community. Instead of liberal values such as “individual interests, autonomy, universality, natural rights, and neutrality, communitarian philosophy is framed in terms of the common good, social practices and traditions, character, solidarity and social responsibility” (Dewey cited in Daly 1994, xvi).

To many communitarians, the discourse of litigation and legalism has cut against communitarian ideals and contributed to the decline of community in America. Since its inception, American society has been influenced to a great degree by the language of litigation and lawyers. Research by social theorists has described the slow and steady “legalization” of American political culture:

“The legalism of popular culture is both cause and consequence of our increasing tendency to look to law as an expression and carrier of the few values that are widely shared in our society: liberty, equality, and the ideal justice under law. With increasing heterogeneity, it has become quite difficult to convincingly articulate common values by reference to a shared history, religion, or cultural tradition (Glendon 1991, 3).

Statistics show that American society is comfortable with using litigation, within the framework of individual rights, as a means to resolving conflict. For example, tort costs in the United States equal roughly 2.4 percent of GNP, whereas in other Western states, tort costs make up less than 0.5 percent of GNP (Lipset 1997, 50). These kinds of statistics indicate to communitarians, that litigation has a detrimental effect on community. The proposals made by made by communitarians will now be explored in greater depth.

COMMUNITARIANISM’S PROPOSAL

Communitarians believe that it is “participation in community life which plays an essential role in transforming the private interests of individuals into the public concerns of citizens, a transformation that is essential to deal with these persistent problems” (Dukes 1996, 157). Thus, communitarians do not simply believe that individuals can participate in the public process, but that the public sphere can also transform individual concerns into public concerns. One method of changing individual concerns into community concerns is through encouraging dialogue and public discourse. As Benjamin Barber, a well-respected democratic and social theorist notes, discussion has the power to make the “1 of private self-interest” into a ‘we that makes possible civility and common political action” (Barber 1984, 190). Through public discourse citizens begin to realize that they must become aware of public issues in order to participate in the gover-
nance of society. David Matthews, president of the Washington D.C.-based think-tank The Kettering Foundation, assesses the key role that public discourse plays in sustaining political legitimacy. "Why is the public dialogue so pivotal? The public dialogue is the natural home for democratic politics. That is the 'home' people feel forced out of and want back. People depend on the dialogue to provide opportunities for the public to hold counsel with itself and give public definition to the public's interest..." (Matthews 1991, vi). Although public discourse can have many roles within a democratic society, all the various functions of talk serve a single purpose: "the development of a citizenry capable of genuinely public thinking and political judgment and thus able to envision a common future in terms of genuinely common goods" (Barber 1984, 197).

Communitarian attitudes have ramifications for problem solving, because communitarians argue that private disputes between citizens are often transformed to public concerns because of the effect conflict has on society. Disputes over water rights in the Western United States, litigation over corporate fraud and financing schemes—these are only two examples where courts addressing the concerns of individual litigants often do not take into consideration broader community interests.

In order to solve conflict in this mode, communitarians argue that communities themselves should become a more active part of the problem-solving process, rather than leaving conflict resolution exclusively to the jurisdiction of courts. Furthermore, they would again stress that private conflicts often become public concerns because of the effect they have on the larger community. Communitarians, therefore, would argue that conflict resolution should be "conducive to personal interaction, mutual recognition, and a sense that the parties and their dispute are part of a larger tapestry" (Ackerman 2002, 31).

COMMUNITIES AND DEMOCRACY

As documented in Habits of the Heart, America has seen a decline in civic participation over the last few decades. Accompanying the deterioration of civic participation is a disintegration of community and civic life. Tocqueville, while visiting the U.S. in 1831 to study its political institutions, was "the first, and remains the best known, of the many observers who have linked the vitality of democracy to community and civic life. As he noted, democracy depends not only upon the strength of its formal institutions, but upon the communal and civic ties of its people" (Nino 1996, 126). Tocqueville commented on the importance of maintaining these principles:

> Amongst the laws which rule human societies there is one that seems to be more precise and clear than all the others. If men are to remain civilized, or to become so, the art of associating together must grow and improve, in the same way in which the equality of condition is increased (Tocqueville 1969, 157).

Some social theorists and political philosophers, such as Benjamin Barber and Michael Walzer, attribute the decline in democracy to contemporary individualistic values such as competition, personal accumulation of wealth, and diminishing values essential to sustaining civil society (such as caring, trust, honesty, tolerance, and cooperation). Benjamin Barber believes that the idea of individual rights prevents the emergence of community, which would be more effective than liberal ("thin") democracy in fostering personal autonomy (Thigpen & Downing 1987, 651). Liberal democracy presumes radical individualism, viewing persons as "solitary, as hedonistic and prudential, and as social only to the extent required by the quest and preservation of liberty and in an adversary world of scarcity" (Barber 1984, 213).

Michael Walzer, a Princeton professor of political theory, argues that the ideas of individualism and individual rights are "a bad sociology" which inhibits the flourishing of true democracy (Walzer 1984, 324). Walzer attempts to establish a Communitarian alternative for the protection of persons that is not based on concepts of individual rights (Walzer cited in Thigpen 2003, 641). Thigpen argues that Walzer finds individualism problematic in "the view of the goods that are distributed". To Walzer, goods are social because they are "conceived and created through social processes on the basis of shared meanings" (Walzer cited in Thigpen 2003, 641).

"The deep structure even of liberal society is... communitarian... we are in fact persons and... we are in fact bound together. The liberal ideology of separation cannot take personhood and bondedness away from us. What it does is take away the sense of personhood and bondedness" (Walzer 1990, 10 original emphasis). To restore this sense, to overcome the alienation of modern liberal society, we must recognize and recover our sense of the understandings and bonds we do in fact share as members of a common community.

Mary Glendon explains how community rights can strengthen democracy:

> When individual rights are permitted to undermine the communities that are the sources of [democratic] practices, they thus destroy their own surest underpinning. The paradox of liberalism seems to be that of the strong state, the free market, and a vital society all are potential threats to individual citizens and to each other, yet a serious weakness in any one of them puts the entire democratic enterprise in jeopardy (Glendon 1991, 138).

Two theoretical models for democracy, deliberative democracy and strong democracy, attempt to define how problem solving would be structured in a society where communities took a more active role in the process. Each will be discussed in turn.

DELIBERATIVE DEMOCRACY

Deliberative democracy structures a notion of democracy that "relies on the capacity of democracy to transform people's interests and preferences" and turn selfish preferences into
impartial ones on the basis of dialogue (Nino 1996, 144). This construct of democracy demands public involvement in political decision-making through more direct processes such as initiative, referendum, and the use of plebiscites to consult the citizenry about a particular measure (Nino 1996, 146-47).

Thus, the role of the courts and judicial review is different in a deliberative democratic state than in the United State's representative democracy at present. Deliberative democracy is discouraged by court processes that forgo the democratic mechanisms but, as Carlos Nino argues, is encouraged by judicial processes that can strengthen democracy (Nino 1996, 199). Thus, Nino believes that some court action can ensure that public policy making complies with democratic processes and that all people in a community have access to participating in the policy-making process (Nino 1996, 200-02). Courts can be used as an independent "referee" that ensures procedural rules and conditions of democratic discussion and decision are satisfied (Nino 1996, 200).

Additionally, Amy Gutman and Dennis Thompson outline how deliberative democracy must confront the problem of "deliberative disagreement" (Gutman and Thompson 1996, 72), caused by a diverse community attempting to establish policy for an entire community. Even though Thompson and Gutman are not communitarians, the arguments they make in support of deliberative democracy support a theory of resolving conflict through the strengthening of citizens' communities which is in concert with the primary goals of the communitarian movement. The authors would prefer a model of dispute resolution that doesn't require citizens to resort to legalisms and courts; rather, they encourage the foundational principles found in direct democracy.

Gutman and Thompson define the problems associated with deliberative disagreements:

Instead of controversies to which moral reasons seem irrelevant, we find conflicts in which moral reasons so deeply divide citizens, that no resolution seems possible on any fair terms of cooperation. A deliberative disagreement is one in which citizens continue to differ about basic moral principles, even though they seek a resolution that is mutually justifiable (Gutman and Thompson 1996, 73).

Thus, if this kind of conflict pervades deliberative decision making, consensus can be difficult without adjudicative means to rectify the conflict. Deliberative democracy recognizes that the government must take a stand in order to resolve these problems, but would allow uncertainty to give citizens the space to alter difficult decisions in the future. Thus, for politically and morally-charged issues like abortion, deliberative democracy would recommend taking a stand, but allowing citizens a space in which to discuss and alter their positions based upon greater information. This is an important difference from our current democracy, where the courts frequently step in to adjudicate the most politically and morally charged issues. Deliberative democracy would leave these moral conflicts in the realm of the political process, and not relegate them to the decision making of the courts.

Using the model of deliberative democracy to resolve conflict can be quite beneficial to communities. Amy Gutman explains some of the advantages of using a deliberative democracy model for public dispute resolution. She says that a "deliberative culture" helps citizens to develop civic integrity and magnanimity and enables those persons who already possess those values to act in accordance with them (Gutman and Thompson 1996, 360). Citizens of communities, practicing civic virtues, can improve the practices of democratic institutions. Communitarians accept disagreement, but they try to neutralize it by drawing the boundaries of political communities so that more public policy is made by like-minded citizens. This is because communitarians realize that if citizens with similar political backgrounds will be more likely to reach important decisions that affect their communities than those who are politically divided.

Even though the principles of deliberative democracy show citizens and their representatives how to live with moral disagreement, a model of deliberative democracy is more idealistic than other conceptions because it demands more than democratic politics normally delivers. Carlos Nino calls deliberative democracy "an epistemic view of democracy" (Nino 1996, 145). Like direct democracy, which stresses direct participation by common citizens in centralized decisions, deliberative democracy demands the public involvement of citizens to participate in decision making and conflict resolution. But because deliberative democracy relies heavily upon individual participation among the citizenry, it can leave the field open for the manipulations of strong factions over those normally ignorant of the complications involved in making serious political decisions.

Furthermore, fanatics or interest groups may hijack informal means of participation. Extremists have a better chance of dominating informal means of participation since they have specific, focused interests, unlike ordinary citizens, who have many responsibilities and interests that impede them from spending significant amounts of time in often lengthy discussion (Nino 1996, 148).

Although the aforementioned problems can provide a barrier to a healthy form of deliberative democracy, if these obstacles are overcome deliberative democracy can strengthen communities and give them a more central role in problem solving. Using a deliberative democracy model as an alternative, a rights-based discourse and an emphasis on litigation can be overcome because problem solving is moved from the realm of individual judges to the community of citizens at large.

**Strong Democracy**

Benjamin Barber uses strong democracy as an alternative to the present model of democracy and as a "distinctly modern form of participatory democracy" (Barber 1984, 117). He
argues that because the principles of liberal democracy are false to human nature and to ideal political practice, liberal democracy should be replaced by a "strong democracy" that is founded on participation and tight citizenship bonds. Through strong democracy, Barber outlines how creating tightly-knit citizen bonds within a community can help to resolve the aforementioned problems associated with liberal democracy.

According to Barber, strong democracy:

rests on the idea of a self-governing community of citizens who are united less by homogenous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and their participatory institutions rather than their altruism or their good nature. Strong democracy is consonant with—indeed it depends upon—the politics of conflict, the sociology of pluralism, and the separation of private and public realms of action... The theory of strong democracy... envisions politics not as a way of life but as a way of living—as, namely, the way that human beings with variable but malleable natures and with competing but overlapping interests can cohere to live together communally, not only to their mutual advantage, but also to the advantage of the mutuality (Barber 1984, 117-18).

Barber argues that people lose autonomy in liberal democracies because only those who find political action to be profitable will participate (Thigpen and Downing 1987, 651). Strong democracy is a kind of participatory communitarianism where citizens form a common consciousness. This kind of participatory communitarianism creates "a participatory process of talk, decision, and action which brings autonomy as private interests are transcended" (Thigpen and Downing 1987, 652). Barber points out that the idea of focusing solely on individual and natural rights to protect citizens from the government and secure the blessings of democracy "is at best a fiction...and loses most of its credibility and all of its unity when it is offered as a real and sufficient psychosocial foundation on which real women and men can build meaningful free lives within a community" (Barber 1984, 100).

Conflict is central to strong democracy because, according to this view, conflict plays a vital role in the political process. In fact, conflict is what centrally defines the concerns of politics. Barber notes that this approach to conflict rids strong democracy of the "collectivist and unitary abuses of communitarianism" (Barber 1984, 135). Barber notes that strong democracy still approaches conflict differently from the liberal idea that "conflict is intractable and at best vulnerable only to adjudication or toleration" (Barber 1984, 135). Strong democracy rather seeks to develop a broader view of politics that "can transform conflict into cooperation through citizen participation, public deliberation, and civic education" (Barber 1984, 135). Thus, rather than using adjudicative means to solve conflict, strong democracy uses conflict itself to widen the scope of politics, allowing communities to solve conflict collectively.

Barber's model of strong democracy provides a healthy alternative to conflict resolution using individual-rights based litigation, which takes no thought of the common good. "Strong Democracy creates a public capable of reasonable public deliberation and decision and therefore rejects traditional reductionism and the fiction of atomic individuals creating social bonds ex nihilo" (Barber 1984, 133). By providing a problem-solving model that is friendly to the communitarian values of the common good, civic participation, and the strengthening of an interpersonal social fabric, Barber offers a version of participatory democracy that presents citizens with another option than litigation.

**BALANCING COMMUNITARIAN INTERESTS WITH LEGAL PRACTICE**

Communitarians advocate mediation and negotiation rather than adversarial solutions as a means of solving conflict. They seek consent and agreement that will produce an outcome where all affected parties participate in the dispute resolution process. Communitarians also prefer infusing the law with communitarian values such as the common good, strengthening of traditions, community solidarity and social responsibility instead of basing law on individual rights standards. This section will first discuss communitarian mechanisms for solving conflict and will discuss an example of infusing the law with community values in modern day tort law.

**COMMUNITARIAN APPROACHES TO CONFLICT RESOLUTION**

**AN EXAMPLE OF INFUSING THE LAW WITH COMMUNITARIAN VALUES: TORT LAW.**

Communitarians believe that even in American society, where rights talk pervades discussion of the law, that "rights have limits, and involve concomitant responsibilities" (Ackerman 1995, 650). Tort litigation is often our society's method for "sorting out the rights and responsibilities of individuals and institutions with respect to one another" (Ackerman 1995, 651). Thus, tort law is a legal subject where communitarian values can contribute to a dialogue between rights and responsibilities.

Professor Robert Ackerman explains how this infusion of communitarian values with tort law can take place in his article, "Tort Law and Communitarianism: Where Rights Meet Responsibilities." Ackerman suggests several applications of tort law where communitarian values can be utilized. First, he explains how communitarian values can change the concept of "negligence" as a legal term by redefining the concept of "duty" (Ackerman 1995, 656). Because the law under the domination of individual rights tends to define "duty" narrowly, Ackerman recommends expanding the concept of negligence through defining public duties more accurately to reflect moral and social obligations to others in the community (Ackerman 1995, 660). Generally, no affirmative duty
to any other person or the community is required under the duty standard in negligence law. By refining the standard, tort law should seek to define duties towards other citizens more broadly, to encourage communities to take responsibility for the well-being of their neighbors.

Ackerman also proposes laws that afford greater protection to whistleblowers in corporations and in government because such protections encourage responsible citizenship (Ackerman 1995, 663). He points out that such employees act with the public interest in mind, and that communitarian principles would protect this kind of active participation on the part of citizens (Ackerman 1995, 663).

However, communitarian principles do not support an absolute broadening of tort protections. Because of communitarianism's suspicion of individual rights, tort law is riddled with situations where communitarianism would limit law's power. For example, communitarians would limit Strategic Lawsuits Against Public Participation (SLAPP suits), which are actions brought against citizens groups who seek to provide public input in a debate over a particular issue (Ackerman 1995, 664). These types of suits, brought by individuals or corporations who seek to keep public input outside of any debate over a particular issue cut directly against communitarian values; hence Ackerman recommends doing away with SLAPP suits altogether.

Communitarians might also support limiting liability for emotional harm, because in Ackerman's words, such limitations "might restore a measure of sanity to the 'tort lottery' and diminish the role of tort litigation as a cottage industry for those who view it not just as a means of obtaining compensation for injury, but as a chance for the big score" (Ackerman 1995, 667). Thus, tort law should seek to limit over-litigation by individuals and large monetary awards which inflict a larger cost on the community.

Finally, Ackerman recommends limiting suits where liability is imposed on the government for "all that may befall" a plaintiff (Ackerman 1995, 675). Ackerman explains the reasoning for such a limitation:

Too many recent torts cases involve citizens imposing demands on beleaguered governmental units, insisting that the government do more, provide more, spend more. These demands are part a product of our culture of complaint, and in part a reflection of our growing expectations of government — the latter probably being a function of the former (Ackerman 1995, 677).

This argument seems to indicate that what Ackerman fears the most is that the government is not responsive to citizen's needs, but that the government gives in too much to this "culture of complaint" leading to greater waves of litigation as Americans pit their individual rights against the ability of the government to provide services.

CONCLUSION

The language of individual rights, although pervasive throughout American political discourse, has not completely overtaken the political forum. Communitarians have provided a reasonable alternative to the dogmatic determinations of law based solely on individual rights. Although the rights-based discourse of litigation negatively affects community, there is some hope of accommodating legal dispute resolution with communitarian ideals. By employing the principles of deliberative and strong democracy and even the process of litigation itself, communitarians hope to reconcile the conflict between rugged individualism and strong community. By employing the aforementioned techniques, communitarian values can be brought into the law itself to accommodate contemporary legal principles with ideas of community instead of leaving the law based solely on principles of individual rights.

ENDNOTES

1. Council of Europe Committee of Ministers Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech". Adopted by the Committee of Ministers on 30 October 1997, at the 607th meeting of the Minister's Deputies.

2. Walzer's theory of social goods argues that each particular good should be distributed in accordance with its meaning for the people which make it and exchange or share it among themselves. A society is just when each of the goods it distributes is distributed for internal reasons and is not usurped by individuals possessing some other good.

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