

THE
RESPONSIVE
COMMUNITY



RIGHTS *and*
RESPONSIBILITIES

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The First Hurdle for Health-Care Reform

If President Bill Clinton and Congress are serious about reinventing the nation's health-care system, they first need to address the problem that threatens any fundamental reform: not the burgeoning deficit or the lackluster economic recovery, but campaign finance reform to free the President, his Democratic National Committee, and the Congressional 535 from the grip of political action committees (PACs) and other special interest groups. In May, Mr. Clinton unveiled proposals to overhaul campaign financing that represent an important step in the right direction.

The political traffic jam in Washington is not due to the fact that for most of the past 12 years the Congress has been Democratic and the White House Republican. Nor is it due to lack of term limits or the failure of Democrats to amass a veto-proof Senate majority. The gridlock in government is tribute to the flood of private money and PAC contributors who have acquired veto power in key committees of the Congress over any proposal that threatens to harm their narrow interests.

The representatives and senators who took office this past January constitute the first national government that PACs and other private contributors paid more than a billion dollars to put in place. Without public financing for their next campaigns, these elected officials are not likely to slap the wrists of the hands that delivered the billion bucks, much less get into a bare-knuckled fight with their PACs.

Private contributions for House elections soared to a record \$407 million in 1992. PAC and other contributions to elect the Senate class of 1992 totaled \$271 million, up from \$180 million spent on the class of 1990 and \$201 million paid to produce the third of the Senate elected in 1988. These sums do not even include the millions in "soft money" which they slipped to party committees as back-door support for Congressional candidates. All together, private money—almost one-third of it from PACs—paid handsomely for lots of access to the best government it

could buy.

The presidential candidates in 1992 also depended heavily on the largess of private donors. In addition to \$175 million of public funds they received, the candidates spent about \$100 million in private contributions, not including their cut of the “soft-money” pie or the \$60 million that H. Ross Perot spent from his own pocket.

President Clinton’s belly needs to be warmed by the fire of Candidate Clinton’s outrage and promise to change the power of money in Washington. So long as private money and PACs clog the corridors of power in the nation’s capital, we can expect President Clinton to temper his proposals to take into account the concerns of big money contributors and to tailor his recommendations to those a beholden Congress will find politically acceptable.

Campaign finance reform is the first hurdle for any health-care legislation that contains costs as it expands access. Lyndon Johnson is the only president who has been able to drive through Congress a major health-reform law, Medicare and Medicaid, to provide care for the elderly and the poor. The lesson of that legislative street-fight should not be lost on the new president. Though Johnson dealt from Herculean political strength, he still had to pay tribute to the private interest pipers to enact his program.

On assuming the presidency in November 1963, Johnson cited Medicare as a top priority in his first message to Congress. “We are going to fight for medical care for the aged as long as we have breath in our bodies,” he said—and he meant it. Yet even he, the shrewdest legislator to occupy the Oval Office, could not get either the Senate Finance or House Ways and Means Committee to report out his bill.

In late 1964, Johnson mustered the votes on the Senate floor to attach Medicare to a Social Security benefits increase that had passed the House. But in the House-Senate conference, Johnson could not get the House to accept the Senate bill. As a result, shortly before the 1964 congressional and presidential elections, he killed the Social Security increase. Without pent-up pressure from the elderly for the increase in the next Congress, L.B.J. feared that he would not be able to pass Medicare.

A few weeks later, Johnson won the presidency by the greatest

landslide in American history—61 to 39 percent. He carried into office with him not only a two-to-one Democratic House, but a hefty liberal majority. Even with an unprecedented electoral victory and the phenomenal public support he enjoyed in the early years after Kennedy's assassination, Johnson could not cobble together a majority for Medicare and Medicaid in the House Ways and Means Committee. To do so, he had to abandon the authority his proposed bill gave the government to set reimbursement rates. He was compelled to agree to pay hospitals on a cost-plus basis and to pay doctors fees that were "reasonable," "customary" and in line with those "prevailing" in their community—something commercial insurers had refused to do because it gave physicians power to raise their own fees.

Johnson realized what would happen. He almost immediately started to press for health-care cost containment. In March 1968, in a special message to Congress on health in America, Johnson asked for authority to "employ new methods of payment as they prove effective in providing high quality medical care more efficiently and at lower cost." He cited these "major deficiencies" in America's health-care system: the tilt of insurance plans that "encourage doctors and patients to choose hospitalization," the fee-for-service system with "no strong incentives to encourage [doctors] to avoid providing care that is unnecessary," and the fact that "hospitals charge on a cost basis, which places no penalty on inefficient operations."

Unless Congress acted, Johnson predicted health-care costs would hit \$100 billion by 1975 and the cost of medical care for an American family would double in seven years. Pressured by lobbyists for physicians, hospital associations, and insurers, Congress failed to act. By 1975, America's health-care bill hit \$133 billion, and the American family's bill doubled in less than six years.

President Jimmy Carter tried again to stanch the flood of health spending. He proposed a bill to contain hospital costs by putting an overall cap on what hospitals charge in order to hold the growth in hospital bills to one-and-a-half times the rate of increase in the overall cost of living. (At the time, such bills were rising at two-and-a-half times the Consumer Price Index.) A year and a half later, the bill was defeated on the House floor, largely due to opposition from well-organized, for-profit hospitals.

President Bill Clinton, a shrewd and tenacious politician, has the best shot to reshape the health-care system of any president since Johnson—and every one of them has tried. But compare Clinton's situation to that of Lyndon Johnson. Clinton won by a mere 43 percent of the vote—less than the 46 percent Michael Dukakis accumulated in losing to George Bush four years ago.

Clinton faces more sophisticated lobbyists with deeper pockets. He must deal with a health industry of well-heeled insurers, doctors, hospitals, pharmaceutical companies, medical equipment manufacturers, unions, health maintenance organizations and nursing homes, each seeking to protect its take out of a business that will be running at a one-trillion-dollar-a-year clip by the end of 1993. According to the Citizens Fund, health PACs doled out \$24 million in strategically-targeted contributions for the 1992 election cycle, about evenly divided between Republicans and Democrats. To top it off, the President faces a more complex health-care system, an aging population, and a technology revolution that all require an intricate legislative fix.

Clinton does have the benefit of tremendous demand for reform from a variety of interests, millions of citizens, and businesses which can no longer afford health care. But without campaign finance reform, private dollars will blunt that demand, and sensible health-care proposals to give us all quality care at reasonable cost will once again land in the bin of legislative leftovers.

Joseph A. Califano, Jr.

Phony Debates

Phony debates are back again. Both proponents and opponents

of granting \$1.6 billion in foreign aid to Russia are marshaling patently untenable arguments. Those who favor the aid maintain that it will save democracy and capitalism in the former USSR; that otherwise we will lapse back into a Cold War, an arms race, and huge American military expenditures to defend ourselves from a suddenly threatening Russia, one dominated by resurgent Communists or right-wing extremists. At the very least, this camp argues, the \$1.6 billion will “stabilize” Yeltsin and allow him time to turn his country around.

Yet the fact is that the funds at issue are to be drawn from those previously set aside for aid to Russia and hence entail no net increase in foreign aid. (No wonder the Russian press skipped right over this controversy; the arguments, after all, were geared to sway the American public). The \$1.6 billion under discussion can help Russia as much as you could reduce the deficit by volunteering to pay taxes that are due anyhow.

Most important, the amount of money at stake—even if increased at a later date and amplified by what other countries will pitch in—is paltry. To gain a sense of how little \$1.6 billion is, note that the Germans are spending about \$100 billion a year for at least ten years on developing an area, the former East Germany, that is much smaller than Russia, and in much better shape. In addition, the Germans are supplementing this financial effort by drawing on a large number of Westerners for both economic management and democratic government. Hence, even if we granted Russia \$160 billion a year, there is no guarantee that this sum would suffice; \$1.6 billion is like trying to bail out the Titanic with a dixie™ cup.

Opponents to monetary aid to Russia argue that we need the money for our own economy. But the domestic debate is hardly more genuine than the foreign one. Democrats and Republicans have duked it out over a \$16-billion stimulus package. Clinton advisors argued that this amount is required to ensure a firm economic recovery—above all, lots of jobs. Opponents have maintained that the sums will only add to the deficit, and be wasted as the economy is, it is recovering quite well anyhow, thank you.

Once again, these politicians have engaged the American public in a game with high stakes but play money. The fact is that \$16

billion would have no lasting effect on either our multi-trillion dollar economy or our gargantuan deficit one way or the other. It may have created quite a few temporary summer jobs, but real jobs that outlast the sunshine are very costly to develop. Moreover, even a small cut in interest rates would boost the economy and reduce government spending more than these government expenditures.

Why these debates? They take us back to the shadow boxing of symbolic politics. The aid to Russia is probably engineered to ensure that nobody can charge the Democrats with having “lost” Russia, the way they were charged with having “lost” China. (Or the charges and countercharges may be aimed at some other such narrow purpose one can only guess at, given the unrealistic arguments being advanced). Similarly, the stimulus package was largely a symbolic gesture to satisfy liberals who want the pain of belt-tightening that deficit reduction entails to be associated with some palliative (or some other such hidden agenda).

One of the virtues of the last election is that we started to outgrow the fairy tale of voodoo economics, and that nursery rhyme about our need to build ever-more nuclear weapons to defend ourselves from a country that can hardly make its trains run on time. The public emerged from its hibernation sensing correctly that change was afoot—that the frank talk about the dangers of the deficit and of a gridlocked Congress captured by lobbyists was allowing us to participate in an authentic debate over what must be done. President Clinton should resist those of his advisors who are urging him to resort to phony politics. On occasion, they may win him an approval point for a day, but in the longer run they erode our trust in government and undermine our willingness to support it.

Amitai Etzioni

The Language Stretchers

Derek Humphry knows that words matter. A leading figure in the euthanasia movement, Humphry says his side lost at the polls in Washington state largely because it first lost the battle over language. The pro-euthanasia campaigners talked broadly about “aid-in-dying.” But the media and public, Humphry says, “used the real words with relish”—suicide and euthanasia—and Initiative 119 went down.

In passing, Humphry pointed out the vagueness of “aid-in-dying.” It can mean, he says, “anything from a physician’s lethal injection all the way to holding hands with a dying patient and saying, ‘I love you.’” Anyone who stretches a phrase far enough to cover both killing and moral support is a serious player in language games.

“Stretching” is, in fact, a big trend in the fast-growing field of language manipulation. Specific terms give way to ever broader and gassier ones. “Blind” or “legally blind” was replaced by “visually impaired,” which includes everyone who wears glasses. “Child abuse” now seems to cover almost anything a parent or parental figure can do wrong. “Substance abusers” (formerly addicts and drunks) now includes any person who overuses or misuses anything at all. William Lutz, editor of the *Quarterly Review of Doublespeak*, says, “The whole world is composed of substance. If you start eating tree bark, does that mean you’re a substance abuser?...This doesn’t promote clarity of discussion.”

More often word-stretching occurs for frankly polemical reasons. “Family” has been stretched to make non-families eligible for various family benefits. The no-marriage, no-child, no-kinship “family” is well entrenched. Now the word is seriously used to refer to group renters, childless couples, and even single people living alone.

A New Jersey court ruled that group renters, male college students on renewable four-month leases, fit the definition of family. To circumvent zoning restrictions, two groups of recovering alcoholics in Cherry Hill, New Jersey, insisted they were families, too. A spokesman said, “Residents consider themselves a family and no other family in the country has to announce itself or explain itself.” As in *Through the Looking Glass*, the word means what the speaker wants it to mean.

If groups of collegians and alcoholics constitute families, it is hard to see why an army barracks or a touring basketball team couldn’t be

considered “non-traditional families” as well. The state of California has seemingly endorsed the view that a family is what anybody thinks it is. For a \$10 filing fee, the state issues gold-seal certificates to all comers declaring that they are a family, even if they live alone or the rest of the family is made up of goldfish. The idea is to set the stage for individuals to reap family benefits offered under 1,600 different state laws.

Another popular form of stretching is to associate some low-level complaint with a higher-level one involving violence, thus presumably startling everyone into paying attention. A *Washington Post* columnist complained recently about “intellectual genocide” in DC public schools, meaning that students aren’t taught well and aren’t learning basic skills. A Manhattan man, dying of AIDS, said his death should be seen as “a form of political assassination” (he means President Bush should have spent more on AIDS).

Act-Up, the radical group of AIDS activists, insists that there is no moral difference between negligent complicity in the AIDS crisis and the act of murder. Since its view of negligence is a broad one, its constantly shifting list of “murderers” has included Ronald Reagan, George Bush, former New York City Mayor Ed Koch, and Arthur Sulzberger, Jr. of the *New York Times*.

At Harvard Law School, a year after the stabbing murder of a law professor, a tasteless student parody of her work was widely denounced as “a second murder.” That language made it into a screaming headline in a national women’s magazine: “A Harvard Killing—Mary Joe Frug Was Murdered Twice.”

“Censorship” has undergone verbal inflation, too. In normal English, it means control of utterance by government. But in the past two or three years, it has been used to include artists who apply for NEA grants and don’t get them (“economic censorship”) as well as various boycotts and decisions by a few cable systems not to carry MTV.

These stretching exercises are often more than publicity-grabbing hyperbole. Sometimes they are conscious attempts to ratchet up a minor offense into a major one. Ogling a woman, once considered harmless or merely rude, is considered sexual harassment now, and is often mentioned in the same breath as rape. Notice how the University of

Minnesota's definition of sexual harassment blurs all lines between a glance, lack of sensitivity, serious harassment, and rape: "Sexual harassment can be as blatant as rape or as subtle as a look. Harassment...often consists of callous insensitivity to the experience of women."

The verbal work of folding the entire category of harassment into the category of rape goes on all the time. "Sexual harassment is a subtle rape," a psychologist named John Gottman told the *New York Times*. "Sexual harassment is a subset of rape with overtones of blackmail and extortion," columnist Carole Agus told her readers in *New York Newsday*.

The term "domestic violence," for instance, once referred to physical assaults in the home. Now it includes psychological abuse. Lenore Walker, a specialist in the field, defines wife-battering to include bullying and manipulation ("making women do things they otherwise wouldn't...by eroding their self-esteem.") This mimics what happened when some definitions of date rape were expanded to include what used to be known as seduction. For instance, Andrea Parrot, a rape expert at Cornell, says that "psychological coercion" is rape, which seems to include all the begging and wheedling that young men do for sex. The feminist writer Robin Morgan says that any sex not initiated and controlled by female desire is rape. This would presumably include a tired wife accommodating her husband's desires.

A similar blurring occurs in the hate-crime field. Often it's not very clear whether we are talking about violence or non-violence, crimes or non-criminal bias incidents, serious social offenses or minor and ambiguous run-ins. The National Institute Against Prejudice and Violence in Baltimore keeps feeding the media statistics on campus "ethnoviolence," but it defines violence to include slurs, graffiti, and perceptions of slights. Even self-defined psychological injury counts as ethnoviolence.

Here are two ethnovoilent incidents listed in a brochure at MIT: 1. "In one of my courses in freshman year, the professor would rarely call on any black student and the few times he did he asked embarrassingly easy questions," and 2. "At times professors would ask me to drop a course when I didn't think it was appropriate....I was outraged."

The effect of this tactic is to increase alarm about what's happening on campus, and to raise doubts about the aims and methods of statistic-

keepers. "Hate crimes" in many instances include insults and other acts that aren't crimes, just as seduction isn't rape and asking easy questions in class isn't racial violence.

The constant use of violent language for nonviolent incidents reflects the current preoccupation with violence, and it reflects too the current tensions among races and between the sexes. But it probably also helps magnify those tensions by linking minor incidents to major assaults and putting everyone on full-time alert for offense. We pay a price for these polemical word games.

John Leo

Update on The Communitarian Network

For information on:

... the new position paper on values and health care

... a Teach-in on the future of the family on November 3, 1993

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CIVICS

American Conceptions of Citizenship and National Service

ROGERS M. SMITH

Advocates and critics alike have always invoked ideals of American citizenship to defend or oppose national service programs, including military service. But too often both sides refer only to a narrow, sanitized subset of the conceptions of citizenship that have actually shaped institutions through most of U.S. history. Up until the 1960s, the nation constructed both voluntary and obligatory service programs in ways that reinforced unjust, ascriptive racial, ethnic, religious and gender hierarchies as central constituents of American citizenship. Failing to understand these facts about past national service programs, we may not grasp the challenges and the opportunities new kinds of national service programs offer to America's future.

THE CONVENTIONAL DEBATE

Most discussions of national service rely on a familiar, age-old narrative about American citizenship. The American creed holds, we are told, that to be an American citizen, one does not have to be of any particular race, gender, religion, ethnicity or original nationality, culture, or language. A person only has to support the Constitution and be law-abiding. Economic concerns may justify a ceiling on immigration, and aliens must give some minimal evidence that they will work hard and be self-supporting; but Americans believe it wrong to deny citizenship on the basis of ascriptive traits. Unlike most other nationalities,

American citizenship rests on consent to the political principles valorizing personal liberties and democratic self-governance that are enshrined in America's laws. The responsibility citizenship confers is to respect and safeguard those principles. To do so, some citizens may be called to military service. But most will be required only to gain the training needed to participate in democratic processes and in the commercial market economy that economic liberties generate; then they will have to pay taxes, do occasional jury duty, obey the laws, and little more.

This standard account includes two overlapping, often jointly held, yet distinguishable conceptions of citizenship. The more dominant "liberal" or "thin democratic" notion of citizenship presents the American citizen as essentially a bearer of individual rights, of economic, spiritual, intellectual, procedural, and—only secondarily—political liberties. She or he is likely to be most absorbed in pursuing happiness in forms of "private" life—work, church, family—and will act in national affairs, even voting, only sporadically. Those brief interventions are likely to be aimed at protecting personal interests and making sure the government does not trample rights.

In contrast, a "strong democratic," "participatory democratic," or "civic republican" reading of American citizenship emphasizes not individual rights but participation in the forms of democratic self-governance and public service the nation provides. In this view involvement in American public life is not just the occasional price of preserving individual liberties, but is our prime civic duty, part of a shared commitment to help shape our lives in common and serve our common interests. It is also a vital fulfillment of our potential for freedom and dignity. Americans generally downplay this second, more "strong democratic" conception of citizenship.

"Liberal" and "strong democratic" conceptions of American citizenship lead to different positions on national service. Liberals view national service programs, like other policies, as means for the development of cognitive and economic skills that enable individuals to flourish in planning their own lives, and in the marketplace. Liberal theorists tend to believe public service should be voluntary and recompensed. They have had notorious difficulty in justifying mandatory military

service, requiring citizens to risk death, for which there arguably cannot be adequate compensation. Liberals have thus often favored mercenary armies organized at the national level, or mandatory service that can be supplied in a variety of ways, including through cash payments. That position is consistent with liberals' advocacy of a government that is efficient, open, and accountable, but intrudes as little as possible on citizens' day-to-day lives.

In contrast, "strong democratic" or "civic republican" theorists stress fostering the sense of civic responsibility and the skills of democratic participation that produce citizens who are more concerned about public life and are vigorously active in politics. The idiom of civic duty comes more naturally to these advocates, and so requirements of military service seem less controversial. Many also have insisted that none should be able to evade service because of wealth. But American civic republicans also tend to favor extensive governance at local levels, because this is more accessible to democratic participation. Thus civic republicans have always been wary of national standing armies that might be vehicles for domination by central governmental elites, preferring instead to make local civil militia the basic units of national defense.

Liberal opponents of national service proposals often see them as creators of unproductive, costly make-work jobs that burden taxpayers and divert young citizens from their preferred personal pursuits, and as supplying the central government with potentially totalitarian instruments of indoctrination and control. Supporters of national service plans promise they will provide concrete public benefits, such as improved schools, health and sanitation systems, law enforcement, construction and maintenance of roads, bridges, parks, and so forth. Many also stress the educational value of national service in promoting recognition of our common civic identity and our obligations to each other and the community as a whole. Many Americans probably want the best of both worlds: programs that foster a sense of civic obligation and willingness to serve the common good, all the while allowing citizens to pursue their self-chosen courses as much as possible.

THE MISSING LINK

Illuminating as it may be, this account of American civic concep-

tions leaves much to be explained. Why have Americans so often denied access to full citizenship to persons and groups who were perfectly willing to vouchsafe loyalty to American constitutional principles and to support themselves? Not just in exceptional periods, but for over 80 percent of the nation's history, U.S. laws have declared most of the world's population to be ineligible for full American citizenship, solely and explicitly because of their race, original nationality, or gender. For at least two-thirds of American history, a majority of the domestic adult population has also been ineligible for full citizenship for the same reasons. For persons of the wrong color, nationality, or gender, it did not matter how "liberal," "democratic," "republican," or "pro-American" their views were, nor how educated or prosperous they were.

It is, moreover, not true that these patterns of civic exclusion, and second-class civic statuses characterized the nation at the outset and gradually eroded. More women (though not many) legally had the vote in 1790 than in 1820. The civil rights of free African-Americans were better protected in 1790 than in 1850, and were much more fully secured in 1870 than in 1920 (though they were not fully secured at any of these times). The legal rights of Native Americans had more standing in American courts in 1790 than in 1850. The U.S. had no racial restrictions on immigration at all until 1882, and it did not adopt an explicitly nationalistic quota system, designed to preserve the existing racial and ethnic makeup of the American citizenry, until 1924. "Two steps forward, one step back" is probably closer to the mark than slow but steady progress, but at times there have been two or three steps back.

Such exclusion has also been a feature of the preeminent form of civic service in U.S. history—membership in the armed forces. In keeping with liberal precepts, America has tried to rely on volunteer armies. In keeping with civic republican precepts, the nation relied on state militia much more than a true national army through the 19th century, with state National Guard units remaining significant even today. But ascriptive Americanist elements have also always been visible. Militia units were often organized along ethnic lines. Until 1948, African-Americans could officially serve only in segregated units, when they were allowed to serve at all. That service often was of vast importance to all Americans: while Union armies during the Civil War only gradually allowed African-Americans to assume combat roles, and never granted equal

pay or permitted them to become officers, in the end the North relied so heavily on African-American troops that it might not have won without them. Their military service then helped justify extending equal citizenship to African-Americans during Reconstruction. Some Republicans even used this military service to explain why African-American men should receive the franchise but women should not, ignoring the fact that women had been denied any chance for a similar military role. But influential as it was, African-Americans' military service did not prevent the withdrawal of these basic rights after Reconstruction.

The denials of opportunities for combat service to women have been much more complete and enduring, although admittedly women have protested these restrictions much less. Homosexuals have been officially proscribed since World War II, even though they actually have served in every war. And until recently, top military posts were almost exclusively held by white men of northern European descent.

Other forms of national service exhibit the same patterns. Efforts to exclude African-Americans, Asian-Americans, Native Americans, and women from juries have a long history and maintained considerable success up through the 1960s. All these groups have also faced restrictions in access to the franchise and to electoral offices. Public education, the oldest and most universal mandatory service program in the nation, long had a Protestant, Anglo-Saxon cultural content; and African-Americans and women frequently had distinct, limited educational opportunities, designed to channel them into the low-skilled labor positions, or the domestic roles, that were considered to be their natural destinies.

The main lessons to be drawn from the full story of American conceptions of citizenship are two-fold. First, though liberal and civic republican notions have indeed been central, Americans have also defined both civic membership and the obligations and opportunities for national service through appeal to a third family of conceptions that I term "Ascriptive Americanism." This holds that ascriptive characteristics, such as ethnicity, race, religion, gender, language, and cultural customs and heritage, are quite relevant for deciding who should be full American citizens. Such citizens should possess the characteristics of native-born WASP males or some none-too-distant approximation thereof. National institutions, including programs of public service,

should promote the expression of such traits in all those capable of developing them, but traditionally, Americanism has held that many could not reasonably be treated as having such potential. At times these less capable persons have included African-Americans, Native Americans, other ethnic minorities, and women. Americanism suggests such disparate groups should be assigned special limited (though often arduous) forms of national service appropriate to their natural capacities. Some may be denied access to central forms of civic service, indeed citizenship itself, altogether.

THE APPEAL OF ASCRIPTIVE AMERICANISM

The second lesson is that Americanist conceptions have shown the power and tenacity they have because liberal and civic republican conceptions of American civic identity, taken alone or in tandem, often have not seemed sufficient to give Americans a sense of meaningful civic membership. America's political leaders have always recognized this fact. The acquisition and use of political power is inevitably shaped by the sense of identity and purpose of the people. Yet political aspirants often seek to recraft existing senses of identity, forging new versions of "Americanism" in order to gain more adherents to their causes. American leaders have repeatedly looked for ways to convince their core constituencies and others that they are indeed part of some larger community that is specially endowed, divinely favored, a source of their worth and success, and hence deserving of their loyalty. In fact, no successful American political leader or movement has failed to employ some such Americanist narrative as a rallying cry.

But political appeals must fall on receptive ears. Americans have so often been receptive to Americanist arguments because taken seriously, both liberal and civic republican commitments have been subversive of many existing social and political hierarchies and customary ways of life to which many Americans still remain attached. Liberal notions of natural individual rights make a *prima facie* case that at least all those capable of rational self-guidance should be treated as bearers of individual rights. Legal systems that subordinate women, African-Americans, Native Americans, and non-Christian religious perspectives are therefore presumptively illegitimate. Civic republican emphases on civic participation can also have egalitarian implications; at a minimum

they militate against the efforts of private religious, familial, and cultural groups, as well as individual conscientious choices, to justify failures to contribute to common civic endeavors that violate their norms.

In addition, the requirements liberal and civic republican ideologies set for individuals to gain a secure sense of personal worth are uncomfortably high. Liberalism demands that individuals show themselves to be industrious, rational, and self-reliant, usually via economic productivity. Especially in times of economic distress, many Americans have found it hard to meet that standard. Civic republicanism calls for willingness to sacrifice for the public good and to make active contributions to public life: demands that many have found burdensome and unrealistic. Neither doctrine offers much reassurance that even the most hard-working individuals will avoid ultimately being eclipsed by their own mortality. Therefore it is not surprising that many Americans have often been attracted to accounts that designated them as worthy because of their social identities—as Anglo-Americans, as whites, as Christians, as men—regardless of their personal accomplishments or economic status.

The central role these appealing ascriptive traditions have always played in American politics is visible in the very invention of American nationality itself, in the ways revolutionary leaders mobilized disparate groups against British imperial rule in the 1770s. When British colonists had overwhelmed Dutch, Swedish, and German immigrants and pushed French and Spanish populations, along with many tribes, to the margins of the original 13 colonies, they grew increasingly restive against the restraints of the British authorities. But there was no massive groundswell for revolution; elites favoring that cause were faced with the political task of winning popular support for it. They could and did claim that Britain had become a corrupt, despotic monarchy instead of a free mixed republic, and that it was violating their natural rights, as standard histories recount. But republicanism and liberal rights theories were not widely known among the more middling and lower classes of English Americans, and thus did not provide a morally or politically compelling case, nor much assurance that this dangerous cause would prevail.

Hence leaders also appealed to the American colonists' more broadly shared senses of religious and cultural identity. Americans

were said to be a chosen people, destined to be a beacon of wholesome Protestant freedom, in contrast to decadent Britain and Europe, and also to the savage American aborigines and barbaric, almost subhuman Africans. The forces of history, nature, and divine Providence therefore could be counted on to ensure the Revolutionaries' success. By elaborating this sense of themselves as religiously favored, superior, and especially freedom-loving, Americans created "Ascriptive Americanism."

Subsequently, the nation's policies, including its systems of national service, have always displayed blends of liberal, civic republican, and Americanist elements, with internal tensions and inconsistencies. It seems predictable that many Americans will continue to reinvent inegalitarian ideologies of civic identity to cope with discontents liberal and civic republican values have not addressed. The liberalizing and democratizing changes of the 1950s and 1960s have, for example, prompted resurgent forms of Americanism in the late 1970s and 1980s, including political ads inflaming racial tensions and nativist calls for immigration restriction. Thus the challenge national service programs face today is to find ways to respond to the longings for less voluntaristic, more organic senses of civic identity which have fueled the Americanism that has often oppressively shaped national service and civic life.

PROGRESSIVE RESPONSES

Some thinkers from America's Progressive era can serve to suggest responses to these challenges. In contrast to older Enlightenment notions of static, natural individual rights, Progressives stressed society's evolutionary nature and the culturally shaped character of individuals. For most Americans, these themes only reinforced the concerns for civic homogeneity visible in the late 19th century. Many Progressives supported Jim Crow, immigration restrictions, colonialism, "protective" legislation for women that often denied them economic opportunities, and harsh "Americanization" policies designed to stamp out immigrants' cultures.

But Jane Addams, John Dewey, Randolph Bourne, Horace Kallen, and some other Progressives developed different views. They began reconceiving American civic identity in ways that had direct, if varying, implications for national service. Appalled at racist exclusionary poli-

cies and imperialism, they all argued for minimizing the importance of American national identity. Not that they minimized social identities: to the contrary, they all thought that it was mainly American society's individualism that drove Americans to doctrines preaching membership in a larger community with higher aims, even if those doctrines were illiberal. Hence they sought a public philosophy which would give greater weight to people's aspirations to belong to intrinsically meaningful social units. But those units were not to be homogeneous.

They were, instead, to be more intimate, immediate, and sustaining human communities. In their view, the U.S. is only a confederation of smaller social groups, bound together by an ethic of mutual respect and tolerance for group differences, and by the desire to achieve collectively certain limited goods on which the groups could agree, such as national peace, good health, and prosperity. All concurred, too, that public institutions should foster this tolerance, as well as the skills to participate in democratic processes through which these common goods could be identified and pursued.

Here progressive thinkers parted company. Dewey conceived of all these smaller communities as voluntaristic, to be run via internally democratic procedures. Kallen, in contrast, saw persons' primary community memberships as inherited and ascribed, and as appropriately governed by custom and tradition, even if these were non-democratic. Bourne urged that persons should feel free to embrace multiple memberships, large and small, in cosmopolitan fashion, especially groups that transcended national boundaries. He praised a radically transformed, inclusive, non-ascriptive, "transnational" Americanism, in which members would often hold dual national citizenships.

As America moved toward World War I, many urged universal military service, both as a means of military preparedness and as training for citizenship. Bourne opposed that idea, but he agreed some institutions had to foster a sense of national unity amidst the diversity he otherwise embraced. In order to avoid both militarism and exclusionary forms of Americanism, he proposed to create a national service program. Under his plan, young men and women would spend two years performing neglected public tasks, such as inspecting food and factories, teaching good health habits, helping with playgrounds, child

care, and soup kitchens. Bourne's was a form of national service aimed not at fostering traditional patriotism but at reducing class and gender differences, building a more humane social environment, and transforming restrictive hereditary social identities.

ONGOING DILEMMAS

Though an improvement over previous nativist and racist policies, the progressive conceptions of Kallen, Dewey, and Bourne have their own difficulties, with which the U.S. continues to wrestle. One is whether Dewey or Kallen is right. Should we treat cultural groups, or even families, as voluntary associations, to be run democratically, or as traditional ascriptive memberships, to be run according to varying customs? A second unknown is the way to mutual tolerance. Does tolerance require compulsorily integrated, democratic public institutions, or permission for each group to set up its own separate institutions? These problems apply to both the form and content of a national service program. Should service be a voluntary complement to a citizen's rights, or a compulsory obligation rooted in our organic civic identities? Should service programs be integrated along ethnic, racial, religious and economic lines, or is it more effective and just to assign persons service in their communities of origin? Should the goal of such programs be to make these communities more democratic and inclusive, or merely to assist them as they are?

These questions hinge on the problem of how we should conceive American civic identity. If our citizens believe national identity is merely a complement to the full communal lives that come only within more intimate associations, will our union continue to hold? Or is this view of civic identity a formula for increasing balkanization and group hostility, as critics of "multiculturalism" and affirmative action contend? If we assert instead that there *is* a national identity and purpose that take precedence over the claims of group membership, how do we define them?

SOME SUGGESTIONS

Though I cannot answer these questions to my satisfaction, I am sure these issues are central to the problem of national service today. Many

Americans still want to feel they have common values and a meaningful national identity sanctified and legitimized by biology, history, or divine providence.

Dewey and Bourne's voluntaristic view of group membership offers the comfort of association with like-minded people, but does not provide these assurances. Instead it reproduces all the greatest difficulties of traditional liberal views. Kallen's emphasis on hereditary cultural groups as the primary locus of social identity offers a more robustly organic perspective. But it thereby endorses essentialism, minimizes national identity (and older civic hierarchies), embraces particular traditions that many find confining, and fosters separatism that may lead to balkanization.

Yet it is Kallen's vision that American civic laws and civic education since World War II have most closely approximated. The reason Kallen's view of American civic identity has gained force may well be precisely because it supplies the more transcendent cultural identities people seek once older racist and nativist forms of Americanism have been rejected as massively oppressive and unjust. It may be, however, that our acceptance of that vision has gone as far as it can go, given that it has not replaced older forms of Americanism with any sense of why membership in the *national* community is estimable.

Bourne's conception of national service may point the way. But we should begin by recognizing that his "trans-national" Americanism, which urged us to conceive of political identities as optional and unrestrictive, was in some ways unrealistic. American civic identity is not something natural. It is something Americans have historically constructed and have struggled to define. But it is, for that very reason, something both more real and more transcendent than any aggregate of unfettered personal choices in the here-and-now. It has been made concrete in a vast range of institutions, customs, and practices that have helped constitute the identities, interests, and moral commitments of many millions of people.

REDEFINING "AMERICAN"

When persons are born or choose to become Americans, then, they do indeed become part of something larger than themselves, something

that preceded them and will almost certainly outlive them. They become part of a political community that will do much to shape the stories and the very meaning of their lives, even as they play parts in shaping its story and its meaning. The same things are true, to be sure, of many other communities to which they belong. But however central any of those groups may feel to them, the laws, culture, economy, and conditions of physical security prevailing within the U.S. are all likely to have major impact on them, for good and ill, like it or not.

Thus on one level it is right to take “Americanism” as a larger order which can infuse the lives of individual Americans with broader significance. But that significance is something over which they can exercise some choice—not unconstrained choice, because much that makes up America is deeply entrenched and both individual and collective human powers are limited—but choice nonetheless, about which cultural, political, economic and religious traditions Americans will seek to value and preserve, and which ones to transform. Thus Americans recurrently reshape both the content of the national narrative and the meaning of their own lives.

National service can help Americans to recraft this narrative. While in the past, national service institutions such as armies, juries, and schools have reiterated the ethnocultural stratifications that have pervaded American life, in the future national service programs might be effective ways for all Americans to gain a richer understanding of the variety of conditions, histories, opportunities and constraints that constitute the lives of the hugely diverse American citizenry of today. And thus Americans might be better equipped to decide how their national story should be continued or modified.

REDEFINING NATIONAL SERVICE

But if national service is to enable Americans to grasp and shape their shared existence better, it obviously should not simply rehearse its participants in the civic knowledge they already possess, or indicate that existing arrangements are natural and unquestionable. Instead, it should be a vehicle through which Americans learn to take seriously the perspectives of Americans different from themselves. That goal requires a measure of egalitarianism in the internal organization of national service programs, for people pay more attention to those who work with

them rather than for them. It also suggests that national service should seek to provide people with meaningful work they can usefully do in environments they do not usually encounter.

That formula may be misconstrued as a prescription for inefficiency, requiring that people be sent to communities they do not know to perform tasks for which they lack skills. Instead, participants should be placed where they can use their skills in new contexts and new ways. For example, recent economics graduates would not have to become extra bedpan changers. Many might more usefully be assigned to assist applicants applying for their first home mortgages, an experience that would probably be instructive in how racially and economically homogeneous neighborhoods are maintained. In contrast, an African-American woman who had recently graduated from an inner-city high school might serve as a teaching assistant in suburban social studies courses, a role that again might educate all involved.

The spirit of such a program would have much in common with Bourne's hope for more inclusive national service programs that would promote appreciation of the multiple communities that make up America. But it would be premised on recognition of the practical importance of their common civic identity to Americans' lives. Rather than Bourne's "trans-national" Americanism, national service thus conceived would promote a more "trans-America" nationalism. And in contrast to past programs that further accustomed Americans to accept their places in ascribed hierarchies, national service thus reconceived might help citizens to recognize the injustices that have so pervasively shaped American life, the ways injustices are perpetuated today, and the practical means by which they can be combatted. At a minimum, national service would give more Americans more insight into the realities of the civic identity they share, so they can better decide what American citizenship should mean now and in the future.

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Property Rights/Property Values: The Economic Misunderstandings of the “Property Rights” Movement

DONOVAN D. RYPKEMA

By almost any definition *community* implies the existence of a *place*—a physical place made up of land, buildings, and public spaces. In most American communities the vast majority of the *place* is in the ownership of individuals—private property.

Since virtually the beginnings of the rights of private ownership of land there has been some restriction on the use of that property. Historically, restrictions have been enacted in order to protect the interests of the community from adverse potential impacts a private property might generate. Today a fundamental challenge to the concept of public restrictions on private land is emerging.

The burgeoning “private property rights” movement is making a three-pronged attack on land-use regulation throughout the United States. The first assault comes from lawyers and developers, who contend that the regulation of private property has become a “taking” entitling the owner to “just compensation” for loss of property value. This prong of the attack is wending its way through the court system—both state and federal—and no doubt will continue to do so for years to come.

The second wave of the attack is on the political front. If the first part of the argument could be rephrased as, “The government does not have the right to pass such regulations,” the second rephrasing might be, “Even if the government has the authority to enact such regulations, it should not exercise that right.” This political question will ultimately be decided in state legislatures and by city councils.

The third tier of the “property rights” advocates’ attack is the economic argument. In simplified terms the argument is as follows: “This land-use regulation diminishes the economic value of my asset. I am entitled to use [develop] my asset to its ‘highest and best use’. It is wrong for the government to deprive me of that opportunity.”

The legal prong of the “property rights” argument will be decided (and then probably re-decided) in the court room. The political prong will be decided at the ballot box.

But it is the economic prong that is being used and abused with increasing frequency by the “property rights” proponents. And it is this prong of attack that, to date, has received inadequate response from the advocates of land-use regulations.

It is to state the obvious to say that “land-use regulations apply to land.” But an acknowledgement of that reality is critical to an understanding of the source, justification, and economic impact of these regulations. Land is an asset like no other. (The terms “land,” “real estate,” and “property” will be used interchangeably throughout.) Among the singular attributes of real estate are:

- Every parcel is unique;
- It is fixed in place;
- It is finite in quantity;
- It will last longer than any of its possessors;
- It is necessary for virtually every human activity.

Contrast those traits with any other investment vehicle—stocks, bonds, gold, insurance policies, commodities futures, oil, fine art, treasury bills, certificates of deposit. None of them possesses all of real estate’s attributes; most possess none at all.

In part because of its peculiar attributes, real estate has always been treated differently than any other asset in law, taxation, lending, political perspective, and philosophy. But real estate has been treated differently for two fundamental economic reasons as well:

- the impact of land use on surrounding property values, and
- the primary source of value of real estate being largely external to the property boundaries.

Imagine two next door neighbors each owning a series of assets. One owns IBM stock, government bonds, gold coins, and antique watches; the other owns GM stock, corporate bonds, gold ingots, and baseball cards. The investment decisions of one have absolutely no measurable effect on the value of the assets of the other. One neighbor probably neither knows nor cares about the investment portfolio of the other. There is no need for one neighbor to urge the enactment of public restrictions on the use to which gold ingots can be placed since the neighbor's decisions will not affect his own asset value.

Now suppose that in addition to the assets above each neighbor owns a parcel of real estate abutting the parcel of the other. *Every decision one owner makes has an immediate impact on the economic value of the asset of the other.* To the extent possible, one owner will try to limit the potential adverse effect the neighbor's land-use decisions might have on his own property value.

Historically, the initial purpose of land-use regulation was public health and safety. Though it is conveniently forgotten by the proponents of the economic prong of the "private property rights" argument, the mitigation of adverse economic impacts caused by proximate land-use is also at the core of land-use limitations.

There is an old principle of private rights that says, "My right to swing my fist ends where your nose begins." Certainly the same principle applies to the regulation of land use.

The sheer complexity of trying to establish individual agreements with every property owner whose decisions might affect the value of one's real estate asset quickly reaches the point of mathematical absurdity. The common-sense approach for real estate investment protection, therefore, has been land-use regulations instituted by the public to protect the composite economic value of private land and to mitigate the risk of substantial value decline caused by actions on nearby properties.

Those who loudly proclaim, "It's my land and you can't tell me what to do with it," are quick to appear before City Council when a homeless shelter is moving in next door or a hazardous waste disposal site is proposed next to their summer cottage. And their argument won't be, "I'm against the homeless," or "Hazardous waste shouldn't be disposed of," but rather "That action will have an adverse effect on my

property value, and you, City Council members, need to prevent that.”

Land-use regulations protect property values. But where does real estate value originate? Some land owners would have you believe that the value of their asset somehow emerges from within the boundaries of their site and, since that value was created within their lot lines, they are entitled to the highest returns available. Nothing, in fact, could be further from the truth. Consider two five-acre parcels of desert land—one in the middle of the Sahara and the other in the middle of Las Vegas. Within the lot lines both have the same physical characteristics: flat, dry, and, in their natural state, incapable of supporting human habitation. Do they have the same economic value? Obviously not. But the differences between the two lie entirely outside the boundaries of the property. Everyone has heard the old adage that “the three most important characteristics of real estate are location, location, location.” The reality of that maxim is well illustrated by the two desert parcels.

It is not the land but the activity around the land that gives considerable value to one parcel and next to none to the other. In other words, the millions of dollars the Las Vegas site is worth stems not from the investment of the deed holder of the site but almost entirely from the investment of others—the City of Las Vegas, employers, owners of other properties, residents of Las Vegas. The creation of value in real estate is to a large extent external to the property itself.

The scenario can be changed somewhat by adding a 40-story hotel to the site. Surely in Las Vegas the property is now worth millions more than the bare land prior to building being erected. But what is the value of the land and hotel in the middle of the Sahara? Next to nothing!—irrespective of the cost of construction. The economic value of the property was created not from within the property lines but from without.

Restrictions on the use of land represent an appropriate dividend on the investment others have made which has generated the economic value of an individual parcel.

Students of real estate economics have identified the “Forces of Value” which push the economic value of a single parcel up or down. These forces are: social, economic, physical, and political. Land-use regulations reflect the political and, to a lesser extent, the social forces

of value. Does the enactment of a land-use regulation affect value? Absolutely. *In both directions!* The rezoning of a parcel of land from General Agricultural to Light Industrial will change the economic value of the property; in all likelihood the value will increase. That land use decision *increased* the value of the site. Note that the land itself did not change. The permitted use changed and, therefore, the economic value of the property changed. When was the last time you heard a property owner say, "Because of rezoning, my land went from being worth \$10,000 to being worth \$100,000. But since it was the action of the Planning Commission and not some investment I made that increased the value, I'm writing a check to the City for \$90,000."? No landowner has ever said that nor should he have. The political force of value is one of the risks inherent in the ownership of real estate and it has upside opportunity as well as downside potential.

To suggest that a decline in value resulting from the enactment of a public land-use limitation entitles a property owner to "just compensation" is to ask for a floor under the risk of real estate ownership. Where then is the offsetting ceiling limiting the enhanced value generated from the same source? No property rights pamphlet has advocated that equitable exchange.

Does the enactment of a historic preservation statute, a wetlands protection law, or a downzoning ordinance ever reduce the value of an individual parcel of real estate? Certainly. But every day hundreds of governmental decisions affect individual investments of all kinds, and often adversely. What happens to the value of Lockheed Corporation bonds when McDonnell Douglas is chosen instead to build a new bomber? It goes down! What happens to the value of the local Ford dealer's franchise when the City decides to buy Chevrolets? It goes down! What happens to the value of the utility company stock when the state utilities commission refuses to grant a rate increase? It goes down! In every instance a political decision by a public body acting in what it deemed "the public interest" had an effect on somebody's assets. Real estate owners have no inherent right not to be adversely affected by political decisions.

To return to the "forces of value," it is the social, political, and economic context within which a property exists that gives it value. Of the four forces only the physical is primarily contained within the

property lines. To claim that the adverse impact of public decisions (the political force of value) is somehow unwarranted, unfair, or undemocratic is to fail to understand (by accident or by design) the fundamental nature of real estate economics. The potential adverse impact of political decisions is simply one of the risks inherent in the ownership of real estate.

This does not mean that it is not possible to have a land-use decision that is fundamentally unfair. Of course that can happen, and when it does it is incumbent on the property owner to demonstrate to the decision-making body that what he loses as a result of those restrictions is much greater than what the public (for whom the public body is acting) has to gain. No one should dispute an individual land owner's right to testify against his property's being subject to a particular land-use constraint. *But to object solely because of a claim of potential loss of value demonstrates a basic misunderstanding of the nature of real estate.*

Often at land-use hearings those seeking to rezone their property (or oppose historic districting, environmental restrictions, etc.) proclaim some divine right to use their property to its "highest and best use." Based on their orations one could quickly reach the conclusion that "highest and best use" means the greatest return imaginable. That simply is not so. "Highest and best use" is a real estate appraisal term which has a very specific definition: *Highest and best use is the use that, at the time of the appraisal is the most profitable **likely** use to which the property may be placed.* The word *likely* is a key one. The first constraint on "likelihood" is what is legally permitted—i.e., what is allowed under land-use limitations. It would be a fundamental violation of appraisal practice to estimate the value of the property assuming a use not currently permitted unless it were *probable* that the land use restriction would be changed. Just the *possibility* of current regulation being changed is not sufficient; the appraiser would have to demonstrate the *probability* of change. In other words, for the owner of an undeveloped 40 acres currently zoned General Agriculture to argue that the "highest and best use" of his property is as a suburban office park when that use is neither permitted by current restrictions nor is it *probable* that those restrictions will be changed is very simply misusing and misrepresenting the vocabulary of real estate. "Highest and best use" is not the maximum value imaginable; it is the most profitable use for which there is market

demand and legal authority. If the “maximum imaginable value” were the standard, we would have adult bookstores, hazardous waste disposal sites, steel mills, and sewage disposal plants in every residential neighborhood in America.

Furthermore “highest and best use” often includes non-economic factors, according to *The Appraisal of Real Estate*:

The most profitable likely use cannot always be interpreted strictly in terms of money. Return sometimes takes the form of amenities. A wooded urban site, for example, may have its highest and best use as a public park; or the amenities of living in a private dwelling may represent to its owner satisfaction that outweighs a monetary net rental yield available from rental to a typical tenant. In this time of increasing concern over the environmental effects of land use, environmental acceptability is becoming an addition to the highest and best use concept.

But the concept of “highest and best use” is but one of the principles of value misrepresented by the “property rights” advocates. There doesn’t seem to have been much attempt to understand either the theory or the practice of real estate valuation. There are, for example, two principles of real estate appraisal that are particularly germane to this discussion: the principle of balance and the principle of conformity. The principle of balance establishes that land value is created and maintained when there is an appropriate balance among types and uses of land in the affected area. Comprehensive plans and zoning laws are an important element in sustaining that balance.

The principle of conformity affirms that area-wide values are greatest when there is a reasonable degree of land-use compatibility and architectural homogeneity. Conformity in use establishes and sustains the composite value of the neighborhood and the individual affected parcels within.

Usually in the heat of land-use arguments, the “property rights” advocates frame the debate in terms of “property owners versus the ‘government’.” Defining the dispute in that context conjures up visions of faceless bureaucrats in Washington dictating how far a garage has to be set back from Elm Street and deciding what color one’s house can be painted. An 80-year-old homeowner can be forgiven for having that misunderstanding when that’s what he has been told. But the leaders of the “property rights” movement know full well that is a bogus

argument. Virtually all land-use controls are enacted and implemented at the local level. It is not Washington bureaucrats but citizens from towns and counties who pass zoning laws, subdivision ordinances, and historic district provisions.

Even the National Register of Historic Places, one of the few pieces of federal legislation affecting properties at all, places absolutely no restriction whatsoever on what a property owner may do with his property. The owner, in fact, is even completely free to demolish historic structures.

But this “property owners versus the government” argument is a blatant misrepresentation of the issue in another sense. It is not for the sake of the local government that land-use restrictions are put into place *but rather to protect the value of the investment of one property owner from the adverse economic impact of the actions of another*. Well-drawn land-use controls may very well reduce the maximum potential value of a single parcel, but the composite value of the sum of the affected properties will be enhanced. “Property rights” advocates often call land-use restrictions a “fairness” issue. In that they are certainly right. But it is not the “fairness” of the local government potentially reducing the uppermost value of a single parcel; it is the fairness of allowing a single property owner to receive a windfall at the expense of his neighbors. The local government is unaffected by how far I swing my fist; but my neighbor is not.

In virtually every objective evaluation of the economic impact of land-use controls—and particularly of historic districts—the composite value of the affected properties was protected at worst and significantly enhanced at best. It is the difference between *individual value maximization* for a few property owners and *value optimization* for all of the owners.

But even if land use were viewed as the rights of the “public” versus the rights of the private property owner, that “public” is entitled to a return on the value that public expenditures largely created. It is the streets, sewers, water lines, sidewalks, curbs, streetlights and parking lots which were, in the main, paid for with tax dollars that have created much of the value of any given property. The contribution of public expenditures to the value of private property was well recognized by the father of *laissez faire* economics, Adam Smith, who wrote in *The Wealth*

of Nations:

Good roads, canals, and navigable rivers, by diminishing the expense of carriage, put the remote parts of the country more nearly upon a level with those in the neighbourhood of the town. They are upon that account the greatest of all improvements.

Yet today “roads, canals” and their contemporary infrastructure counterparts remain “the greatest of all improvements” for which the regulation of land use is an appropriate recompense.

There is another fact of economic life where the interests of the individual and the interests of the public at large coincide. In economics it is the differentiated product that commands a monetary premium. Any good advertising agency, manufacturer, retailer, or service vendor will tell you the economic value of its product is enhanced by identifying and capitalizing on the *differences* between its product and the competitors'. Much land-use legislation, particularly historic preservation districts, has at its heart the identification and maintenance of the *differences* between that community and any other. It is that product differentiation that has created an economic premium—from which both the public and private sector benefit—from Charleston, South Carolina to Guthrie, Oklahoma, from Seattle, Washington to Fredricksburg, Virginia.

It is easy rhetoric to proclaim, “This country was built on the unencumbered rights of private land owners. It is un-American to limit what I can or cannot do with the land I own. We need to return to the frontier days of the homesteaders who developed their land without the interference of ‘big brother’ in their decisions.”

In fact, certainly the most severe and limiting land-use restrictions ever enacted by the federal government were those placed on the homesteaders of the western frontier. To be able to lay claim to their 160 acres, the men and women of the western expansion had to clear, cultivate, and live on their land for five years. Almost no current land-use control is that demanding. It wasn't for money that the Homestead Act placed those restrictions. The federal government paid less than three cents an acre for each of those 160 acre parcels—an amount most homesteaders could have afforded to pay. A homesteader was not allowed the option of paying \$4.50 instead of abiding by the land-use controls. The actions were required because of the recognition of the

interrelationship of properties and the desire to meet the social, political, and economic needs of the sum of the land owners (and the nation as a whole) even if it meant restricting the “freedom” of the individual land holder.

The “property rights” debate is about fairness, about equity. It is about the fairness of allowing a single property owner to affect adversely the values of a multitude of owners. It is about the fairness of the public getting a return on its investment which created much of the individual value to begin with. It is about the fairness of one owner’s windfall against a group of owners’ maintenance of value. It is about the fairness of a single individual destroying the “product differentiation” of a community, built up over generations, in order to create a carbon copy locally of somewhere else. It is about the fairness of the owner of real estate demanding compensation if his asset declines in value because of a public policy decision when the holders of the Lockheed bond, the Ford dealer, and the owner of utility company stock have no such protection.

In fact, land-use controls are a capitalist plot to optimize the property values of the majority of real estate owners, not a communist conspiracy to deprive individuals of some imaginary “property rights.”

Adam Smith perceptively observed that, “As soon as the land of any country has all become private property, the landlords, like all other men, love to reap where they never sowed.” That doesn’t mean we are depriving them of rights when we tell them no.

**A Communitarian Perspective on the
SEC's Proxy Rules:
Corporate Social Responsibility After
*Cracker Barrel***

JOHN C. COFFEE, JR.

The practical ability of shareholders to lobby their own corporations on social and moral issues has long depended on a little known Securities and Exchange Commission (SEC) rule—one which the SEC has quietly reinterpreted this year in a way that may largely negate its effectiveness. The critical rule, SEC Rule 14a-8, enables a shareholder to place a proposal on the corporation's agenda for a vote at its annual meeting of shareholders without incurring the enormous costs involved in soliciting proxies. In most circumstances, federal law requires a soliciting shareholder to prepare and clear with the SEC a formal disclosure document known as a proxy statement, but under Rule 14a-8, the proponent can avoid this requirement by tacking the proposal onto the corporation's own proxy statement; then, all the shareholders may instruct their management how to vote their shares on the issue in question.

Over the years, public interest organizations have used this rule to raise a broad spectrum of social and moral issues ranging from investment in South Africa to the environment and nuclear power. Although activists have rarely won contested votes at shareholders' meetings, they have not needed to. Instead, they have exploited the embarrassment that the corporation faces when placed in a high-profile stance on a controversial issue. For example, during the early 1980s, the American Jewish Congress was able to induce many public corporations to end their acquiescence in the Arab boycott of Israel, because, simply put, no

CEO was willing to stand up at a shareholders' meeting and defend its quiet complicity. In general, when faced with the sunlight of public exposure, corporate managements have sought a negotiated resolution under which they have agreed to change their policy on the issue in return for the sponsoring shareholder's agreement to withdraw its resolution.

Predictably, the success of Rule 14a-8 in facilitating shareholder activism created opposition to it. For some time, the SEC has sought to prune the rule, but has been uncertain about how to do it. In 1992, in a low visibility decision, the SEC tried a new technique, whose impact may well be to withdraw most normative issues from shareholder debate. Not only has the SEC acted unwisely, but, from a communitarian perspective, it has chosen the least tenable and most objectionable way of downsizing the rule: namely, by assuming for itself the role of the moral arbiter who decides what issues the shareholders may and may not debate.

The adversaries in this year's battle over corporate morality were Cracker Barrel Old Country Store, Inc., a Tennessee-based restaurant chain with over 14,000 employees, and the New York City Employees' Retirement System (NYCERS), a large public pension fund. In January 1991, Cracker Barrel issued a press release indicating that it would not "continue to employ individuals...whose sexual preferences fail to demonstrate normal heterosexual values." Based on this policy, Cracker Barrel terminated several gay employees. An uproar ensued, and Cracker Barrel quickly backed off its formal policy, but not before gay activists initiated a nation-wide boycott of the company. In response, NYCERS submitted a shareholder proposal in June 1992 to Cracker Barrel for action at that corporation's annual meeting of shareholders which requested its Board of Directors to "implement non-discriminatory policies relating to sexual orientation."

Rule 14a-8's requirement that a corporation include a timely shareholder proposal in its proxy statement has long been subject to an important exception: The corporation may omit shareholder proposals "relating to the conduct of ordinary business operations." Over the years, the SEC has vacillated in its interpretation of this exclusion, expanding and contracting it from administration to administration as political currents have waxed and waned.

Unsurprisingly, Cracker Barrel argued to the SEC's staff that the "ordinary business" exclusion applied to its employment policies because it had violated no federal statute in dismissing openly-homosexual employees but had simply made a business decision to protect its public image as a "family values"-oriented company. Equally predictably, NYCERS responded that overt discrimination could never be a matter of "ordinary business operations" and that Rule 14a-8's exclusion was intended only to spare corporations from pointless debate over mundane issues. In addition, NYCERS also argued that Cracker Barrel's policy had generated sufficient controversy and adverse publicity to be of concern even to those shareholders interested only in profit maximization.

What was surprising, however, was the SEC's response. First, in October 1992, the SEC's staff issued a "no action" letter to Cracker Barrel, permitting it to exclude the NYCERS proposal. Rather than narrowly distinguishing the case before it, the staff announced a change in policy. Hereafter, it said, "the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant." In short, no matter what the form of discrimination (against gays, women, racial minorities, or religious groups), the subject of employment policies was placed off-limits for shareholders seeking to use Rule 14a-8. Early this year and without any additional explanation, the Commission affirmed the staff's position. Since then, literally scores of corporations have sought similar "no action" letters from the Commission's staff permitting them to exclude other controversial shareholder proposals under this now-broadened exemption for "ordinary business operations." Although NYCERS has gone to court to challenge the SEC's ruling and may well succeed, the larger issue deserves to be highlighted: What rights should shareholders possess to challenge corporate policies on moral grounds?

This issue has a long history, and the SEC's position in the *Cracker Barrel* dispute is, in fact, a reversion to an old and unfortunate position that once before embarrassed the SEC. In 1951, in response to an attempt by shareholders to force Greyhound to desegregate its seating on bus routes in the South, the SEC adopted an even broader exclusion to Rule

14a-8, covering any shareholder proposal submitted “primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes.” In that McCarthy era, the fear literally was that Communists might use corporate proxy statements for agitprop purposes. Yet the consequence of this SEC overreaction was that shareholders could not feasibly challenge the morality of racial segregation, even when practiced by their own corporation. In a Vietnam-era case involving an attempt by an anti-war group to force a vote on a resolution instructing Dow Chemical to cease manufacturing napalm, the D.C. Circuit Court of Appeals found the SEC’s exclusion for “general economic, political, racial, religious, social or similar causes” to be hopelessly overbroad. Shareholders, as the owners of the business, were entitled, it said, to decide for themselves what normative limitations they wished to place on their own firm’s activities. In response to the *Dow Chemical* decision, the SEC adopted the “ordinary business operations” test as a substitute exclusion that could survive judicial scrutiny. However, until this year, the SEC had generally read the exclusion relatively narrowly.

The sad irony, then, is that, with its *Cracker Barrel* interpretation, the SEC has come close to returning full-circle to its 1951 *Greyhound* position—at least when the moral issue relates to what the SEC considers “ordinary business operations.” Indeed, one has little doubt that, back in 1951, the SEC would have considered segregated buses to have equally been a matter of “ordinary business operations.”

What explains this new reluctance on the SEC’s part to permit shareholders to raise issues of corporate morality at their own shareholders’ meeting? The SEC is not an illiberal agency; nor is it opposed to shareholder power. Indeed, during 1992 it enhanced shareholder power under Rule 14a-8 by ruling that the executive compensation paid to senior executives at Exxon was not a matter of “ordinary business operations” and thus shareholder proposals relating to this topic could not be excluded from the corporation’s proxy statement. Curiously, the SEC seems today to be an activist agency when it comes to shareholder rights relating to economic efficiency, but it turns conservative when the same shareholders seek to assert issues of corporate morality.

But why? The probable explanation for the SEC’s seemingly incon-

sistent attitude toward shareholder authority is a fear of informational overload. The SEC believes that if ideologically-motivated shareholders owning typically only a few shares could require the corporation to include every proposal they wished to attach to the corporation's proxy statement, the result would be that essential economic information in the proxy statement would be obscured and shareholders might be inundated by a flood of idiosyncratic proposals relating to every conceivable moral issue or grievance. Here the SEC's concern is valid; absent some screening mechanism, numerous proposals are likely to be tacked onto a single proxy statement. Regulation is thus necessary, as otherwise a point of diminishing returns is quickly reached at which overloaded shareholders will cease to pay attention to any individual shareholder proposal.

But, if potential overflow is the problem, simpler, less drastic reforms are possible than a categorical prohibition on shareholder consideration of issues relating to employment discrimination. The real question that needs to be asked is: If some screening mechanism is necessary, what kind of mechanism should the SEC design? Essentially, the choice is between two general approaches.

First, one can regulate the substantive content of proposals, disqualifying some proposals on the ground that they are too remote to the concerns of shareholders to justify inclusion in the proxy statement. This is the approach that the SEC has traditionally followed, and the "ordinary business operations" exclusion is the leading example of such substantive content regulation.

Second, the obvious alternative would be for the SEC to rely on procedural regulations that do not attempt to judge the moral significance of the issue. For example, the SEC could require a proponent of a specific proposal to obtain the support of some minimum level of the shareholders (hypothetically, 1 percent of the class or \$500,000 in common stock) before the corporation would be required to include the proposal in its proxy statement. Other variations on this theme are also possible.

At present, the SEC has disdained procedural approaches in favor of substantive rules. As a result, if there is informational overload today, it may be because a shareholder holding as little as even \$1,000 in market

value of the corporation's stock can normally have his or her proposal included in the proxy statement, regardless of its practical relevance to the corporation (unless the proposal falls within the SEC's vague category of "ordinary business operations").

Which approach—procedural or substantive—to Rule 14a-8 is preferable? The first point to understand is that substantive content regulation essentially involves government censorship. However polite and well-intentioned the process, the SEC is at bottom deciding what moral debates the shareholders can and cannot hear. For example, when the SEC determines that all issues of employee relations fall under the heading of "ordinary business operations," it is effectively precluding any feasible debate among the shareholders about employment discrimination (whether based on race, gender, religion, or whatever). Clearly, this is overbroad. Yet, this leads to the second point: governmental agencies tend to favor overbroad exclusions.

As a self-protective strategy, the SEC has naturally searched for broad categorical exclusions that allow it to make individual decisions in an apparently neutral way. Put more simply, it is easier for a bureaucracy, such as the SEC, to rule all disputes about employment discrimination out-of-bounds than to make difficult individual decisions about particular disputes. In short, the SEC's bureaucratic defensiveness results in overbroad exclusions.

How would an alternative system of procedural regulation work? In order to prevent informational overload, the proponent of a proposal might be required to secure the support of some minimal number or percentage of the shareholders. For example, suppose a hypothetical shareholder, Ms. Smith, wished to oppose Cracker Barrel's policies, and the applicable rules required her to obtain co-authorization from shareholders holding at least 1 percent of the outstanding shares of Cracker Barrel. As a practical matter, Ms. Jones could take her proposal to the leading public pension funds (such as NYCERS or Calpers), which often hold 1 percent blocks of stock simply by themselves. As public bodies representing thousands of employees, some of these funds have been historically sympathetic to these issues. Or, she could canvass other individual shareholders in a more time-consuming, but still not impossible, manner (SEC rules could also give her an immediate right to a shareholder list for this purpose). Either way, such a procedure would

screen out only those proposals that shareholders themselves were unlikely to support.

From a communitarian perspective, the SEC should not play censor or assume the responsibility of deciding which moral issues are significant to shareholders. The community of shareholders should make its own decisions, and moral debate should not be limited by a governmental agency paternalistically seeking to protect shareholders from unnecessary controversy. To the extent that some screening is necessary (and it is), the test should be whether the proposal resonates with a sufficient number of other shareholders to justify inclusion, not whether the SEC thinks it is relevant. In contrast, today a very small shareholder can make a shareholder proposal—but only if the government (in the form of the SEC) decides that the proposal is not inappropriate. Ultimately, the existing system makes life easier for the SEC, but never explains why shareholders, as the owners of the corporation, are not entitled to impose their own normative restrictions on their corporation's behavior.

The future of corporate social responsibility and that of Rule 14a-8 are likely to dovetail. Under the Clinton administration, it is possible (but not certain) that the *Cracker Barrel* ruling will be re-examined. Ultimately, however, the broader issue involves not just the *Cracker Barrel* decision that employment discrimination can be a matter of "ordinary business operations," but the underlying premise that a governmental agency can distinguish important moral issues that need to be debated from trivial ones that should be ignored. In truth, there is virtually no role that the government is less suited to perform.

Q. How many children bring loaded guns to school
on an average day?
(see page 62.)

Liberalism and Medical Ethics

NORMAN DANIELS

Medical ethics is a subspace of political philosophy for Ezekiel Emanuel (*The Ends of Human Life: Medical Ethics in a Liberal Polity*); he reaches for “communitarian” solutions that go beyond classical liberalism. Emanuel argues passionately, sometimes brilliantly, that liberalism is unable to solve, among other issues, one of the most central and urgent problems of medical ethics—the rationing of health care. Specifically, liberals (to scan properly, Emanuel’s use of the term must sometimes be read with the vehemence, although not the politics, we expect from Pat Buchanan or Dan Quayle) cannot solve crucial questions about the allocation of medical resources because they are committed to being “neutral” about what counts as a good life, at least for purposes of justice. Only communities committed to certain values can face these issues squarely and with integrity. Indeed, since we live in pluralist societies, we must tolerate many different communitarian responses to these problems, each driven by a commitment to a particular conception of the good life. Sensitive to the criticism that communitarians often do not really say what they mean by a community, Emanuel provides details, at least for the case of health care, sketching a system through which different “community health programs” attempt varied approaches to rationing problems.

Emanuel argues that it is what he considers liberalism’s dogma of “neutrality” that makes it impossible to specify limits on care in the face of scarcity. We can shape packages of medical services in rather different ways, each delivering different kinds of benefits, including opportunities, to different categories of people. One package might favor acute care over long-term care; another might do the opposite; another might emphasize services that promoted independent living; yet another

might select services by cost-effectiveness criteria, giving no particular priority to those who were sickest. According to this communitarian viewpoint, we cannot decide among these benefit packages without appealing to a robust conception of the good, contrary to the constraint of liberalism. Moreover, a criterion (such as mine in *Just Health Care*) for defining the benefit package according to its ability to protect individuals' fair shares of the "normal opportunity range" does not tell us which opportunities to protect when scarcity prevents us from equally protecting everyone's.

Emanuel is right that the equal opportunity account does not tell us just how to limit services under resource constraints. The problem, however, not only has a different source from the specific criticisms Emanuel offers of my account, but it is a very general problem that infects a broad range of accounts, whether or not they are liberal; the problem also arises with regard to other goods than health care. We need, I suggest, a theory of rationing that answers questions such as these: When is it fair to ask people to give up equal chances at a scarce good to promote better outcomes using it? How much priority should we give to those who are worst off when we can produce greater benefits by giving a service to those already better off? When should modest benefits to the many outweigh significant benefits for the few? What fair procedures should we use when we have no other way to give answers to these questions? Appeals to equality of opportunity do not by themselves answer these kinds of questions. Nor do appeals to other deontological principles, which is why the problem is so general. For example, the same questions face us when we try to ration legal services, abiding by the principle that all must be equal before the law. The incompleteness ascribed to the equal opportunity account, and to liberalism more generally, derives from a general incompleteness of distributive theories that do not incorporate a theory of rationing. Even if we adopted a particular conception of the good that favored a particular rationing scheme, we would still face the problem of incomplete determination I sketch here. Communitarians in general can no more solve the problem of rationing by direct appeal to their values than adherents to liberal principles.

Is this communitarian cure worse than the liberal disease it treats?

Emanuel proposes that we establish a universal access voucher system entitling every individual to join a “community health program” (CHP). Members of each CHP would “deliberate democratically,” relying on consensus, not mere majoritarianism, to make decisions about allocating health-care services. Since different communities have fundamentally different values, “Let a thousand flowers bloom.”

It is not clear, however, how Emanuel derives a universal entitlement to participation in this multi-flowered health-care system without relying more explicitly on the very liberalism he finds theoretically and practically unacceptable. He does imagine that liberal communitarians will all recognize certain basic rights necessary for democratic deliberation. This feature distinguishes his position from other communitarians. Nevertheless, the rights he lists do not include welfare rights, and it is unclear how to derive welfare rights from the undeveloped liberalism Emanuel attaches to his communitarianism. It is also unclear why Emanuel believes that geographically limited CHPs organized around preexisting neighborhood health centers, unions, community hospitals, or HMOs, are likely to contain people who share the same conception of the good in a highly pluralist society. In large metropolitan areas, some CHPs might form around shared values, but that is an unlikely event in most contexts.

More troubling are the exclusionary powers of CHPs. To protect the “integrity” of their conception of a good life, Emanuel admits, a lesbian CHP might exclude men, even if they agreed to live by the policies of the CHP, or a Hispanic CHP might exclude those from other cultures who might want to perpetuate their own traditions. Could an Aryan CHP exclude blacks and Jews because they undermine the “integrity” of a group interested in community living built around “shared racial values”? Emanuel is unclear, but this liberal gardener would prefer to pull some flowering weeds.

There may be a point of convergence, however, between a liberal account and Emanuel’s liberal communitarianism. We may have to rely on procedurally fair ways of resolving disputes about limiting services, either because that is what rationing theory requires, or because we cannot construct such a theory. What is not obvious is that liberals must insist that such procedures yield decisions that apply uniformly to the whole population. Local variation might be accepted, especially since

the reliance on fair, democratic procedures means there is a class of fair outcomes. Liberalism with local variation might avoid the difficulties facing Emanuel's account.

Photo by Dorothea Lange, July 2, 1942. From the Manzanar Relocation Center, California. Courtesy of the National Archives' exhibit on communities.

A Communitarian Health-Care Package

EZEKIEL J. EMANUEL

The designation of what health services should be guaranteed in any universal health-care system is a question not just of economics and costs, but also of justice. One reason the U.S. has been so resistant to implementing a program that guarantees universal and equal access to health-care has been the inability to specify—and justify—a basic benefits package that should be guaranteed all Americans. Without such a package, politicians and others fear granting universal health coverage because they worry that demand for medical services will be virtually unlimited and costs uncontrollable. As such, the rationing of medical services is the problem on which ethics and political philosophy potentially have the most to contribute. They lend us a standard of justice by which a basic benefits package can be measured.

The current favorite of the Clinton administration is a managed competition plan. Yet in deciding what services the plan should cover, the advocates of managed competition avoid the issue of justice altogether and simply rely on a modified version of those listed in the HMO Act of 1973 as the basic benefits package. These services include:

- ... physician services;
- ... inpatient and outpatient hospital services;
- ... medically necessary emergency health services;
- ... short-term (not to exceed 20 visits) outpatient evaluative and crisis-intervention mental health services;
- ... medical treatment and referral services for the abuse of, or addiction to, alcohol and drugs;
- ... diagnostic laboratory and diagnostic and therapeutic radiological services;

- ... home-health services; and
- ... preventive health services (including voluntary family-planning services, infertility services, preventive dental care for children, and children's eye examinations).

As Stanford Business School's Alain Enthoven, the champion of managed competition, acknowledges, there is nothing sacred about this list; what it includes and excludes is, in his words, entirely "arbitrary." Consequently, he suggests that it might be reduced for cost-control reasons: "Qualified health plans would have to include the basic benefits package specified in the HMO Act, possibly with tighter definitions and restrictions to reduce costs."

Enthoven's approach has a key political problem. If the composition of the package is arbitrary, individuals will resort to power politics and lobbying to get the medical service they favor included in the benefits package. In addition, there is a deeper, ethical problem. If it is simply arbitrary whether a certain service, say long-term nursing home care or extended mental health care or certain kinds of reconstructive surgical procedures, is guaranteed, then there is no justification for any particular care to be included or excluded. But if basic medical care is to be granted each citizen not merely as an economic good, but as an act of justice, then this arbitrariness and lack of public justification violate fundamental principles of the formulation of policy.

A RAWLSIAN ANSWER

Norman Daniels has offered probably the most clear and elegant articulation of how Rawlsian liberal principles of justice should guide the determination of a basic benefits package. In brief there are two critical claims to his argument. First, normal human physical and mental functioning is critical in order for individuals to pursue the normal range of opportunities available in their society. Second, diseases prevent individuals from pursuing and realizing their fair share of these opportunities. Thus health care is one mechanism which ensures individuals their normal range of opportunities.

The problem with this conception of justice in health care as the equality of opportunity is that it justifies too many medical services: Save for a few medical services that enhance human functioning, almost all

the effective services of modern medicine are aimed at preventing, ameliorating, or curing diseases that limit individuals' normal range of opportunities. Simply put, liberal principles of justice, because they do not invoke the concept of good, do not seem to provide a principled way of limiting the medical services that ought to be guaranteed. For instance, determining whether the health-care system should cover long-term nursing home care or liver transplantation for alcoholics or extensive pre-natal testing for genetic diseases cannot be decided simply on the basis of equality of opportunity or other liberal principles but requires judgments of the importance of long-term nursing home care and genetic screening as compared to other opportunities. Daniels acknowledges this deficiency in his and related liberal theories of justice as applied to health care: "Resource limitations imply that we cannot provide all efficacious services, even assuming we know enough to provide only them...The fair equality of opportunity principle falls short of telling us just how to make [these] rationing choices."

As a consequence of this weakness, most liberal theorists have suggested that the specification of a basic benefits package will be dealt with at the legislative stage given more information (Harvard's John Rawls) or by some democratic procedure left entirely unspecified (Princeton's Amy Gutmann). Daniels, on the other hand, contends that this problem of incompleteness is general and inherent in all distributive theories. What he sees as necessary is the development of a general theory of rationing.

A COMMUNITARIAN APPROACH

Yet a communitarian approach to health-care benefits recognizes that there can be no single basic benefits package, no single theory of rationing, applicable to the entire nation. Determining what services should be guaranteed and which ones left to individual choice and payment depends upon judgments about what opportunities are good and worthy, and such judgments will not be uniform in a pluralistic society. Individual communities within the nation, however, may share a conception of the good that can shape the basic benefits package for that community. Of course such a determination will take deliberation over time and will be subject to frequent revision, depending upon changes in technology, the efficacy of particular services, and the

community's further interpretation of its conception of the good.

Such a view could be implemented relatively easily in a health-care system comprised of a multitude of managed care plans—or, as I call them, community health plans—which provide comprehensive health care to the individual subscribers. The government would provide a risk-adjusted per capita payment for each citizen, who would contribute this payment to his or her community health plan in exchange for services. In this way, the community health plan would work under a budget determined by the product of the number of its members and the per capita payment. However, rather than operating as corporate entities which allow their management to decide arbitrarily how to restrict the HMO Act's list of services, the community health plans would be patient-physician cooperatives where members determine the basic benefits package through democratic procedures. Thus the basic benefits package would vary from community health plan to community health plan.

FIRST CHALLENGE: SPECIFICS OF THE GOOD

Daniels has had a mixed response to such a vision. He acknowledges that such local variation in the basic benefits package decided through participatory democratic deliberations may be a point of convergence between liberal and communitarian visions. Nevertheless, he has articulated three fundamental challenges to the communitarian view. First, he asserts that a communitarian vision, which permits invoking conceptions of the good in determining which services should be guaranteed, is no better than liberal theories of justice in defining a basic benefits package: "Even if we adopted a particular conception of the good that favored a particular rationing scheme, we would still face the problem of incomplete determination I sketch here. Communitarianism in general can no more solve the problem of rationing by direct appeal to their values than adherents to liberal principles."

In Daniels' view, the problem is that no distributive theory has a theory of rationing that decides problems such as when should modest benefits to the many outweigh significant benefits for the few. But there may be no general answer to this question without further specification of what the competing benefits are and how central they are to a conception of the good. A communitarian vision would leave the

definition of the good, reflected in the specifics of the package, up to the individual community. For instance, there may be a choice over whether the basic benefits package should include family-planning services, including contraception and other interventions, for the many, or infertility services, including *in vitro* fertilization or other interventions, for the few. Clearly such a choice depends upon how important the opportunity to bear a child is. In certain communities—Catholic, Orthodox Jewish, and other—we can imagine that the opportunity for fertility services would be valued very highly even if available only to a few. Other more secular communities, on the other hand, would probably prefer that family-planning services be widely available. In still other communities both family-planning and infertility services might be provided but some other benefits might be restricted, such as long-term institutional care or neonatal intensive care. The choices among services are not necessarily dichotomous, either/or choices but choices among competing visions. These examples are simplifications for the sake of illustration and are not necessarily the actual choices that might be made. Clearly this is not a general solution to the abstract problem posed by Daniels; instead it demonstrates how particular conceptions of the good can select certain services as basic, based on the value the community places on the opportunities granted by those services.

Being able to invoke conceptions of the good does provide communitarianism more ethical “resources” with which to address and resolve distributive issues than do liberal theories of justice. However, only until communitarians elaborate at least one conception of the good that enables them to delineate in detail what medical services should be guaranteed and how adjustments would be made, can we finally allay skeptical assertions that communitarians cannot solve the incompleteness of distributive principles better than liberals.

SECOND: BOUNDARIES

Daniels’ second challenge to a communitarian view of health care is to ask why in a highly pluralistic society would geographically limited community health plans contain people who share the same conception of the good. Yet community health plans need not follow existing political boundaries, nor, like school districts, serve contiguous

geographical areas. In fact, like magnet schools, they may cover individuals from disparate parts of a region who are willing to travel for health services. This means that individuals would not necessarily be locked into a community to which they felt they did not belong. Furthermore, there are groups of people who live in physical proximity and do identify themselves as a viable community—such as Mormons, lesbians, Haitians, etc.—who certainly would be able to create a community health plan. In such communities, preexisting organizations can serve as the nidus for these plans. This would also provide the impetus for individuals who share certain affiliations, such as union membership or a common community hospital, to explore whether they indeed did form a community of members who share a deeper vision of life.

Given the governmental and economic policies against community participation over the last century, it is unreasonable to expect that community participation will occur immediately. Indeed, I readily acknowledge that some individuals may be willing to accept the most convenient plan with the fewest obligations for participation available. Nevertheless, it is possible that when hard or controversial policy choices—about abortion or terminating life-sustaining care or organ transplantation—come before the community health plan, these more passive individuals will realize the importance of participation in their community. As Michael Walzer of Princeton's Institute of Advanced Study has reminded us, all we can do is provide individuals with the opportunity—that is, an on-going forum and positive incentives—to participate in community identification and deliberation. It is in the nature of such activities that they cannot be forced upon people. Finally, it must be acknowledged that in rural areas, where the population density is low, it will be more difficult, if not impossible, to constitute communities of shared conceptions of the good. I know of no general solution to this problem.

THIRD: MEMBERSHIP WITHOUT DISCRIMINATION

Daniels' third challenge is whether communities should be able to exclude individuals who agree to abide by their policies but do not share their conception of the good. To answer this charge, I would like to first discuss the rights and responsibilities of group membership. When an individual is included in a community, he or she must be treated as a

special member with what New York University Law Professor Ronald Dworkin has called equal concern and respect. Similarly, the individual must affirm an obligation to the particular others of his community. Thus once in a community, an individual cannot be discriminated against or treated unequally, or else the community will be in violation of the essential principles that constitute any community.

Membership in a community is inherently both inclusive and exclusive. If we are going to affirm communities—ones with a shared sense of identity, not just accidental associations—we must recognize that not everyone can be a member. Being a member of a vital community means affirming the common conception of the good, working to further interpret and refine that conception, and making actual community life fulfill that conception. Being part of a community entails partaking in this constant interpretive process and therefore can involve a critical stance. This critical stance differs from a hostile view of the community's conception of the good: Hostility entails no obligation or interest in revising or interpreting the conception of the good. A community should want the critic, but may clearly not want the hostile adversary. On this basis I suggest that communities should have this power of exclusion if their vitality is to continue.

If we encourage communities to form and give them powers of membership, there are likely to be some that affirm offensive conceptions of the good and exclude individuals on the basis of reprehensible criteria such as race or religion. As I see it, communities whose notions of the good are rooted in the denigration of others—white supremacist communities, for example—should be prohibited. In other words, it seems justifiable to prohibit communities that have conceptions of the good which treat a race or a religion or certain sexual orientations as inherently inferior. Nevertheless, I would argue that we would want to permit the existence of certain communities, including ones defined by ethnicity or sexual preferences, even though their conception of the good might exclude from membership individuals who do not share their ethnicity or sexual orientation. What differentiates these from the white supremacist communities is that they do not claim those excluded are inherently inferior. The conception of the good in the lesbian or Hispanic community does not rely on denying the value of others. In any case of exclusion, deciding whether denigration or prejudice was at work rather than a

positive conception of the community's good will require a process of interpretation and judgment by State Health Oversight Boards, supervised by a national board. But this interpretive process is no different from the current process of deciding whether hiring practices are discriminatory. There is nothing in the communitarian sanctioning of exclusion that differs substantially from the liberal examination of employment and discrimination. Indeed, noxious weeds which gain their strength by denigrating others are no more to be condoned by communitarians than by liberals.

Top Problems in Public Schools, According to Teachers

1940

1992

Talking Out of Turn

Drug Abuse

Making Noise

Alcohol Abuse

Cutting in Line

Pregnancy

Littering

Suicide

Chewing Gum

Rape

Running in Halls

Robbery

Dress Code Infraction

Assault

Congressional Quarterly Researcher, 9/11/92

Police in the Community, Community in the Police

BRIAN FORST

Taking police out of their patrol cars and putting them back on the street has become the subject of increasing interest among public officials across the country. Throughout the 1980s, community policing was materializing in a variety of forms: foot patrols in Flint, Michigan, Newark, and Baltimore; neighborhood “mini-precinct” stations in Houston; and specially assigned community police officers, with decentralized authority and neighborhood meetings in most of these and in other cities, including Miami, New Haven, Portland, Pasadena, and St. Petersburg. By 1993, more than 400 cities had adopted some form of community policing.

In 1990, David Dinkins, Mayor of New York City, announced that the city would adopt community policing as its “dominant operational philosophy.” Perhaps the most telling endorsement of community policing came from the Warren Christopher Commission in the wake of the beating of Rodney King and the ensuing riots in Los Angeles. While the performance of police forces in urban areas came under national scrutiny, the Commission’s evaluation of the Los Angeles Police Department (LAPD) prescribed community policing as the way to realign its discredited force with the community it serves.

WHAT IS COMMUNITY POLICING?

Community policing represents a significant departure from the “professional” model that has characterized policing since the 1950s. The professional model emphasizes police responsibility for crime control, and views citizens primarily as victims, witnesses, or offenders—not as partners. Professional policing stresses adherence to rules,

features a centralized bureaucracy, and places emphasis on rapid responses to calls and the effective handling of individual incidents. Police officers cruise neighborhoods in patrol cars and are alerted to crimes and problem situations by means of centrally dispatched radio messages. For this reason, the approach has earned the unofficial title of “911 policing.”

This model lost its support as large segments of the public expressed resentment because of what they considered police insensitivity, a concern aggravated by the distance that developed between the police force and the public. As most American cities experienced an increase in visible street crime in the 1980s, police departments drew fire for offering what many saw as quick-fix or token solutions: for instance, shows of force in highly publicized drug sweeps, or lectures to school children on the hazards of drug abuse. Many maintain that crime cannot be effectively dealt with if such programs are grounded in elitist notions that place the police above large segments of the community. Assessing community-police relations following the Los Angeles riots, the Governor’s Webster Commission report summed up the rage the nation felt over the beating of Rodney King: “There is much deep-seated hostility, mistrust and suspicion in this relationship, and it cries out for a change in the old ways of doing business.”

Community policing, in contrast, aims to strengthen officer-community relations to prevent crime. This model shifts authority from the supervisory hierarchy to officers on the beat. By building bridges to the community—through door-to-door contacts, foot patrols, and the establishment of accessible neighborhood precincts—officers encourage residents and commercial tenants to cooperate with them on matters of community concern, and establish the foundations for a working relationship. For example, in Takoma Park, Maryland, an officer’s typical day might include meeting with neighborhood groups, planning crime prevention strategies with residents, and circulating blotters with updates on crime patterns and solutions. Partnership is the core of this new approach: The safety of the community is the responsibility of both the police and the citizens. Criminologists Jerome Skolnick and David Bayley see the distinction between the two models as a matter of carrots and sticks: “the emphasis on community policing is toward soliciting, enlisting, inviting, and encouraging, while in traditional policing it is

toward warning, threatening, forcing, and hurting.”

In addition, community policing requires a change in focus—a shift from a preoccupation with arrests and crime rates to a concern for the living conditions of the community. Under the professional model, the basic mission of policing is crime control through law enforcement, and success is defined in terms of crime and arrest statistics. Non-crime related tasks such as reducing street disorder were considered “social work,” and such neglected problems contributed to the decline of some inner-city neighborhoods. Community relations is often seen as a side-issue—a matter of public image and damage control. In contrast, the community-policing approach recognizes that a department’s effectiveness depends on the officers’ commitment to the community and respect for all of its members—perhaps even the offenders. A growing cadre of advocates of community policing, including Lee Brown, U.S. drug czar and former chief of three major police departments (New York, Houston, and Atlanta), and David Couper, Chief of the Madison, Wisconsin, Police Department, interpret the mission of policing even more broadly: improving the vitality of the community.

DECENTRALIZATION VS. ACCOUNTABILITY

Shifting responsibility and authority from a centralized bureaucracy to a cop on the beat gives officers the opportunity to invent creative solutions to varying community problems. Community police officers in New York, for example, have dealt with a wide range of concerns: in Brooklyn, Officer Randy Mazzone worked with residents to seal abandoned buildings in order to reduce drug trafficking and related crimes; and in Manhattan, Officer Carl DeFazio organized tenants of an apartment building to help bring about the arrest and incarceration of a landlord who had intimidated them with pit bulls and weapons. Other officers have established evening basketball games to keep kids off the street, fixed street lights, and towed abandoned cars to create an environment that is not conducive to crime.

Yet to many, the idea of decentralization competes with the idea of police accountability. Critics of this approach point to the demise of the cop-on-the-beat style of policing that had been the standard mode of municipal policing until the 1950s. The unaccountability and corrup-

tion associated with these foot patrols contributed in large part to their discontinuance. Proponents of community policing, on the other hand, argue that the increased visibility and higher degree of accountability involved in this updated form of decentralization would make corruption a problem of the past.

One should not underestimate the difficulty of implementing the changes that community policing entails. It is not simply a matter of getting officers out of their patrol cars or adding sections on community policing to the academy's training manuals, but in trying to change the way officers, citizens, and social workers see their roles in maintaining safety. Community policing holds that citizens are no less responsible for their safety than police officers; each neighborhood should be more self-reliant in ensuring its own safety. "If citizens don't do more for themselves and social agencies don't pick up the slack, it will be difficult to do community policing with the current resources," explains Robert Trojanowicz, director of the National Center for Community Policing. Whether and how it is possible to bring about such attitudinal changes remain to be seen.

DOES IT REDUCE CRIME?

Another common concern of critics is whether community policing substantially reduces crime. Does an officer's concern about abandoned cars, poor lighting, and the welfare of the residents in his or her beat come at the expense of crime control? A recent survey of residents of Madison, Wisconsin, conducted by Mary Ann Wycoff of the Police Foundation suggests that it does not. Following an experimental period of community policing, these residents perceive robberies and burglaries to be less of a problem than they were under conventional policing. Yet is this enhanced feeling of security backed by a decrease in crime statistics?

Police Foundation researchers found that these beliefs have modest empirical support. In areas patrolled by community police officers in Newark in 1985, researchers found a decline in Part I crime rates (the aggregate of homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson) and in personal crime rates, but not in control areas. And a recent LAPD study on the Foothill Division of Los Angeles found that burglaries and rapes had dropped in the 18

months the community policing program there had been in effect.

Although conclusive evidence of a significant decrease in crime due to community policing is yet to come, the benefits such a program brings the community extend beyond crime statistics. Almost every study on community policing has shown that residents feel a heightened sense of security. Their living conditions improve, whether due to decreased drug traffic and sealed abandoned buildings, or to the ousting of a bully landlord. Most of all, the rapport between the community and its officer is strengthened. This is not a benefit easily measured by statistics.

A BRIDGE TO THE COMMUNITY

Officer Joe Balles of the Madison, Wisconsin, Police Department is a case in point. One of the many 1980s converts to the principles of community policing, Officer Balles volunteered for one of the department's ten community policing assignments in 1989. While Madison is largely an upper-middle class university town, many of its residents live in low-income apartments that are common to Chicago, Milwaukee, and other urban centers in the Midwest. Officer Balles' beat is such a neighborhood—a six-block apartment complex that houses some 2,500 people, about 55 percent low-income African-Americans. The crime rate in this complex is substantially higher than for Madison as a whole. Eight people were shot there in 1991, and one was killed; burglaries and robberies occur far more frequently there than in most other neighborhoods of the city.

Officer Balles operates out of a converted apartment space in the complex. He spends much of his time walking his beat, and much of the rest of the time chatting with residents in his office. Once a month he convenes a meeting with rental property managers, owners, and the building inspector to exchange information about crime and crime-related conditions in the neighborhood. When a problem such as an abandoned car or inadequate lighting surfaces, Balles tries to find a solution from the managers and owners, or from the city. If the city bureaucracy is unresponsive to a public-works problem, a story about the problem is likely to turn up in the newspaper or on television. Officer Balles, in short, takes on problems that conventional patrol officers do not.

In turn, the bonds developed with the community benefit Balles' work in ways that would not necessarily happen if he were a conventional patrol officer. In June and July of 1991, Racine and Milwaukee were experiencing a wave of armed robberies by a 29-year-old man recently released from prison. When the man showed up at a relative's apartment in Balles' beat, he received a discreet call from the relative, with whom Balles had previously developed a close relationship. The offender was arrested, and the one-man crime wave was ended.

It is incidents like this that have made community policing a growing trend in police departments nationwide. As then-New York City Police Commissioner Lee Brown stated in a 1991 *Harvard Business Review* interview: "The better your relationship with the people, the more information you'll get." And as one resident in Southeast Washington, D.C., reports of her neighborhood's community policing efforts, the approach benefits both sides of the partnership. "United by the purpose of improving the quality of life in our neighborhood, we became a community." Indeed, although studies do not yet conclusively prove that community policing reduces crime, it helps bring officers and community members closer together and reduces resentment, a worthy end in itself.

Separation vs. Accommodation of Religious Practices

Neal Conan (Host): The Supreme Court will hear arguments today in two important cases involving freedom of religion and the separation of church and state. For some time now the increasingly conservative

A. 135,000 kids take guns to school daily.

court has signaled its discomfort with the standard set by a more liberal court 22 years ago in the case *Lemon v. Kurtzman*. That decision barred any state action to entangle the state with religion or advance religion in any way. It's resulted in Supreme Court decisions invalidating numerous schemes to aid parochial schools. The cases argued today appear to offer the court an opening to reverse or modify that decision. NPR Legal Affairs Correspondent Nina Totenberg reports.

Nina Totenberg: The first and probably the more important of the two cases involves a deaf youngster in Arizona named Jim Zobrest. Jim attended public schools through the eighth grade, but when he reached high school he and his parents wanted a more religious atmosphere. He transferred to the local Catholic school and his parents asked the public school district to pay the \$8,500-a-year cost of having a sign-language interpreter for Jim at the Catholic school. The Zobrests pointed out that under the Federal Education of the Handicapped Act, deaf children have a right to free, appropriate education, either in their public school, or if they go to private school, they're entitled to reimbursement for the cost of any special services they need. But the local school district and the state attorney general concluded that to pay for a sign-language interpreter—at Jim's side all day long—in a pervasively religious school, would unconstitutionally entangle the taxpayer's money with the church and would create a symbolic union between church and state. The lower courts agreed, and the Zobrests appealed to the U.S. Supreme Court, which will hear the case today.

Mrs. Zobrest argues that denying her son a publicly-funded sign-language interpreter in a religious school is nothing more than discrimination against her son and his choice of a parochial school education. And, she maintains, that had he gone to a private, non-religious school,

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he would have been entitled to a publicly-funded sign-language interpreter under the federal law.

Mrs. Zobrest (Mother of Deaf Child): We see it as a handicapped child who is entitled to services, and no money will be going to the Catholic school, the Catholic church—no money will be going anywhere near anything or anybody that's going to promote the Catholic religion. This is a service for Jim that will make it possible for him to be educated. This—all the interpreter does—we like it to a hearing aid—all the interpreter does is take the spoken word and transform it into a form that Jim can understand. Again, like a hearing aid. And the state of Arizona would provide Jim—if he needed it—would provide him with a hearing aid, but they wouldn't limit him as to where he could wear the hearing aid.

Totenberg: But Steven Green of Americans United for Separation of Church and State counters that a sign-language interpreter is different from a hearing aid. First, the interpreter is a human being. Second, the interpreter does not translate verbatim, but interprets concepts.

Steven Green (Americans United for Separation of Church and State): What we [are] involved with here is a sign-language interpreter who is going to be with the student throughout the school day, interacting with the student during class, outside of class, participating in conversations, discussions and, most importantly, from our perspective, also translating and participating in the instruction of religious education and in worship services.

Totenberg: 'What does that matter,' responds University of Chicago Law Professor Michael McConnell, who's filed a brief in the case on behalf of several major religious groups.

Michael McConnell (University of Chicago Law Professor): If Jimmy Zobrest had decided to go to a school that specializes in Afro-centrism or has some other ideological or philosophical bent, he would have been entitled to the interpreter there and the interpreter would have provided precisely the same sort of services. The question is, why would anyone think that the First Amendment requires discrimination against religion?

Totenberg: Steve Green responds.

Green: Well, I believe the constitutional distinction is that, that the First Amendment does in some instances require distinction between religious speech and other forms of speech when the government is involved in that.

Totenberg: The *Zobrest* case is sufficiently significant that it has attracted friend-of-the-court briefs from dozens of groups. Asking the court to uphold a strict separation between church and state are such groups as the B'nai B'rith Anti-Defamation League, the American Jewish Committee, the National School Boards Association, and various civil liberties groups. On the other side are a large number of religious groups, ranging from the Mormons to the National Association of Evangelicals. Many are asking the court to modify or overrule its landmark *Lemon v. Kurtzman* decision in which the court strictly forbade any state action that advances religion or entangles the state with religion. They say that under the *Lemon* rules, the court has automatically invalidated student-aid measures that only incidentally involve religious schools. And they want a rule of neutrality toward religious and non-religious schools alike. The argument between the two sides is best illustrated in this colloquy between Professor McConnell, supporting the *Zobrests*, and Steven Green of Americans United for Separation of Church and State. First, Professor McConnell.

McConnell: It is not required to put a thumb on the scales against religious choices, which is clearly what's being done in this case.

Green: This is not putting a thumb on the scale of religious choices. This is to keep the government from participating intimately and directly in the process of inculcating religious doctrine and belief by virtue of participating in the religious educational process.

Totenberg: When all is said and done in the *Zobrest* case, the Supreme Court could simply decide the case narrowly, declaring that Jim *Zobrest* was entitled to a publicly-funded interpreter, but that that does not unduly entangle the state and church business. Or, the court could make a major shift in First Amendment law, modifying or changing entirely its 1971 ruling. Or, it could rule against Jim *Zobrest*. However it decides, the ruling will be watched closely to see if, for example, the court would be willing to approve the use of vouchers at parochial schools. In short, the ripples from the *Zobrest* case could be far-reaching.

A second case being argued today has rearranged many of the organizations in the *Zobrest* case, placing some of them on different sides. The second case involves a New York school district that opened its classrooms after-hours to general civic, social, and recreational activities. But the school district did not allow religious activity on its grounds. When the Lamb's Chapel and Evangelical Sect requested permission to show a series of movies at the local high school, the school board refused permission, and Lamb's Chapel sued. The church claimed that once the school board had opened its door to other public groups after hours, it had created a public forum and was discriminating against religious groups, depriving them of their First Amendment right to free expression and freedom of religion. Professor McConnell sees the Lamb's Chapel case and the *Zobrest* case as related.

McConnell: At bottom, the issue in both cases is whether we're going to have an interpretation of the First Amendment which requires discrimination against religion, religious institutions and religious messages. My hope is that the cases will be consistent and that they'll both hold the discrimination against religion is not part of our constitutional heritage.

Totenberg: But Steve Green of Americans United for Separation of Church and State, sees the cases as completely different. Americans United, which opposes the *Zobrest* request for a publicly-funded sign-language interpreter, supports the Lamb's Chapel in its request to use school property after hours.

Green: This auditorium is not any different from any other civic auditorium at this particular point in the day. And so, by virtue of the government discriminating against the religious group, against the church, they, in fact, are violating the establishment clause and possibly the free-exercise clause. That is different from the *Zobrest* case, where you have the government intimately involved in the religious educational process.

Totenberg: The Supreme Court is expected to decide the *Zobrest* and Lamb's Chapel cases by summer.

Editor's Note: On June 7, 1993, the Supreme Court ruled in favor of the Lamb's Chapel and Evangelical Sect. In a 9-0 decision, the Court held that the First Amendment forbids the government to discriminate against the expression of viewpoints based on content. On June 18, 1993, the Supreme Court ruled that the Constitution permits using government money to pay for Jim Zobrest's sign-language interpreter. The lower courts must still decide, however, whether the school district was legally obliged—as opposed to constitutionally permitted—to pay for the service in a parochial setting.

We Never Passed Around the Hat...

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Communitarian Project, the Center for Policy Research, 2020 Pennsylvania Ave., NW, Suite 282, Washington, DC 20006.) Many thanks.

Mayberry Revisited?

Thomas E. McCollough: *The Moral Imagination and Public Life: Raising the Ethical Question*

Chatham, NJ: Chatham House, 1991, 176 pp.

Reviewed by Yehudah Mirsky

The problem with Western civilization, Leo Strauss once said, lies in its roots: the Greeks talked about morality and didn't do it, while the Hebrews did it but never talked about it. In other words, our moral tradition derives from the Bible, while the philosophical language with which we discuss politics and morality comes from the rationally-minded Greeks. In *The Moral Imagination and Public Life*, Thomas McCollough tries to bring the two back together, relating the language of politics and morality to the ways in which we actually live. At a time when the American covenant increasingly is losing its hold on the faith and hope of its adherents, this book, despite its flaws, makes a valuable and hopeful contribution.

McCollough's chief complaint is with the policy-making model of public life of liberal individualism, based on the amoral and alienating mind-set of economics. In that model, "the public interest...is defined simply in terms of public preferences expressed in opinion polls and...values are treated as interests." In its place he proposes the "moral imagination...the capacity to empathize with others and to discern creative possibilities for ethical action." And this process of discernment is to proceed through "the ethical question" by which he means that which "impels members of the civil community to reason together about the good, right, and fitting on the basis of what we know and value in order to engage in responsible action."

The key term is "value." Values, he writes, are communal, arising out of the realities of our lives as parents, children, friends, co-workers,

worshippers, hobbyists, or in other words, full-fledged human beings. Yet the language of American politics, rooted in the liberalism of John Locke and other Enlightenment thinkers, focuses narrowly on the lone individual of the marketplace, the consumer, pretending that values are things we pick off a shelf and use, like a CD player or canned peas. Drawing on Isaiah Berlin's well-known distinction between "negative" and "positive" liberty, (the difference between freedom *from* the state, and the freedom *to become* the fulfilled person of your imagination), McCollough argues that by celebrating the former and neglecting the latter, modern American society has reduced its members to an atomized mass, ripe for the depredations of advertising and even more sinister forms of manipulation and control.

Yet, he admits, simply trying to recreate an imagined Mayberry-like vision of small-town community is misguided. (In fact, as I remember it, there were few, if any, African-Americans in Mayberry, and Andy Griffith bore little resemblance to his real-life colleagues like Bull Connor and Sheriff Clark.) We need to find a middle way between what the abstruse-though-profound German thinker Jurgen Habermas has called the "system world" of money and power and the "lifeworld" of care and intimacy. The key metaphors of our public life must not be the marketplace, but the public square, not consumption but citizenship. We need to recapture public deliberation from the lawyers, interest groups, lobbyists, and TV networks that have dulled our senses and drained the "We" from "the people," and involve ourselves in decision-making for the "public good," for "what is necessary in order for persons to flourish, to have what they need to develop and expand their mental powers, skills, sensitivities and moral imagination...this is the aim of public ethics."

Although I am in fundamental agreement with much of what McCollough says, I found myself often feeling uneasy as I read along. In condemning liberalism in the abstract for its very genuine flaws, McCollough risks forgetting the long, hard historical struggle of the rising middle classes (and their intellectual champions) for dignity and autonomy over and against the feudal authoritarianism of the Old World. And though the rapacity on display in the 1980s was striking, we ought not lose sight of the ways in which liberal economics has created wealth and enriched people's lives.

In addition, McCollough's embrace of the ideal of "positive liberty"

gives me pause. Mere “negative liberty,” he says, does not adequately safeguard social welfare and is often used to justify the wretched excess of robber barons past and present. I have no quarrel with his statement that “positive liberty entails access to employment and adequate means of life.” But he adds that it also means “protection against interference with the requirements of self-development.” Yet is personal development and fulfillment the business of the state? Linking the warm and fuzzy notion of community to the inherently coercive idea of the state seems a risky proposition, especially after the long experience of totalitarianism. McCollough does say that the totalitarian danger lies in the atomized mass society “arising out of the vacuum of community” and leaving nothing between individuals and the state. The point, then, is not for the state to be a kinder, gentler learning environment but for it to be self-limiting so as to allow personal development *through civil society*.

McCollough’s concrete discussion of policy, and specifically of aging and health policies that recognize people’s needs for community and balance, is very satisfying. But I was astonished when, of all things, he invoked busing as an ideal of public deliberation. True, the particular busing experience he draws on, in Charlotte, was, in his telling, exceptionally harmonious for all involved. But it will hardly do to invoke perhaps the most divisive and counterproductive experiment in social engineering in America’s recent past. This celebration of busing is of a piece with McCollough’s denigration of interest groups. (Nearly all of the groups McCollough enumerates as truly and disinterestedly acting in the public interest are identifiably on the left. Now, whatever side you are on, unless left and right each acknowledge the existence of virtue on the other side, we as a society will get nowhere.) Yes, interest groups can and do often get out of hand. But interest groups reflect very genuinely held differences about both private and public good. It would be nice to wish those divisions away in an oceanic tide of civic-mindedness. But until the Messiah comes, we are left with politics.

ESPECIALLY NOTED

Harold A. McDougall, *Black Baltimore: A New Theory of Community*.

(Philadelphia: Temple University Press, 1993). 244 pp.

Catholic University Law Professor Harold McDougall explores how Baltimore's African-American "base communities"—small peer groups that share similar objectives—have struggled for civil, political, and social advancement. While McDougall's political history focuses on four of the communities in West Baltimore—Upton, Park Heights, Harlem Park, and Sandtown—he believes these ideas are applicable to urban areas nationwide.

Suzanne Goldsmith, *A City Year: On the Streets and in the Neighborhoods with Twelve Young Community Service Volunteers*. (New York: New Press, 1993). 304 pp.

Suzanne Goldsmith, Director of the Community Service Project of the American Alliance for Rights and Responsibilities, chronicles the nine months she spent working with the nationally-acclaimed City Year program in Boston. Her account reveals the successes and failures of this ambitious community service project that brings people of different races and classes together for a year of public service.

Maritza Pick, *The Sierra Club Guide to Community Organizing: How to Save Your Neighborhood, City, or Town*. (San Francisco: Sierra Club Books, 1993). 214 pp.

Maritza Pick, a political writer and strategist on numerous successful grassroots environmental campaigns, draws on her first-hand experience in this how-to book for community organizers. The book offers advice including organizing the first community meeting, fund raising, and running for office.

Daniel Patrick Moynihan, "Defining Deviancy Down," *The American Scholar* 63, Winter 1993.

Senator Daniel Patrick Moynihan (D-NY), reinterprets sociologist Emile Durkheim's theory of a crime constant in society—that society expands what it means to be deviant to hold the crime level constant. Moynihan warns against the opposite tendency—contracting our standards of deviancy to consider acceptable what was once considered deviant.

Alvin F. Poussaint and James P. Comer, *Raising Black Children*. (New

York: Plume, 1992). 436 pp.

Harvard Medical School's Professor Alvin F. Poussaint and Yale University Psychologist James P. Comer answer over 1,000 of the most common child-rearing questions asked by African-American parents across the socio-economic spectrum. The manual addresses issues such as racism, interracial marriage, the "mainstream debate," and how to stem violence. Though the book was specifically developed for a black audience, many of the prescriptions offered—e.g., parents should avoid spanking as a form of punishment—are sound advice for any family.

"This man isn't here for free drinks, Senator. He wants some answers."

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Should We Put Them to Shame?

Judges in the U.S. sometimes use shaming to maintain civic order—instead of levying fines, or mandating jail sentences—especially for first-time and non-violent offenders. For instance, prosecutors in Lincoln County, Oregon, will plea-bargain with a criminal only if he or she first apologizes for the crime in a local newspaper advertisement. In Singapore, litterbugs—even those who drop only one paper cup and a paper bag—are required to do highly visible community service, such as picking up trash in a public park, thus adding to their chores a measure of public shame.

Does the punishment fit the crime? Should shaming be used at all and if so, under what circumstances? Would you, for instance, insist that all drivers display their names on the side of their cars as a way of encouraging them to be more responsible? Or would you require this only for those guilty of serious traffic violations? Are there other creative ways of encouraging non-violent offenders to act in a more civil manner?

Of Our Own Making

When tens or hundreds of millions are vicarious witness to a tragedy of our own making, when these millions come to believe there is no recourse to solution, there must be a general demoralization. The world grows the more damned for our failure to put an end to the tragedy in what was Yugoslavia.

It is a tragedy of our own making; a tragedy deeply and extensively personal. There is no blaming the weather. The ocean and wind currents and temperatures are not the problem, rather an intentional isolation and slaughter of men, women, and children. We are as the victims, and to turn from them is to abandon ourselves.

Our response to the tragedy in what was Yugoslavia has been shamefully inadequate. The slaughter has gone on, the press has continually recorded the savagery and suffering, while world sports fans of a sort turned to find the reports of a lunatic chess match. Serbians complain of the difficulties of an economic embargo, while following the chess match and turning from responsibility for their soldiers' campaign of "ethnic cleansing."

Possibly it is not sympathy that is lacking, but imagination and confidence enough to attempt a thoroughly peaceful solution, as a Martin Luther King or Mahatma Gandhi might have attempted or as the noble French General Philippe Morillon tried.

Morillon simply positioned himself as a Gandhi or King between a people desperately suffering and those who would destroy them. Although such a radically peaceful act did not end Bosnia's terror, it gave pause to the destroyers and apparently saved hundreds of lives. Can such a tactic be effectively broadened?

Yugoslavia is slavery and the Holocaust. Yugoslavia is a driving of Armenians to the desert; Japanese barbarism in China and Korea; terror and starvation in the Soviet Union and Communist China; apartheid in

South Africa; caste in India.

The tragedy in Yugoslavia is not simply their tragedy, but ours. Ethnic and racial and gender intolerance is a tragedy of every society. Possibly, that which is really closest to us is most difficult to recognize and study and resolve. That it is such a persistent and widespread moral blunting may make us despair of resolution.

A thousand years of hatred can never in itself explain the hatred. Ethnic and racial difference does not explain intolerance, for it is we who set up the various categories of ethnicity and race to suit ourselves. We choose our characteristic stances to ethnic and racial and gender differences, and tend to act on these stances with little regard for justice and compassion.

Muslims and Christians in Yugoslavia are as you and we. But we can insist they are different, and act as though they are irreconcilably different. We can even pretend Muslim or Christian children for some lunatic reason are in need of cleansing for our sake. Wherein springs such self-destructive thinking?

To avoid responding at this time in history is to avoid all sense of responsibility for our neighbors, and to grow inevitably more narcissistic, callous to others, and self-destructive. We save ourselves and grow by continually reaching to others.

*Leo and Cindy Rosenberg
Sumner B. Twiss
Providence, R.I.*

Communities and Competition

Jeremy Rosner ("The Healthy Community: Health-Care Reform, Rights, and Responsibilities," Spring 1993) argues that a theory of health-care organization called managed competition might provide a more communitarian basis for care of patients. I disagree.

Rosner and I do share the same general diagnosis of the ailments of standard political analysis of health care delivery. Although many

assert that there should be a right to health care, it is quite clear that our Constitution does not accommodate a right to Rawlsian primary goods like medical care. The concept of rights in our state is decidedly procedural, circumscribing a negative freedom; it should not conceptually be conflated with notions of positive freedom. The right to health care, as many use it, is much better considered as a social obligation to ensure some level of functioning for all members of the community. This far Rosner and I go together.

We also agree that the present nonsystem of health care in this country fails to evince thoroughgoing commitment to such an obligation.

Rosner's answer is that we should replace the current system with one that encourages consideration of health care as a set of community-held values. Here too we agree. But where we differ is the choice of therapy. Rosner prefers managed competition as the vehicle for turning medical care into a communitarian enterprise; I advocate a single payer.

Managed competition is a concept in many ways at war with itself. Its advocates want to take advantage of market forces to increase efficiency of medical care, but they also want to ensure that the inequalities that occur in any market are abated by management. But can they have their cake and eat it too?

Consider the twin challenges of cost control and access to medical care. Managed care gains efficiencies by giving providers incentives to be more cost-effective. Negative incentives are bonuses for not referring patients to expensive tests; positive ones are bonuses of such referral when the test is especially well reimbursed. Incentives may lead to lower costs, but do not appear to induce a sense of community based on obligation to patients. Moreover, because managed care entities are meant to compete, it is unlikely that one health care maintenance organization (HMO) is going to let its competitors, or its patients know about the incentive devices it employs. Therefore cost reductions may be accomplished through the very uncommunitarian devices of implicit rationing.

Managed competition must also involve not only price competition, but also quality competition. Recent research shows that higher expenditures per case leads to higher quality care. As with any other consumer

good in the market, some may prefer to pay more for a better product. Certainly market advocates have long pushed for different priced (and different quality) products in medical care.

But where does this leave those who rely on public purchasing for their product? Theirs is likely to be the cheapest (and likely lowest quality) care. How far will the society allow the impoverished to drop in terms of the health care they receive? All the concerns about access today rest on the assumption that those without insurance received inferior care (a contention that research supports). But might not many of the problems with access be repeated in a managed competition plan that has a relatively low public floor?

The alternative is a public system. Many of the market incentives that are part of managed competition can be accommodated by a Canadian-style single payer with global budgets. If a hospital knows that its budget will not grow next year unless it can produce efficiencies, it will innovatively set itself to this task.

More importantly, the public system reiterates the communitarian place of medical care. It is redistributive in a way that managed competition is not. It ties poor unhealthy citizens to wealthy, healthy ones. It can also readily accommodate citizen participation. Health-care decisions that affect the community, such as explicit rationing issues, should be part of the discussion by citizens that are akin to public involvement in school boards. If we want public input and involvement in medical care, then why do it through an artifice like the health purchasing cooperative? Managed competition may have much to offer, but its reliance on market devices produce only a procedural justice, not the substantive justice a communitarian wants from medical care.

*Troyen A. Brennan
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Pornography: Free Speech vs. Civil Rights?

SHARON J. PRESSNER

Is pornography a form of sexual discrimination that violates the civil rights of women or is it protected by the First Amendment? The central issue in civil-rights litigation is equality under the law. Those who see pornography as a form of sexual discrimination believe it creates an atmosphere that promotes the inequality of the sexes. They point to studies—such as those by Daniel Linz and N.M. Malamuth—that suggest that pornographic images often provoke rape, domestic violence, and sexual harassment. Civil libertarians argue that the pivotal issue is preserving the right to free speech and cry out against the potential for government control of expression. For both sides, the problem is the same: How can we both prevent violence against women and yet ensure that our First Amendment rights are not jeopardized?

Defining pornography as a civil-rights issue would allow victims of sex crimes who can prove a link between the crime and pornography to sue the producers and distributors of the material for damages. Legislation based on this approach includes the “Pornography Victims Compensation Act,” promoted by Republican Senator Mitch McConnell of Kentucky, which was introduced in 1991 but never reached the Senate floor for a vote. This bill would have allowed victims of sexual violence who could trace the crime to child pornography or obscenity the possibility of suing the producers and distributors of the material.

Along the same lines, the Civil-Rights Antipornography Ordi-

The Responsive Community intends case studies to be material for dialogue. Hence, various sides of an issue are illuminated without reaching a conclusion.

nance, which covers all forms of pornography, is the work of feminist activists Catherine MacKinnon and Andrea Dworkin. Versions of this ordinance were adopted in Minneapolis in 1983 and in Indianapolis in 1984, and then later repealed—the former was vetoed and the latter found unconstitutional. Another version is currently under consideration in Massachusetts. MacKinnon enjoyed a recent success in Canada where, with her legal assistance, the Supreme Court expanded its obscenity code to include material “that would apparently fail the community standards test not because it offends against morals, but because it is perceived by public opinion to be harmful to society, particularly to women.” The anti-pornography feminists are supported in their efforts by conservatives who aim to ban pornography, such as Phyllis Schlafly and members of the religious right—a rather unlikely coalition.

PORNOGRAPHY AS A FORM OF EXPRESSION

Pornography, free-speech feminists and civil libertarians insist, should be protected just like any other form of expression, “no matter how objectionable or offensive it may be to some or even most of us,” as the ACLU says. In response to the bill pending in the Senate, the ACLU states, “Under the First Amendment, expression cannot be punished or suppressed unless it is intended to and will incite imminent harm.” The civil-rights approach, the ACLU concludes, “might seem attractive but, like all other anti-pornography measures, it could easily backfire by empowering the state to control speech, and to use its power to limit more than just the speech we abhor.” Some raise the additional question of how such an ordinance would treat violent pornographic images that, arguably, have social value. For example, the movie *The Accused* uses explicit rape scenes to convey an anti-rape message. Others fear this legislation would allow law-makers to censor any explicit material they consider offensive, perhaps even including textbooks used to teach sex education.

In addition, law professors Nan Hunter and Sylvia Law submitted a brief objecting to the Indianapolis ordinance on grounds that such legislation does a disservice to men by underestimating their self-control:

Men are not attack dogs, but morally responsible human beings. The ordinance reinforces a destructive sexist stereotype of men as irresponsible beasts, with "natural physiological responses" which can be triggered by sexually explicit images of women, and for which the men cannot be held responsible...

According to Hunter and Law, the end result of such legislation is to absolve men from responsibility for their actions and displace the blame for sexual violence onto the producers of pornography.

Joining the ACLU in its opposition to such ordinances is the group Feminists for Free Expression, which includes Betty Friedan, Susan Jacoby, and Nora Ephron. They contend that women, varied in their tastes and in their definitions of sexism, do not require "protection from explicit sexual materials." In fact, granting women special protections implies that women are not able to protect themselves. Others in this alliance against anti-porn legislation are publishing organizations such as the American Booksellers Association and the Association for American Publishers; gay and lesbian groups, whose erotica would probably be first on the list to be restricted; and proponents of sex education, whose campaigns against AIDS and teen pregnancy often use explicit images and materials.

PORNOGRAPHY AS SEX DISCRIMINATION

The anti-porn ordinances attempt to deflect the issue of free speech by defining pornography in non-speech terms, as "the graphic sexually explicit subordination of women, whether in pictures or in words," depicting women enjoying "pain or humiliation." However, to invalidate the Indianapolis ordinance, the U.S. Court of Appeals relied on the categorization of pornography as a form of expression. Judge Frank Easterbrook apparently recognized the negative effects of pornography on women but ruled that the law was an unconstitutional violation of the guarantee of free speech: "The state may not ordain preferred viewpoints in this way. The Constitution forbids the state to declare one perspective right and silence opponents."

What is of central concern here, say those who would make pornography a civil-rights issue, is the harmful consequences of pornography to women; pornography, therefore, is an issue of discrimination, not a First Amendment issue. MacKinnon, testifying before Attorney Gen-

eral Edwin Meese's Commission on Pornography in 1985, stated:

Because these injuries are disproportionately inflicted on women, but also on everyone whom it victimizes, on the basis of their sex...we have proposed a new approach: That pornography be civilly actionable as sex discrimination and recognized as a violation of human rights.

Civil-rights legislation does not threaten the freedom of speech through censorship or a morals squad, they maintain. It allows women to act in response to proof that they have been harmed.

IS THERE A LINK BETWEEN SEXUAL VIOLENCE AND PORNOGRAPHY?

Proponents of civil-rights legislation seek to demonstrate the correlation between pornography and violence. In one experiment conducted by Daniel Linz, groups of college-age males were shown five extremely violent R-rated commercial films and were told to rate aspects of the film and their own mood. This study showed that the men soon became desensitized to the violence against women; they rated the fifth film as less offensive and degrading, and even found some of the material humorous and enjoyable.

N.M. Malamuth and colleagues conducted studies that show that exposure to pornography depicting violent rapes reduces men's aversion to rape. They presented an audiotape, using a male voice, of different stories including one of consensual sex and a fantasy in which a woman appears to enjoy being raped. About 40 percent of the subjects found the rape fantasy to be very arousing. A similar study found that 30 percent of their subjects were very aroused by both the male fantasy rape and by another story in which a man assaults a woman.

In addition to the social science experiments, advocates of making pornography a civil-rights issue point to links between violent porn and sex crimes in some select incidents. In 1988, police found in the possession of a man accused of raping, molesting, or robbing four women, nude photographs of other women along with the equipment he had used to take pictures of some of his own victims; he had asked at least one to "smile pretty." A 1989 serial murder suspect in Delaware had a collection of sadistic pornography which portrayed abuses similar to the ones he inflicted on his victims. Infamous serial killer Ted

Bundy blamed pornography for his violent behavior. Furthermore, anti-porn advocates point out that police say many similar incidents go unreported.

Civil libertarians, including the ACLU, are skeptical of such evidence. Researchers in other countries, such as Britain and Denmark, have found no clear connection between pornographic images and violence. Rather than encouraging rape, pornography “is an aphrodisiac, that is, food for the sexual fantasy of persons,” writes Berl Kutchinsky, professor of the Institution of Criminal Science at the University of Copenhagen. Pointing to the experiences of other countries, Harvard law professor Alan Dershowitz, writes:

Many countries that have stringent laws against pornography—such as the Soviet Union, Saudi Arabia and China—have high levels of rape and poor records on feminism. Other countries more tolerant of pornography—such as the Scandinavian and Western European countries—have lower levels of violence against women and more respect for equality and feminism.

Opponents of pornography also argue that degrading images encourage men to view women as objects and institutionalize men’s supremacy over women. The judge who overturned the Indianapolis ordinance conceded that “depictions of subordination tend to perpetuate subordination. The subordinate status of women, in turn, leads to affront and lower pay at work, insult and injury at home, battery and rape on the streets.”

All said and done, the anti-pornography draft legislation leaves many questions unanswered. Will it reduce the mistreatment of women? Will subjecting producers and distributors to lawsuits diminish sexual abuse or at least curb the pornography market? How would such legislation distinguish between various types of pornography—that with social value, or hard- vs. soft-core pornography? But, before we dismiss the civil-rights legislative approach outright, can we continue to tolerate brutal images that may contribute to incidents of sexual violence against women?

ABOUT COMMUNITARIANS

When Hillary Rodham Clinton stood up at a lectern in Austin, Texas, and said, “We need a new politics of meaning,” the audience wanted to know what sort of politics she was referring to:

“My politics are a real mixture,” Mrs. Clinton says. “An amalgam . . . The labels are irrelevant. And yet, the political system and the reporting of it keep trying to force us back into the boxes because the boxes are so much easier to talk about. You don’t have to think. You can just fall back on the old, discredited Republican versus Democrat, liberal versus conservative mindsets.”

She likes to think of herself as “a citizen.” She talks about “virtue” and “personal responsibility” and “being connected to a higher purpose.”

. . . [She says] people need to think of others, instead of themselves. Excessive individualism and materialism must give way to selflessness. This means that bean-counting and rights-based liberalism will probably need to end. People need to serve each other, and serve their communities, distinguish themselves by social activism and caring. Virtue needs to be rewarded by government. Personal responsibility needs to be rewarded by government. The Me Decade must give way to the We Decade.

“The 80’s were about acquiring—acquiring wealth, power, prestige,” Mrs. Clinton said a week before her father’s death. “I know. I acquired more wealth, power and prestige than most. But you can acquire all you want and still feel empty. What power wouldn’t I trade for a little more time with my family? What price wouldn’t I pay for an evening with friends? It took a deathly illness to put me eye-to-eye with that truth, but it is a truth that the country, caught up in its ruthless ambitions and moral decay, can learn on my dime.”

. . . [Mrs.] Clinton herself says she has been most influenced by the writings of Vaclav Havel and communitarian political philosopher William Galston—formerly a University of Maryland professor—right under her nose in the Clinton administration. Galston, who wrote “Liberal Purposes,” which was

published in 1991, is now the deputy assistant to the president for domestic policy, and well known for his arguments that liberals should take the issues of virtue and character more seriously, instead of ceding them to the right wing.

Martha Sherrill, "Hillary Clinton's Inner Politics,"
The Washington Post, May 6, 1993.



Enola Aird, chairwoman of the Connecticut Commission on Children, contends: "It's a false question to ask what rights need to be given up. The emphasis has to be on shoring up personal and shared responsibilities. I don't want to argue for anyone to give up their rights to do things, but I think there has to be a better balance.

"I'm not white...and I think communitarianism has a long way to go. But I find it to be logical, honest, and long overdue," says Aird, who is African-American and co-author of the new position paper on the family.

Six years ago, she left the workplace to return home to raise her children—she works for the commission on a voluntary basis. The move was difficult in a country where, she says, misplaced values, financial pressures and federal tax laws "conspire against the family.

"In this country, we will not even try to help families until they're almost at death's door....But I see more and more people who are committed to reviving this ethic of shared responsibility to children and family and community."

Now, says Aird, mothers and fathers are taking time off the treadmill and leading a grassroots movement back toward the home.

"You look at some of the work being done in the public housing projects. They're saying, 'We have a right to live here, but we don't have the right to trash the place.'...It's happening in the suburbs where mothers and fathers are forming 'safe home' groups. The parents say to each other, 'I'll do right by your kids.'

"I have two children whom I've brought into a world that seems to be falling apart," says Aird. "I have no option but to do my part to put it back together. It's not just my right to self-actualize

and work. It's my right to be with my children—it's my right and my responsibility."

Richard Scheinin, "One for All",
San Jose Mercury News, December 12, 1992.



The vivid yellow, white and purple early blossoms of spring are suddenly sprouting from the winter ground here. And at the same time, amazingly, there are finally changes blossoming in the nation's mentality.

Example One: Amitai Etzioni, the great sociologist of The George Washington University, is sitting in a small cafe near The Watergate. He is impassionedly talking about his new "communitarian" movement, which he dreams will bring Americans back to a sense of community and to a real balance "between our rights as individuals and our social responsibilities.

... At the National Press Club, as I listened to these men and women speaking of this new paradigm of responsibility and deliberation and creative activism, three questions occurred to me:

How do you put responsibility back into people from whom it has been drained by dependency-creating social programs and the whole pretentious "rights" network?

How do you deal with a culture where adversarialness (sic) itself is considered the end and not the means?

How do you replace divisive education with civic education? Even more, can you?

At least most of the speakers seem to agree that, yes indeed, these are the questions. But they all also assured me of what most of us already know: that there is a tremendous hunger in this country and in the hearts of its remaining citizens and in what is left of its sense of community for just such thinking and just such action.

Community, civic culture, citizenship—they all go together, and they have all been in substantial part destroyed by the emphasis on rights instead of responsibilities, perpetual adversariness (sic) in place of deliberative community, and on "talk show democracy" in place of citizenship.

If we want to remain a viable and healthy society, those perversions of historical human responsibility and community will have to be addressed and changed. There is no other way.

The hopeful thing is that there are analysts and movements, like these and many others, who are beginning to say “enough,” and who finally are offering us alternative visions of our country.

Georgie Anne Geyer, “Classic Style of Citizenship May Be Blooming”,

The Houston Post, April 4, 1993

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AUTHORITARIANS, LIBERTARIANS, AND COMMUNITARIANS

Compiled by Sarah Horton

From the Authoritarian Side:

Fly the Friendly Skies?

What if the U.S. government were to take the “war on drugs” literally? Richard J. Baum, Republican staff member of the House Select Committee on Narcotics Abuse and Control, believes that might be the answer to our drug woes. Comparing cocaine traffickers to the Iraqi forces in the Gulf War, Baum proposes giving federal drug-interdiction agencies the authority to shoot down planes carrying drugs past our borders. Arguing that legal constraints have kept airborne traffickers off-limits despite their cargo constituting a “grave security threat,” he writes:

Nothing short of direct force is sufficient to deter the pilots who routinely shuttle their deadly cargo of processed cocaine between the eastern coast of South America and the Caribbean... If the US government initiates a “shoot-down” policy against trafficking planes in international airspace, then other governments will likely take similar action within their own borders....

Unfortunately, Baum concedes, there is one little hitch in his plan:

Of course, the most important drawback of using force against airborne drug traffickers is the chance of making a mistake—of shooting down and possibly killing individuals who are not involved in the drug trade. Though a degree of risk is inevitable, it must be remembered that such risk is always involved in serious operations of law enforcement and national security....

Sorting out the good guys from the bad guys can be difficult for air-interdiction agencies because drug traffickers are able to mix in with hundreds of other small aircraft on legitimate flights.

How does Baum propose to distinguish drug traffickers from other

small aircraft? Drug traffickers let loose their cargo from the hold of their planes since they rarely land to deliver the goods. Therefore, he reasons, a law-enforcement officer could be required to witness the drop-off, or perhaps the drugs could be recovered and tested before the shooting were authorized. Finally, protocol would require that drug-interdiction agents attempt by radio to persuade the pilot to land and face trial in the U.S. rather than biting the bullet. We wonder how Baum would feel under this policy if he were a passenger in a light aircraft with a broken radio....

Hemisphere, *Summer 1992*

Thanks to the N.R.A....

Democratic Congressman Charles E. Schumer of New York, chairman of the House Subcommittee on Crime, has put together this thank-you list on behalf of criminals and gun runners:

- Thanks to the N.R.A., the Bureau of Alcohol, Tobacco and Firearms (A.T.F.)—the agency responsible for tracking down gunwielding criminals—is prohibited from computerizing and even unifying gun-ownership records that can be used to trace weapons found at crime scenes. The police, instead of using computers as they do when hunting stolen cars, are forced to send people to every gun shop in a jurisdiction to check records manually.
- Thanks to the N.R.A., even though the sale of new machine guns was outlawed in 1986, anybody can buy one made before 1986.
- Thanks to the N.R.A., despite a federal law that prohibits convicted felons from buying guns, in 1986 Congress was pressured to pass a law requiring the A.T.F. to process applications from felons seeking to waive the prohibition.
- Thanks to the N.R.A., the A.T.F. is prohibited from researching the effectiveness of using taggants in explosives. Taggants are a cheap and technologically feasible microscopic additive that would help investigators at crime scenes—like the World Trade Center bombing—trace the explosives involved.
- Thanks to the N.R.A., federal officials must give a gun dealer's license to any applicant within 45 days even if they cannot com-

plete a background check. So dogs and dead men have gotten licenses that entitle the holder not only to sell guns but also to buy them wholesale from manufacturers, with no questions asked.

New York Times, *April 4, 1993*

Is this the Police's Idea of April Fool's?

In mid-April, 11 random shootings (three of them fatal) occurred in the Washington, D.C. neighborhood of Mount Pleasant over a series of weeks. Despite the fact that the killer kept returning to the same hunting grounds, the police department's main lead to his identity was that he was "emotional, unstable, and unpredictable" and seemed "to enjoy the attention he was getting." Considering that the police were apparently drawing blanks, one would imagine that they would only encourage citizen efforts to protect themselves.

On the contrary. Several Mt. Pleasant business-owners who had been subscribing to a private security company were surprised to discover that in spite of this new threat to their safety, the District police had ordered their security patrols be stopped. Come again? By law, privately retained guards are not permitted to patrol public spaces—and, the police department pointed out, for the patrols to get from one private property to another they must traverse public land. There had been no reports of the patrols' inappropriate conduct, no incidents of vigilantism—it seems the police department simply did not want security patrols *on its turf*.

Washington Post

Annie Get Your Gun

Oregon state representative Liz Vanleeuwen has proposed a bill to require most households to own a gun and know how to use it. She sees it as a crime deterrent: "Criminals who do the break-ins...that involve your private property, have just learned that it's a pretty safe way for them to get whatever it is they want."

One Portland police officer objected to the bill because it could contribute to the problem of guns winding up in the hands of criminals. Observing that many burglaries occur while no one is at home, he

explained: “If the thief breaks into the home, what they’re going to end up taking is the gun and that gun is going to end up on the streets in the hands of an irresponsible person.”

An unidentified resident broadened that concern to include small children. “We have children. My husband has guns, but they’re up. Nobody could get to them, but most people would not keep them up to where children couldn’t get ahold of them,” she said.

CNN News, *February 3, 1993*

One in Five Americans Unsure Whether Holocaust Occurred

A Roper Organization poll revealed that 22 percent of adults and 20 percent of high school students surveyed believed it is possible that the Holocaust never happened.

The question read: “Does it seem possible, or does it seem impossible to you, that the Nazi extermination of the Jews never happened?”

“What have we done?” responded Elie Wiesel, the Nobel laureate who wrote of his experiences in the Auschwitz and Buchenwald concentration camps, upon hearing of the survey results. “We have been working for years and years. I am shocked that 22 percent—oh, my God.”

Press Reports, *April 19, 1993*

From the Libertarian Side:

Potty Parity or Bathroom Humor?

In Texas, heated debate over restroom equality and the niceties of bathroom etiquette have wound their way from the powder room onto the House floor. A measure, informally dubbed potty parity, aimed at thinning out the waiting lines for women’s restrooms, has passed the Senate and has worked its way through the Texas legislature.

Denise Wells, a House legal secretary, is partly to credit for this legislative achievement. Faced with being number 31 in a line for the restroom at a Houston concert, she chose an alternative route to relief—

the men's room, and faced subsequent arrest.

This potty offender literally brought the House down—on her side. Backed by research that has concluded women require twice as much time as men for a visit to the restroom, the measure would mandate that convention halls, sports arenas, and all large public facilities under construction as of January 1994 provide twice as many women's restrooms as men's. If the bill is signed into law, Wells will be able to look forward to shorter lines for the ladies' room.

Yet the demand for restroom equity has not gone over lightly. Women may have to wait in longer lines, men's rights groups countered, but what about the ladies' plusher facilities? It seems that Texas Fathers for Equal Rights has just been waiting for the chance to whip out its own restroom wish-list, topped by couches and full-length mirrors.

For the Austin branch of the National Coalition of Free Men, however, the issue is not preening but privacy. The Coalition demands more stalls—with doors.

"Texas men are no longer turning the other cheek about so-called 'potty parity,'" said Hugh Nations, spokesman for the Coalition. "We don't want to be treated like cattle. No longer will we stand for having to urinate in herds at troughs."

Where do they find the time?

Press Reports

ACLU Objects to Campaign Finance Reform

The ACLU has filed a lawsuit to overturn a District of Columbia law that limits campaign contributions to candidates for District elective office. One of the nation's strictest limits on campaign contributions, Initiative 41 was approved by a landslide vote last November, and would restrict donations to candidates to \$100, or in some cases, \$50. Before the law went into effect in March, District mayoral candidates were allowed to collect a maximum of \$2,000 from an individual donor.

Supporters of the measure say it will prevent wealthy special-interest groups from unduly influencing politicians, and that it will allow grass-roots candidates a fair chance against incumbents.

However, the ACLU rests its case on the grounds that the measure is unconstitutional, because it limits the freedom of expression of political preference. Other opponents object that the measure will make special interest donations harder to regulate.

The Washington Post

First Down... and \$1 Million to Go

When Tawana Hammond, a 17-year-old girl who had never played organized football, tried out for Maryland's Francis Scott Key High School team three years ago, the school's lawyers advised the school to let her compete anyway. They pointed to Title IX, which forbids sex discrimination in schools that receive federal funding. Yet when Hammond was tackled in her first scrimmage and faced injuries that required the removal of her spleen and half her pancreas, the school felt her pain. Claiming that the school did not properly inform her of the risks associated with football, Hammond has tackled the school with a \$1.5 million lawsuit.

Press Reports

In Search of Stress Cases

In California, lawyers prowl outside factories after layoffs have been announced, trying to recruit stress cases. Workers only have to claim that 10 percent of their anxiety is job-related to collect benefits. One L.A. clinic even offers the workers' comp equivalent of frequent flyer miles—a free trip to Las Vegas for anybody who visited the clinic 30 times in three months.

George F. Will, Newsweek, December 14, 1992

The Fear of Responsibility

Seventy-one percent of those surveyed would donate the organs and tissues of their loved one if asked to do so. Yet many family members do not think of donating organs because of the grief they experience after such a personal loss. To remedy this problem, many states, including Maryland, Virginia, and the District of Columbia, have enacted Required Request laws. According to the Washington Regional Transplant Consortium's donation guidelines for physicians and nurses,

these laws “require that health care professionals notify the family of their legal *right* to donate organs and tissues.” What’s next—Required Request laws notifying us of our right to help our neighbors, our right to care for family, and our right to give to charity...?

Washington Regional Transplant Consortium

From the Communitarian Corner:

One Fraternity’s “Nigger Night”

Amid campus anger at a Phi Kappa Psi pledging activity in which students were told to dress like African-Americans and clean the chapter house, the president of Rider College, New Jersey, has suspended that fraternity’s privileges and pressed charges against nine students involved.

According to two white students, a member of Phi Kappa Psi had summoned potential pledges to the house, told them to emulate Stepin Fetchit, paint Xs on their foreheads, and clean the fraternity’s kitchen. The fraternity member, who has since been suspended for one year, had called these activities “Dress Like a Nigger Day.”

In a special meeting of students, faculty, and administrators, President J. Barton Luedeke announced the college had decided to suspend Phi Kappa Psi’s pledging privileges and require members to attend “diversity training” workshops.

“Anything of this nature is beyond what this campus community can begin to accept,” Dr. Luedeke told the audience. “I share your frustration.”

In addition, the national governing board of the Phi Kappa Psi fraternity has used its emergency powers to indefinitely revoke the Rider College chapter charter.

Press Reports

Responsibility for Your Own Health

Every time somebody ends up in a hospital because of a condition that is, we believe, caused by behaviors that they have

been willing to pursue, you and I help pay for their care. So we need to try to put some focus on individual responsibility.

Hillary Rodham Clinton, March 11, 1993

Watch that Pistol

A man who learned first-hand the peril of having a hand-gun in a house of children is on a mission to spread that message so that his misfortune does not befall others.

Like so many others in San Jose's Hispanic community, Nicolas Conchas had joyfully ushered in the new year by firing his .22-caliber pistol into the sky. But the next day, his four-year-old grandson found the loaded weapon and shot himself through the heart.

"I want to tell everyone that it is very dangerous to have guns in your home if you have children," said Conchas.

Conchas was the first person in California to be charged under a law according adults criminal liability if a child is harmed by an unsafely stored weapon. A municipal court judge reduced the penalty to a misdemeanor provided Conchas make public appearances to discourage the same behavior in others.

His public-service activities include speaking out against the Hispanic community's New Year gun-firing ritual, and addressing the problem of violence at gang-plagued schools, churches, and community centers.

New York Times, December 31, 1992

Wilder Vetoes Smokers' Rights Bill

In March, Governor Wilder of Virginia defied one of the nation's largest tobacco lobbies by vetoing a bill prohibiting job discrimination against smokers.

The measure would have prohibited employers from firing or refusing to hire employees or applicants solely because they smoke while not at their job.

Saying that the smokers' rights bill would have made an unhealthy

practice a legally protected right, Wilder explained: “Smokers who have acquired their habit are inflicting in some instances their own whims and fancies on others, and it is deleterious to health.”

In addition, Wilder objected to giving smokers the same civil rights accorded African-Americans and others protected under employment discrimination laws. After vetoing the measure, Wilder said, “It is creating a special class of people that would be given protections that others were not entitled to.”

Anti-smoking advocates praised Wilder for his unswaying stand despite that Virginia is the nation’s fifth-largest tobacco grower and Philip Morris USA is Richmond’s largest private employer. Thus far 28 states and the District of Columbia have enacted smokers’ rights laws.

Press Reports

Nothing New Under the Sun

The many, of whom each individual is not a good man, when they meet together may be better than the few good, if regarded not individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse. For each individual among the many has a share of virtue and practical wisdom, and when they meet together, just as they become in a manner one man, who has many feet, and hands, and senses, so too with regard to their character and thought.

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