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Liberalism, Values & Lincoln–Douglas Debate

**Essays on Lincoln–Douglas debate
from eight years of Econ Update &
the LD/Extemp Monthly.**

2nd Edition!

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Applying Logic to LD

by George H. Smith

Values permeate all aspects of our lives and actions. Human action is motivated by a desire to acquire something we don't presently have. It involves moving from a less satisfactory state of affairs to a more satisfactory state of affairs. If human beings were completely satisfied there would be no reason to act at all. We *evaluate* some things as more desirable than others; and this subjective process of valuation determines which actions we take.

Whether it is choosing which flavor of ice cream to buy or which job to take, whether our choice involves only ourself or other persons, all decisions – from the most trivial to the most significant – entail value judgments.

Given the millions of individuals in a society, the value judgments of one person frequently conflict with the value judgments of another person. I value my car, but so does the car thief; and his attempt to steal my car conflicts with my effort to protect my property. In a political context, the value that some people place on economic equality conflicts with the value that other people place on economic liberty. The number of such conflicts, real or potential, is virtually unlimited.

We see, therefore, that value “debates” occur every day, even if in an informal, implicit fashion. Perhaps the most important question concerning these “debates” is: Can they be resolved rationally? Is there a “right” or “wrong” in disagreements over values? Consider the example of ice cream flavors. If I like vanilla while my neighbor prefers strawberry, is one of us correct and the other in error? In matters of taste such as this, most people agree that there is no right or wrong. It is simply a matter of personal preference.

But now consider the car thief who values my

car and attempts to steal it. Is this, like the example of ice cream, merely a question of subjective preference with no resolution? Is the thief's desire to take my car on an equal footing with my desire to keep it? Is this a brute clash of wills with no right or wrong? Or do I have a “right” to the car in some sense, which makes my action (resisting the thief) morally correct? If so, how can such a claim be justified rationally?

This plunges us headlong into the realm of *moral* values. If, as most people would agree, car theft involves an issue of right and wrong (thus distinguishing it from the ice cream example), then we are dealing, not just with subjective values, but with moral values that are in some sense objective. It is by applying moral principles that we ascertain whose subjective values are to be given priority.

Value Debating

All argument involves giving *reasons*; value debating consists of giving reasons why one value judgment is superior to another value judgment. This, in turn, presupposes that the value judgments under consideration are more than subjective preferences (like ice cream flavors). Imagine the following debate topic: “resolved: Vanilla ice cream is better than strawberry ice cream.” What would be the point of this debate? Indeed, would it even make sense? What does “better” mean when applied to ice cream flavors? Better for whom?

Now consider the following (hypothetical) debate topic: “Resolved: The United States should not provide military aid to governments which violate human rights.”

This topic, and many like it, involve value judgments. In this respect it resembles the ice

cream topic. But, unlike ice cream flavors, this topic is debatable. Reasons can be given, pro or con, and some reasons are *better* than others. This means that there are standards of value by which position you or I happen to prefer, but which of our positions is more justified and defensible.

Moral Argument

Your skill value debating will be greatly enhanced if you know how to *analyze* moral arguments. Most moral arguments can be reduced to a basic pattern known as the deductive syllogism. Understanding this simple logical device will enable you to build a stronger case, as well as criticize your opponent more effectively.

The first thing to note about moral propositions (e.g., “one should not steal”) is that they are *normative* in character. By this we mean that all moral propositions contain a word like “ought,” “should,” or “must.” This word is not always explicit; it may be lurking beneath the surface. For instance, there is no “ought” word in, “Stealing is wrong.” But a closer look reveals that a word like “ought” is implied by the word “wrong.” After all what does “wrong” mean if not, “That which one ought (or should, or must) not do.”

Whenever you (or your opponent) defends a position that contains a moral value judgment (an “ought” judgment), you will find it helpful to analyze the foundation of this judgment. This is where the deductive syllogism comes in handy. Here is a famous example of a deductive syllogism:

Major Premise: All men are mortal.

Minor Premise: Socrates is a man

Conclusion: Therefore, Socrates is mortal.

We cannot analyze the logic of this syllogism here (you may wish to consult an introductory text on logic), but a little bit of common sense reveals that there is no information contained in the conclusion that is not contained in the two premises (major and minor). When the conclusion follows necessarily from the premises in this way, the argument is said to be *valid*.

Moral arguments can be analyzed in a similar fashion. Consider this statement: “Military con-

scription is immoral.” This may be viewed as the conclusion of a deductive syllogism, such as the following:

Major Premise: Involuntary servitude (slavery) is immoral.

Minor Premise: Military conscription is a form of involuntary servitude.

Conclusion: Therefore, military conscription is immoral.

Notice the difference between the major premise and the minor premise. The major premise is a value judgment; the minor premise is a description involving no value judgment. (This does not necessarily mean that it is an *accurate* description - its truth or falsehood is irrelevant here.) The conclusion follows necessarily from the premises. In other words, if the premises are true, then the conclusion must be true as well.

This suggests a method with which you can (a) build your own case; and (b) criticize the case of your opponent. Let us consider each of these in turn.

Building a Moral Argument

As indicated in the previous discussion, your moral argument will have two basic elements: the general moral principle (major premise) on which you base your case; and the particular descriptive statement (minor premise) which shows that your conclusion follows necessarily from the moral principle.

Of these two elements, the general moral principle is by far the most difficult to defend. Indeed, it is highly unlikely that you will have the time to defend it adequately in the limited time available to you. Because of this, you should select a major premise that is fairly uncontroversial and that will be accepted by the judges and perhaps even by your opponent. Few people will take issue with the claim that slavery is wrong, or that theft is wrong. If, then, you can show that your conclusion follows from such claims, the moral underpinning of your argument will rest on secure foundations.

Your basic strategy here is to show that your conclusion follows necessarily from a well-established moral principle. This can be a power-

ful debating tool and often yields surprising results. Suppose you wish to defend the radical statement, "Taxation is theft and should be abolished." You could argue this in the following way:

Major Premise: Theft is the appropriation of property without the owner's consent.

Minor Premise: Taxes require the appropriation of property without the owner's consent.

Conclusion: Therefore, taxes are theft.

With this established, you can then proceed to moral argument:

Major Premise: Theft should be abolished

Major Premise: Taxes are theft.

Conclusion: Therefore, taxes should be abolished.

From a simple definition of theft in the first syllogism, you have arrived at a surprising conclusion. Your opponent would be unlikely to attack either major premise. Instead he would be forced to question your minor premises – for example, by maintaining that the taxpayer is not the true "owner" of his money, or that taxation is really based on consent.

Criticizing a Moral Argument

Understanding the role of the syllogism in moral argument provides an effective analytic device in criticizing your opponent's argument. Your opponent may be unaware of the implications of his own arguments; and by identifying some unacceptable implications, you can do much to damage his case.

This is especially true of *utilitarian* arguments. Utilitarianism is a moral theory which holds that the "good" consists of the "greatest good for the greatest number," "the greatest happiness for the greatest number," or some similar standard. Many people rely implicitly on utilitarian standards in their value arguments...such as when they contend that a certain policy should be undertaken (usually by the government) because it would benefit the majority of people. This reasoning, if spelled out

explicitly, would look something like this:

Major Premise: The government should do whatever benefits the majority of people (the greatest good for the greatest number).

Minor Premise: X (the policy in question) would benefit the majority of people.

Conclusion: Therefore, the government should do X.

Many debaters, in opposing policy X, would focus on the minor premise. They would argue that the policy does not, in fact, benefit the majority. This response, however, is not the most effective critique. Far more devastating is to zero in on the major premise and call attention to its unsavory implications. Is there no limit whatever to what may be done in the name of "greatest good for the greatest number"? What if a small, unpopular religious sect offends the religious sensibilities of the majority, who would be "better off" if the sect were outlawed? What about a newspaper or magazine that the majority finds unacceptable? *Who*, moreover, is to judge what constitutes the "greatest good for the greatest number"?

The problems confronting a utilitarian standard in ethics are legion. Your opponent is unlikely to adopt this explicitly as a moral principle; he probably hopes to smuggle it in his argument without identifying it openly. Your strategy is to show that utilitarianism is the major premise on which his case rests. Then, by plugging in alternative minor premises (e.g., "The suppression of the *National Enquirer* would achieve the greatest good for the greatest number"), you can draw implications from his own premise that even he would be unlikely to accept.

Arguments from Authority

Conventional debates over policy resolutions frequently include quotations, statistics, opinions, and so forth culled from various authorities. In value debating, such appeals to authority are highly suspect and should be used with great caution, if at all. If your opponent relies on an

appeal to authority, you should be able to weaken his case without much trouble.

It is important to understand when an appeal to authority is permissible and when it is not. The basic rule is this: If a debate involves specialized information – information that the average layman lacks – then the opinion of specialists may be introduced to establish facts that cannot otherwise be verified. If a policy debate concerns pollution, for instance, then the conclusions of research scientists about the effects of pollution may be relevant.

But the situation is different in value debating. There are no “authorities” in the realm of morality. Moral theory is not based on specialized information inaccessible to the average person. The philosopher who writes books on value theory is not privy to specialized facts, as may be the case with a scientist engaged in laboratory experiments. The philosopher has probably thought more about moral issues than the average person, but his reasoning is based on ordinary facts – the kind of observations about human beings that any person can make. Therefore, to quote (say) Plato or Aristotle in support of a value statement is to make a very weak argument. The *conclusions* of philosophers are far less significant than the *reasons* and *arguments* offered in defense of those conclusions.

Here again it helps to know the syllogistic structure underlying value arguments. It is primarily in the major premise – the general value principle on which the argument depends – that an appeal to authority is invalid. That a certain philosopher regards a moral principle as correct means little. You can point this out easily, if your opponent resorts to an appeal to authority. Great philosophers have defended all kinds of views that are considered repugnant today. Plato and Aristotle, for example, defended the institution of slavery. This obviously does not mean that slavery is morally correct.

Another, somewhat disguised, appeal to authority consists of an appeal to the “majority,” as expressed in democratic election. That the majority considers something moral or desirable proves nothing. The “majority” consists of individuals, and these individuals are no more fallible than the individuals comprising the minority.

Never permit your opponent to obscure the essential issues in a value debate by resorting to these invalid tactics. There is no substitute for a logical, well reasoned case. One person constitutes a majority, if that one person is right.

Arguments from Rights

We have discussed briefly the weakness of moral arguments based on utilitarianism and appeals to authority. (This does not mean that these approaches can never play a role in value debates – only that they should not constitute the *foundation* of your case.) In searching for a major premise that will support your argument, you will probably find that one based on natural rights is the most effective and immune from attack.

What do philosophers mean by “natural rights”? Basically, a “right” is an *enforceable claim* that one person has against another person. Rights always entail corresponding *duties*. Thus, if I have a right to X (say, my car), then other persons have a duty not to *interfere* (through force or the threat of force) with my use of X – provided, of course, that I do not violate the *equal rights* of other people. If I am the rightful owner of my car, then I have a *right* to it, and the car thief commits an *unjust* act when he attempts to steal it from me.

One may visualize the function of rights in moral theory by imagining an invisible moral barrier surrounding every person. Rights function as a protective shield, beyond which others may not transgress without committing an unjust act. Most of the great moral crusades throughout history have rested on some version of rights. The movement against slavery in antebellum America, for example, was based on every person’s right of “self-ownership.” Every person, the anti-slavery theorists argued, has a natural right to his own body, mind, labor, and the fruits of one’s labor. Slavery was thus viewed as theft on a gigantic scale. Slaveholders were condemned as “manstealers” because they “stole” from the slave that which was properly his own – moral jurisdiction over his body and labor.

Arguments of this kind can be extremely effective. Of course, you will not be debating the subject of slavery; but just as the principle of “self-ownership” served as the major premise in

the argument against slavery, so, when combined with a different minor premise, it can serve as the foundation in a variety of value debates.

Basing your major premise on a natural right works especially well when, as in a debate, your time is limited, and you cannot expect to justify your position fully. As previously mentioned, few people will openly deny a right like “self-ownership,” or a right to “freedom of conscience.” (If your opponent does deny these, you can point out that he is unable to offer a viable argument against slavery or religious persecution.) It is because rights like these are firmly embedded in

the American tradition and find widespread acceptance that a value argument based on rights is so powerful. Formulating your major premise in terms of rights is likely to make the foundation of your argument (the major premise) unassailable. Your opponent will have no choice but to attack your minor premise, i.e., the specific *application* of the rights principle to the topic of debate. This is where your skill as a debater will be tested, but at least you have the considerable advantage of a well thought out moral premise. This is the first step in making your value argument fundamentally sound.

How to define your terms

by George H. Smith

How a debater defines the key terms in a resolution can seriously affect the outcome of a debate. How can you arrive at good definitions when presenting your side? And how can you recognize the faulty definitions offered by your opponent?

Logicians generally agree on the basic components of a definition and on the rules for adequate definitions. A debater who learns the structure and rules of definition has a significant advantage over his adversaries. Some aspects of definition are rather technical, but they will more than repay the time and effort it takes to master them.

A definition has three parts: (1) the *definiendum*, (2) the *copula*, and (3) the *definiens*. We can illustrate these parts with Aristotle’s famous definition “Man is a rational animal.”

DEFINIENDUM	COPULA	DEFINIENS
Man	is	a rational animal.

“Man” is the word being defined, so it is called the *definiendum* (literally, “the thing to be defined”). The verb “is” links the subject to the predicate, so it is called the *copula*. The phrase “a

rational animal” does the work of defining, so it is called the *definiens* (literally, “thing which does the defining”).

In addition, the *definiens* is subdivided into two parts: (1) the *genus*, and (2) the *differentia*. In Aristotle’s definition, “rational animal” is the *definiens*. This is divided as follows:

DEFINIENDUM	COPULA	DEFINIENS
		DIFFERENTIA GENUS

Man is a rational animal.

“Genus” refers to the general class to which the *definiendum* (“man”) belongs. Aristotle assigns “man” to the broader class of beings known as “animal”; thus, “animal” is called the “genus” of “man.”

“Differentia” refers to the specific difference(s) by which we distinguish the *definiendum* (“man”) from other members of the genus (“animal”). Aristotle uses the attribute “rational” to distinguish man from other animals; thus, “rational” is called the *differentia* (the specific difference) of “man.”

Before pushing on, we need to discuss one more term: *species*. A species is a subclass of a

genus. Thus, “man” – a subclass of the genus “animal” – is said to be a *species* of “animal.”

“Genus” and “species” are relative terms, like “parent” and “offspring.” John is a parent in relation to his children but he is also an offspring in relation to his own parents. In the same way, “animal” is a *genus* when compared to the species “man,” but “animal” is also a *species* when compared to the genus “living beings.”

Here is another example: “table” is a genus relative to the species “dinner table.” But “table” is a species of the genus “furniture” – and “furniture” is itself a species of the genus “household goods,” and so on.

Now, having armed ourselves with the rudiments of definition, let’s see how we can arrive at good definitions and spot faulty ones.

1. Definitions should not be too broad.

A definition is too broad if the definiens includes more items than it properly should. For example, consider this definition: “A circle is a figure all of whose points are equidistant from a given point.”

A little reflection will reveal the inadequacy of this definition. The definiens includes not only circles, but arcs and spheres as well. Hence our definition is too broad.

The definiens needs to be recast. But how? The definiens, as we know, consists of two parts: the differentia and the genus. Let’s glance at each of these.

The differentia (“all of whose points are equidistant from a given point”) is adequate, but the same cannot be said for the genus (“a figure”). This is too broad, because it admits arcs and spheres. So let’s try a more restricted genus: “a closed, plane figure.” This genus excludes arcs and spheres and so accomplishes our purpose. Our definition is now adequate and may be broken down as follows: “A circle” (the definiendum) “is” (the copula) “a closed, plane figure” (the genus) “all of whose points are equidistant from a given point” (the differentia).

2. Definitions should not be too narrow.

A definition is too narrow if the definiens improperly excludes some items. Consider this definition: “A thief is a person who steals money.” Clearly, this definition is too narrow, because

some thieves steal other things than money.

In this example, the problem lies with the differentia (“who steals money”). This is too restrictive. The word “money” should be eliminated, thereby leaving us with an adequate definition: “A thief” (the definiendum) “is” (the copula) “a person” (the genus) “who steals” (the differentia).

Some definitions are both too broad *and* too narrow, as we see in this example: “A novel is a prose narrative about people.” The genus (“prose narrative”) is too broad, because it does not rule out short stories, etc. In addition, the differentia (“about people”) is too narrow, because it rules out narratives about animals, robots, etc.

3. The definiens should apply to ALL possible instances of the definiendum and ONLY to those instances.

To apply this rule to Aristotle’s definition of man, we need to ask: Are *all* men rational, and are *only* men rational? Logicians call this the “all and only test”

This is an easy way to detect definitions that are too broad, too narrow, or both. Let’s illustrate this test with some faulty definitions presented earlier:

- (a) “A circle is a figure all of whose points are equidistant from a given point.”

Is this true of *all* circles? Yes. Is this true only of circles? No. This definition fails the “only” part of the test; it is too broad.

- (b) “A thief is a person who steals money.”

Is this true of all thieves? No. Is this true *only* of thieves? Yes. This definition fails the “all” part of the test. It is too narrow.

- (c) “A novel is a prose narrative about people.”

Is this true *of all* novels. No. Is this true *only* of novels. No. This definition fails both parts of the test; it is at once too narrow *and* too broad.

4. The differentia should state the ESSENTIAL characteristic of the definiendum.

Some definitions pass the “all and only test,” but they fail in another way: they do not state the *essential* characteristic of the definiendum. Consider these definitions:

“Man is an animal that can (has the capacity to) build computers.”

“Man is an animal that can (has the capacity

to) build automobiles.”

These definitions pass the “all and only test.” But their differentia – the capacities to build computers and automobiles – do not identify the *essential* characteristics of man. In other words, these characteristics are not *fundamental* or *basic* to what is meant by the concept “man.”

An *essential* characteristic is that characteristic which best explains or accounts for the definiendum’s other characteristics. Man’s ability to build computers, in itself, does not explain his ability to build cars. Nor is the reverse true.

Now consider Aristotle’s definition. “Man is a rational animal” Man’s rationality (i.e., his capacity to reason) accounts for his ability to make computers, cars, and many other things. Thus, we can say that rationality is *essential* to the concept “man” “Rational” is the proper differentia to distinguish man from other animals.

5. Definitions should not be circular.

This rule is fairly obvious. The definiens

should not use the word being defined, or some variant of it. Here are two examples of circular definitions:

“A line is a linear path.”

“A carpenter is a craftsman who practices carpentry.”

6. Definitions should avoid metaphorical and figurative language. They should be literal.

“A camel is the ship of the desert.” “The lion is the king of beasts.” Definitions should avoid this kind of language.

Philosophers sometimes commit this error when they define the State as an organism. For example, in *Leviathan* (1651), Thomas Hobbes defines the State as “an artificial man . . . in which the sovereignty is an artificial soul, as giving life and motion to the whole body.”

7. Definitions should not be vague, obscure or ambiguous.

This rule serves the interest of clarity, and the value of clarity should be apparent to all debaters.

Types of definition

by George H. Smith

"I don't know what you mean by 'glory,'" Alice said Humpty Dumpty smiled contemptuously. "Of course you don't - till I tell you. I meant 'there's a nice knock-down argument for you!'"

"But 'glory' doesn't mean 'a nice knockdown argument,'" Alice objected

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master - that's all."

Lewis Carroll, *Through the Looking Glass*

Stipulative & lexical definitions

Who has the better of this debate, Alice or Humpty Dumpty? Can the word "glory" mean "a nice knockdown argument" if that's what Humpty Dumpty wants it to mean?

By assigning a new or uncustomary meaning to the word "glory," Humpty Dumpty uses a kind of definition known to logicians as a stipulative definition. Humpty Dumpty stipulates what he intends a word to mean, and that's that. Of course, Humpty Dumpty's definition of "glory" is not what others understand "glory" to mean - and this is where his stipulative definition gets into trouble.

We use language to communicate, and communication requires a common understanding of the meaning of words. Word-meaning is established by custom and convention; it is not written in the stars, for example, that the word "cat" must mean "a small furry domesticated animal often kept as a pet." But this is the conventional meaning of "cat" - or, as philosophers like to say, this is the lexical definition (the dictionary definition) of "cat" (This is also known as a reportive

definition, because it "reports" the customary meaning of a word.) Thus, if you wish to be understood, you should not, like Humpty Dumpty, try to make a word mean whatever you want it to mean.

Precising definitions

As a debater, you will often find lexical definitions inadequate for your purposes. Consider this L-D topic: "Resolved: That the American criminal justice system ought to place a higher priority on retribution than on rehabilitation"

One of the key terms here is "retribution," which the Oxford American Dictionary defines as "a deserved punishment" But what exactly is "deserved punishment"? If a thief steals \$5,000, should he, as part of his "deserved punishment," be required to return the money (perhaps with interest)? If so, then "restitution" (returning something to its proper owner) will become part of what you mean by "retribution," even though this is not explicitly contained in the lexical definition.

We see, then, that lexical definitions are often too vague for the debater. When you try to render a lexical definition more exact, you offer what logicians call a precising definition.

As its name implies, a precising definition imparts precision to an otherwise vague definition. Precising definitions are often necessary in debate. When formulating them, however, you should follow these guidelines:

First, a precising definition should define a word that is vague in its ordinary usage. As we have seen, the lexical definition of "retribution" ("deserved punishment") is vague, so you may have good reason to offer a more exact definition.

Second, you (or your opponent) needs to show why a precising definition is required for some special purpose. For example, in the debate on

retribution versus rehabilitation, you might point out that these terms (according to their lexical definitions) do not exhaust the possibilities – that restitution has been left out in the cold. Thus, as part of your case for retribution, you are including the “deserved punishment” of restitution.

Third, a precisising definition should remain within the boundaries of normal word usage. You should not, in the name of precision, drastically alter the meaning of a word. In other words, a precisising definition is not a blank check to saddle a word with any meaning you wish. This would be a stipulative definition, not a precisising definition.

Fourth, a precisising definition should remove vagueness by fixing fairly precise limits to the meaning of a word. For example, a lexical definition of “rehabilitate” is to restore (a person) to a normal life by training. Obviously, this is quite vague. What is “a normal life”? What constitutes “training”? (Would torture qualify as a kind of “training”?) These and similar questions need to be considered when you formulate a precisising definition for “rehabilitate.”

Theoretical definitions

Theoretical definitions are those which contain theoretical presuppositions. In other words, a theoretical definition rests on an underlying theory, and the rejection of this underlying theory will render the definition senseless or inappropriate. You will encounter this kind of definition frequently in value debates.

Consider the meaning of “retribution” – “deserved punishment.” Clearly, this is a theoretical definition. “Deserved,” in this context, means “morally deserved,” so, in order for this definition to make sense, we must presuppose a theory of moral obligation. What does it mean to call a punishment “deserved”? And how do we determine when a punishment is “deserved” and when it is not? A defender of retribution must be prepared to answer such questions, or his case may collapse before his eyes.

The defender of “rehabilitation” should not rejoice prematurely, for he, too, is grappling with a theoretical definition. At the very least, a definition of “rehabilitation” rests on a theory of human nature.

Do human beings have free will, and, if so,

can a criminal be “rehabilitated” against his will? If a criminal must cooperate in his own rehabilitation, then what becomes of criminals who refuse to cooperate? And what becomes of a criminal justice system which cannot function without the consent of criminals? The theoretical issues contained in a definition of “rehabilitation” are many and complex.

If you use a theoretical definition unawares, you may find your premises ambushed by a skilled adversary. Of course, while presenting your case, you cannot discuss every presupposition of a definition – that would be too unwieldy and time-consuming. But you should prepare yourself in advance by thinking through the theoretical implications of your key definitions.

Loaded definitions

A loaded definition does more than describe the meaning of a word. It “loads” a gratuitous evaluation (such as “good” or “bad”) into a definition and presents this as part of a word’s meaning. Consider these definitions:

A “politician” is one who is dedicated to noble and selfless public service.

An “anarchist” is one who professes the wicked and dangerous view that government should be abolished.

These are obviously loaded definitions, because they define out of existence selfish politicians and good anarchists. Philosophers also call these persuasive definitions, because they attempt not merely to describe, but to persuade as well. It may be the case that all politicians are selfless and that all anarchists are wicked, but these assertions require separate arguments. They are not legitimate features of the definitions.

Recommended reading

Nicholas Rescher, *Introduction to Logic*, (St. Martin’s Press, 1964), pp. 30-41.

Irving M. Copi, *Introduction to Logic, 3rd ed*, (Macmillan, 1968), pp. 96-103

Francis H. Parker and Henry B. Veatch, *Logic as a Human Instrument*, (Harper and Brothers, 1959), pp. 80-83.

John Hospers, *An Introduction to Philosophical Analysis, Ended*, (Prentice-Hall, 1967), pp. 18-62.

From abuse to deadly force

by George H. Smith

Your success with this resolution will depend on whether you can keep the debate focused on *your* definitions of key terms. Words like “justified,” “response,” and “abuse” can favor the affirmative or negative, depending on how they are defined and used. To illustrate this, let’s examine two general interpretations of the resolution. The first creates a presumption that favors the affirmative; the second creates a presumption that favors the negative.

The right of self-defense

In its most obvious and superficial meaning, the resolution refers to the right of self-defense. If someone assaults me (a physical abuse), do I have the right to defend myself (a response) with deadly force? Or, to use a specific example, suppose an assailant tries to stab me with a knife. Am I then justified in shooting him with a gun in order to save my own life? Do I have the right to defend myself?

This interpretation clearly favors the affirmative. Few people will question the right to use deadly force in self-defense, if the threat is immediate and serious. This position is easily defended, leaving the negative with virtually no option except to defend *pacifism*. According to moral pacifism, force (deadly or otherwise) is *always* wrong and should never be used, even in self-defense.

Pacifism is difficult to defend (especially in debates) because it is usually tied to religious beliefs, such as those held by Quakers, Mennonites, Amish and others who appeal to the Bible. If you try to defend pacifism on religious grounds (e.g., by quoting from the Bible), you will first have to establish the validity of your religious framework

— and this will likely prove a frustrating and hazardous enterprise.

Does this mean the pacifist case should be dismissed altogether? Not necessarily. Many pacifists combine their moral reasoning with *practical* considerations. Pacifists maintain that violence is counterproductive, that it typically breeds more violence, that nonviolent methods can effectively curb violent acts, etc. Such practical arguments, sometimes presented with great skill (e.g., by Gandhi), are not tied to religion, nor does their validity depend on the *moral* case for pacifism. They can be used to supplement the negative case.

Defining “abuse”

(2) Now let’s explore another interpretation of the resolution, one that favors the negative. Note the term “abuse.” What does this mean? The dictionary definition most relevant here is “to treat badly.” The resolution speaks of “physical abuse” so, strictly speaking, we are discussing bad treatment inflicted on one person by another through physical means.

The interpretation creates a broad spectrum of possibilities, ranging from minor to major cases of physical violence. And though we may agree that severe cases of physical abuse can justify a response of deadly force, what about cases that are far less severe? Suppose a man becomes angry and slaps his wife, not very hard and just once. This is physical abuse, so can the wife justifiably respond with deadly force? Can she shoot her husband dead on the spot? Common sense says no; there must be some proportionality between the abuse and the response. This interpretation of “abuse,” therefore, clearly favors the

negative.

The preceding examples illustrate the crucial role of meaning in this debate resolution. So let's take close look at two words where variations of meaning are especially important: "deliberate" and "justified."

Deliberation on "deliberate"

To act deliberately means to act intentionally, with forethought and purpose. We are dealing here with a *state of mind*. A victim who responds with "the *deliberate* use of deadly force" is a victim who *intends* to kill the invader. (Whether he succeeds or not is another matter.)

The "deliberate use of deadly force," therefore, must refer to a plan, a course of action undertaken for a specific purpose — to kill another person. This meaning of "deliberate" favors the negative, for the following reason.

Deliberate action requires deliberation, i.e., "careful consideration or discussion" (*Oxford American Dictionary*). This common definition virtually excludes those cases where a victim responds with deadly force during the course of an attack. Why? Because the victim of a violent assault, while the assault is *in progress*, rarely has the time or presence of mind to think about anything, much less to deliberate with "careful consideration" about an appropriate response.

If victims fight back during the course of an assault, they normally do so spontaneously in a desperate effort to save their lives, using whatever means they can. Circumstances simply don't permit the time and leisure required for such victims to engage in "careful consideration."

Thus the very wording of this resolution — "the deliberate use of deadly force" — implies a response undertaken by the victim *after* the physical abuse has stopped and after sufficient time has passed for the victim to deliberate about a response. This creates problems for the affirmative case, for we are now dealing not with immediate self-defense, but with *retaliation* or *revenge*. The following examples should clarify the point.

(1) While being attacked, I kill my assailant in self-defense. Is this justified? Probably. But is my action "deliberate"? Did I carefully consider a course of action and then decide to respond with

deadly force? Probably not. I struck back with no other thought than to defend myself, using whatever means I could, deadly or otherwise. Therefore, even if I respond with deadly force, my response was not deliberate (according to the usual definition of that word). And if my response was not deliberate, it does not fall within the category of actions specified by the debate resolution and so cannot be used by the affirmative.

(2) Now consider another example: I am attacked and beaten but manage to escape. Later, having carefully planned a response, I find my assailant and deliberately kill him. I have responded to physical abuse with the "deliberate use of deadly force," but is my action justified? Perhaps, but this is a case of *retaliation* — punishment inflicted after the fact, not immediate self-defense. As such, it is far more difficult to justify than the previous example.

This is why the meaning of "deliberate" favors the negative. Deliberation requires time to plan, and this implies that some time has elapsed between the physical abuse and the response. It is often difficult to plead self-defense in such cases, thereby eliminating a potential (and powerful) argument for the affirmative.

Justification

When is a victim *justified* in responding with deadly force? How we answer this question depends on the meaning we assign to "justification." Let's briefly consider three broad categories of meaning: (1) *legal* justification, (2) *political* justification, and (3) *moral* justification.

Legal justification

An action is *legally* justified if it conforms to a given legal code. If a victim responds with deadly force, should he be punished as a criminal? Debaters who argue this point will be functioning, in effect, as attorneys on opposite sides of a criminal case. As in all such cases, questions of law will take precedence over broader moral issues, such as whether the law is unjust and should be changed.

Political justification

An action is *politically* justified if it is consistent with a given political theory — a theory of

the individual, society, and government. The theory most relevant here is one based on natural rights, a state of nature, and a social contract.

Many seventeenth and eighteenth century political theorists (e.g., John Locke) adopted this kind of theory, and it dominated the thinking of America's founding fathers (e.g., Thomas Jefferson and James Madison). After sketching the essentials of this theory, we shall explore its application to the debate resolution.

"Rights" are enforceable moral claims that one person has against another person. "Enforceable" means that the possessor of a right can justifiably use physical violence (including deadly violence) against those who seek to violate his rights.

"Natural" rights are rights possessed by the individual in virtue of his nature as a human being. Natural rights do not depend for their existence on the wishes or decrees of men, society, or government.

Theorists generally agreed that the most fundamental natural right is the right to life — often called "self-proprietorship" or (in the words of John Locke) "property in one's person." This basic right means that everyone has moral jurisdiction over one's body and labor, the right to decide how one's body and labor shall be used.

A natural corollary of one's right to life is the right of self-defense. If I am attacked or seriously threatened, I have the right to defend myself, and I need not seek the approval of others to do so. The right of self-defense, in other words, is also a natural right.

Political theorists often examined rights in the context of a *state of nature*. This refers to a (hypothetical) society without government, where each individual is in full possession of the "executive power" to enforce ("execute") his own rights.

According to Locke, a number of "inconveniences" would arise in a state of nature where each person enforces his own rights and acts as his own judge and jury, in effect, when resolving disputes with others. For example, we tend to favor our own cause, and this makes it highly unlikely that we can be impartial when our own interests are at stake.

These and similar considerations lead to the

conclusion that individuals should delegate some of their rights to government — an impartial referee who is able to resolve disputes and enforce decisions. More precisely, we delegate to government, not our natural rights per se, but the *power* to *enforce* our rights. This, according to social contract theory, is why government, and government alone, has the right to execute the law by punishing offenders.

How does our debate resolution fare if examined in the light of social contract theory? The answer depends on how we define other key terms. Generally speaking, however, this theory is more useful to the negative than to the affirmative, for the following reason.

No social contract theorist would deny the right to use deadly force for the purpose of immediate self-defense. They would be extremely skeptical, however, of a victim's use of deadly force when time has passed between the assault and the response. Why? Because this delayed response, undertaken when the victim is no longer in imminent danger, resembles *punishment* more than self-defense. And punishment is the proper business of government, not the individual.

According to social contract theory, if a person wishes to correct an injustice, he should appeal to government and eschew personal revenge. The victim may (or may not) have a valid complaint, but what chance does the accused have if his accuser functions as judge, jury, and executioner? Not much, to say the least. Moreover, if every victim bypasses an impartial referee (government, according to social contract theory) and acts as judge his own case, then society will revert to that odious "state of nature" where personal prejudice and revenge triumph over objectivity and justice.

This is why "justification," as interpreted by social contract theory, favors the negative over the affirmative in our resolution. But the affirmative is left with a credible response. According to social contract theory, we delegate the power to enforce our rights to government, but this power reverts back to the individual if the government is unable or unwilling — owing to corruption, inefficiency, or some other reason — to fulfill its responsibility. In other words, if a government defaults on its basic duty to provide justice, then

society reverts to a state of nature where every person may reclaim and enforce this natural right.

Thus, if the negative builds a case based on social contract theory, the affirmative can offer this rebuttal: Our government is unable (for whatever reason) adequately to protect certain kinds of victims in extreme circumstances. For example, suppose a wife is repeatedly and viciously abused by her husband. Suppose further that the husband has made it perfectly clear that, should his wife try to leave or call the police, he will murder her. (Or suppose she has called the police on several occasions, but they did not help her.) Finally, suppose this woman, a few hours after another terrible beating, shoots and kills her husband.

The wife in our example, according to social contract theory, has a strong case. If government fails to protect her, she needn't offer herself as a sacrificial victim to an abusive spouse. She can reclaim her natural right to enforce justice in self-defense. Of course, the law may decide differently and convict the woman of murder or manslaughter — but this merely reinforces the crucial distinction between legal justification and political justification. The verdict of law may (and often does) conflict with the verdict of political theory.

Moral justification

An action is *morally* justified if it conforms to the standards of a given moral theory. If a victim responds with deadly force, was his action morally justified — apart from what the law or political theory may say? Perhaps, if he acted with just intentions or from a sincere belief that his life was in danger. Perhaps not, if your moral theory stresses the objective consequences of an action more than the subjective intentions of the actor. Thus, the moral approach can favor either the affirmative or the negative, depending on the moral

theory you employ.

This subject is difficult to discuss briefly, since moral theories are so varied and complex. But moral philosophers agree on one point: A moral principle, to be valid, must be *universalizable*. In other words, a moral principle must apply universally to every person in similar circumstances. If it is morally proper for you to do X in circumstance Y, then it must be morally proper for *every* person to do X in circumstance Y.

The principle of universalizability can yield interesting results when applied to our debate resolution, because it can force your adversary into awkward corners.

For example, suppose the negative denies the moral right of any victim to respond with deliberate and deadly force (except in immediate self-defense). The right to enforce justice, according to the negative, belongs exclusively to government, never to individuals.

Here the affirmative should respond as follows: "If, as the negative claims, it is morally wrong for individuals to respond with deadly force, then this moral principle must apply universally to every person without exception. In other words, no person has the right to enforce justice. But if this is true, then where did government get its right to enforce justice, if not from individuals? What is government, after all, except a collection of individuals that we have empowered to enforce our rights? The government has only those rights and powers we choose to delegate to it. If individuals do not have the right to respond with deadly force, then that right does not exist — and no one can morally enforce a nonexistent right, including government. Therefore, the argument of the negative collapses from the weight of an internal inconsistency. Either individuals have the right to enforce justice, or that right does not exist."

Analyzing value resolutions

by Dr. John Williams

According to Webster's New Collegiate Dictionary, a debate is "a regulated discussion of a proposition between two matched sides." Whatever else this definition may imply, it is clear that a debate involves a disagreement. One party to a debate maintains that a proposition is true; the other party maintains that the proposition is false.

Disagreements between people in everyday life are not "debates" in the formal sense. The rules and procedures indicated by the dictionary's reference to "a regulated discussion" do not characterize everyday arguments between people who disagree on some issue. Yet when people argue about an issue in a rational manner we can, in a somewhat loose sense of the word, refer to them as "debating" that issue.

Consider the range of disagreements "debates" in this loose sense of the word can involve. Some students in a laboratory disagree as to whether a fluid is sulfuric acid or hydrochloric acid. Two people in a bar disagree as to who won the Rose Bowl in 1957. The members of a town council disagree as to whether they should permit a neo-Nazi political organization to march through the streets of that town.

The first two disagreements are, at least in principle, easily resolved: By carrying out chemical tests it is possible decisively to determine whether a fluid is sulfuric acid or hydrochloric acid. By consulting a reputable recordbook it is possible decisively to discover who won the Rose Bowl in a given year.

Simply, these two disagreements concern matters of fact, and procedures acceptable to each party can be used to determine which party's statement corresponds to reality.

What, however, can we say about the third case? Is it possible to specify a test or checking

procedure that would decisively resolve this disagreement?

Conceivably, members of the town council might agree upon a test or procedure. The dispute might turn upon whether the proposed march satisfied criteria distinguishing a "legally permissible" march from a "legally impermissible" march. By comparing the neo-Nazi organization's application to hold a march against the town's by-laws relating to street marches, the dispute may well be resolved.

It is more than likely, however, that dispute is not so easily settled. One can imagine some members of the town council vigorously arguing that the curtailment of any group's freedom of speech and non-coercive action is unacceptable, even when that group embraces and seeks to promote ideas and ideals most people find repugnant. Other members of the council might retort that allowing such a group to march would cause any citizen of the town whose forbears had suffered at the hands of the Nazis in Europe during the 1930s-40s great anguish, and would precipitate factionalism and tension within the town. The dispute, in short, is in all probability a dispute about values.

Clearly, the disagreement is a real disagreement. More significantly, we can and do distinguish between rational discussion and argument between the parties to the disagreement, and irrational or non-rational exchanges between those parties. Yet while rational discussion and argument is possible, the disagreement cannot be resolved as simply or as decisively as can a disagreement about such matters of fact as the chemical identity of a specified substance or the winning side in some past sporting encounter.

Lincoln-Douglas debate involves the analysis and discussion of what is usually called a value

resolution, as against a factual resolution. The simple disputes just discussed illustrate the distinction. A resolution to the effect that a given substance is sulfuric acid, or that such-and-such team won the Rose Bowl in a specified year, is a factual resolution. The resolution that the Hometown Council should issue a permit enabling a group of neo-Nazis to march through the streets of Hometown is a value resolution.

One further distinction should be noted. A value resolution must not be confused with a policy resolution. A policy resolution, as the very name suggests, is simply a statement of policy. A rule proscribing or prescribing a pattern or behavior or procedure is specified. "Drive on the right-hand side of the road!" prescribes a pattern of behavior road-users are required to follow - at least in the United States of America. In the United Kingdom and Australia an entirely different pattern is prescribed: road-users in these nations are required to drive on the left-hand side of the road. In themselves the respective rules involve no claims to "truth" or to "goodness" - they are simply policies to be accepted, much as is a rule in chess.

Compare the following resolutions:

1. "In the United States of America, the road law stipulates that drivers are to use the right-hand side of the road."
2. "Drivers are to use the right-hand side of the road."
3. "A representative international organization should specify road laws applicable in all nations."

The first resolution is a factual resolution. It is either true or false, and its truth or falsity can be determined by checking the U.S. road laws.

The second resolution is a policy resolution. It specifies how drivers in a given territory are to behave.

The third resolution is a value resolution. It affirms that a given state of affairs "ought" to exist.

Lincoln-Douglas debate involves the third sort of resolution. Consider the following examples:

- ❑ Government should place limits on civil liberties in order to protect social welfare.
 - ❑ A just social order ought to place the principle of equality above that of liberty.
 - ❑ The rights of the victim should take precedence over the rights of the accused.
 - ❑ Nuclear weapons are morally justifiable.
 - ❑ The rights of the mother are more important than the rights of the unborn.
- These topics clearly constitute value resolutions. Such terms as "morally justifiable," "just," "rights" and "should" clearly and unambiguously signal that value judgements are involved.
- Consider, however, the following topics:
- ❑ Tuition tax credit for private school attendance is justifiable.
 - ❑ Deficit financing by the United States federal government is justifiable.
- These topics could be debated in purely economic terms. Yet a little thought indicates that the topics invite a consideration of values. Consider the topic about deficit financing. One could address this topic simply by Keynesian economic theory. Yet questions relating to values are appropriately raised. Is it, for example, "right" if the United States federal government finances its activities by a means which advantages people living in the present at the expense of the next generation? Obviously, before exploring this question - a question relating to values - one would have to demonstrate that deficit financing in fact does benefit one generation by passing on costs to another, but assuming that this factual claim has been adequately defended, the question about values invites exploration. In Lincoln-Douglas debate that invitation is to be accepted!
- How does one argue about a value resolution? Is it possible to proffer considerations which might reasonably lead thinking people to affirm rather than deny a value resolution? These and related questions are the issues we address here.

Facts and Values

Lincoln-Douglas debates, as already noted, involve discussion of value resolutions. Yet it is erroneous to conclude that such discussion is solely about values. Questions of fact are also involved.

Consider the resolution, “Nuclear weapons are morally justifiable.” Obviously, one could not even begin rationally to discuss this resolution unless one knows what nuclear weapons and the effects of such weapons are. Similarly, the resolution “Deficit financing by the United States federal government is justifiable” involves understanding what is meant by deficit financing and considering the consequences of such a practice. The topic certainly demands that one “evaluates” these consequences, but such an evaluation presupposes that one has determined what the consequences are.

Again, resolutions to the effect that the U.S. government should or should not act in ways advantaging particular groups in the United States certainly involve an exploration of values – for example, an exploration of the question as to what the “proper” function of government is. Yet such resolutions also raise questions of fact. For example, the U.S. government might advantage U.S. clothing manufacturers by placing high tariffs upon imported clothing. What, however, are the effects of such a policy upon ordinary consumers? Would jobs, providing otherwise lost goods and services, have been created? Are savings and thus investment then similarly lost? Are jobs protected in the clothing manufacturing industry secured at the cost of jobs in industries producing goods foreign exporters of clothing would directly or indirectly accept in exchange for their products? One might go further than considering only economic consequences: a nineteenth-century French thinker, Frederic Bastiat, once asserted that if “goods cannot cross national borders, armies will.” Maybe protectionism – high tariffs, quotas, and so on – “costs” the interdependence between nations forged by trade and thereby jeopardizes world peace. Examining this possibility may well include a study as to whether free trade or protectionism immediately preceded periods of war.

The general point, however, should be clear. A value resolution is distinct from a factual resolution. This does not mean, however, that debating a value resolution does not involve considering matters of fact. A vital first step in considering a value resolution involves isolating the value judgments and factual judgments such a resolution involves.

Moral, Aesthetic, and Political Values

The resolution “Experimentation using laboratory animals is unjustifiable” is being debated. One side argues (a) that the animals in question are sentient (i.e., feeling) (b) that experimentation frequently subjects sentient creatures to pain, and that (c) subjecting sentient creatures to pain is wrong. It is thus concluded that experimentation using laboratory animals is wrong. Claims (a) and (b) are factual claims. Claim (c) is a value judgment. Specifically, appeal is being made to a moral value judgment. Similar appeals might be expected in debates about abortion, nuclear weapons, pornography, and so on.

Compare, however, a debate on the resolution, “Environmental protection should take precedence over technological development.” One side, having read the poetry of William Blake, refers to the “dark, satanic mills” which allegedly spoiled the beauty of England’s once “green and pleasant land,” and goes on to argue that increased material prosperity takes second place to the conservation of natural beauty. An appeal here is being made to an aesthetic value.

Again, consider the resolution, “Individual liberty is more important than equality.” Discussion of this resolution of necessity involves reference to what one might call “social goals” and the relative importance of these goals. The discussion, in other words, focuses upon political values. Any resolution relating to the desirability or otherwise of a specified form of governmental action clearly raises a general question as to the role government should perform, a question demanding an exploration of political values.

It might be useful at this stage to consider again the value resolutions listed above, asking what values are appropriately discussed when considering each resolution, and whether these values are moral values, aesthetic values, or political values.

- In preparing for Lincoln-Douglas debate, it is important to determine what values – moral, aesthetic, and political – an exploration of the set resolution appropriately involves.

Intrinsic and Instrumental Values

A: “*You should increase the volume of fiber in your food.*”

B: “*Why?*”

A: *"You want to be healthy, don't you?"*

The consuming of a certain volume of fiber is, in this imaginary conversation, prescribed. "A" clearly regards this activity as "desirable" or indeed "good." Yet equally clearly, the value he ascribes to it is instrumental. It is prescribed as a means to an end deemed "good" - namely, being healthy. Consuming a certain volume of fiber is not "desirable" or "good" in itself: the activity is valued because it leads to a "desirable" or "good" state of affairs. If it were shown that the eating of fiber did not bring about this happy state of affairs, or if a more efficient and more enjoyable way of realizing it were to be discovered, then "A" would cease valuing the consumption of fiber.

Suppose, however, that "B" pondered the suggestion that she should increase her consumption of fiber and thereby promote her health, looked bewildered, and asked, "Why should I want to be healthy?" "A" might refer to the pain and discomfort unhealthy people are prone to experience, to the pleasurable sensations healthy people enjoy, to the happiness usually attending good health, and so on. One might argue whether in so responding "B" was giving reasons for desiring good health or was explaining what is meant by asserting that someone enjoys good health. Either way, however, the discussion is clearly nearing its end. Pleasure or happiness are, by most people, valued in and of themselves. They are valued as

ends, not as means. Similarly, pain is, by most people, perceived as a state of affairs to be avoided for what it is, not for what it might lead to. Simply, pleasure and happiness usually are perceived as intrinsically valuable, as intrinsically good. Pain, on the other hand, usually is perceived as intrinsically undesirable, as intrinsically evil.

People can and do disagree as to what states of affairs and experiences are intrinsically good or intrinsically evil. Certainly people frequently disagree as to how one weighs the intrinsically good consequences of an action against the intrinsically evil consequences of the same action - were that not the case, Lincoln-Douglas debates would be very dull indeed! Such disagreements, however, do not undermine the distinction between actions and states of affairs valued for their consequences - instrumental value - and actions and states of affairs valued in and for themselves - intrinsic value.

In preparing for Lincoln-Douglas debate, it is important to distinguish intrinsic and instrumental values. More often than not, Lincoln-Douglas debates involve one side arguing that an activity referred to in the resolution is (instrumentally) wrong because the (intrinsically) evil consequences of the activity outweigh any (intrinsically) good consequences, and the other side arguing the converse.

Thinking About Political Values

Dr. John Williams

The American psychologist/philosopher William James once posed a simple problem that still can generate intense argument. A hunter noted a squirrel happily seated in a tree. The hunter eyed the squirrel; the squirrel, in turn, eyed the hunter. Watching the squirrel intently, the hunter circled the tree. Watching the hunter no less intently, the squirrel turned until he completed an entire rotation, facing the hunter at every stage of his journey. Question: Did or did not the hunter walk around the squirrel?

The debate is more about words than about

the world. If agreement can be reached as to what is meant by "walk around" the problem is resolved. If such agreement is not reached, the debate can continue until the participants either become bored or are reduced to violence, verbal or otherwise!

Listening to formal debates involving reference to political values brings William James' old story to mind. Again and again participants in such debate are doing battle over words and their meaning as much as over the world and its nature. One thinks of such key terms as "liberty,"

“equality,” “justice,” and “rights,” words that are virtually impossible to avoid when discussing (political) value resolutions. All participants clearly “favor” or take a “pro attitude” to the states of affairs and patterns of behavior signified by these and similar terms; precisely what these states of affairs and patterns of behavior are, however, is a matter for serious disagreement.

This essay indicates one way in which key political “value words” can be used. The use is that characterizing what political philosophers and historians of ideas call “classical liberalism,” the political philosophy which was embraced by the Founding Fathers of the United States of America, and informs such seminal documents as the Declaration of Independence, the Constitution, and the Bill of Rights. This philosophy is associated with such early British thinkers as John Locke, David Hume, Adam Smith, James Mill and John Stuart Mill, and such French thinkers as Charles Louis de Secondat (Baron de Montesquieu,) Marie Jean Condorcet, and Alexis de Tocqueville.

From the mid-nineteenth century onwards, some political thinkers have proffered alternative analyses on such terms as “liberty,” “justice,” equality,” “rights,” and so on to that proffered by past and present “classical liberals.” Any reader interested in exploring in some detail the nature of these changes might enjoy a recently published volume simply entitled *Liberalism* (Minneapolis: University of Minnesota Press, 1986) written by an English scholar, John Gray.

The “Halo” Effect

It is worth noting that an enormous disadvantage is incurred by people who state that they are “against” or in some sense “opposed to” “liberty,” “justice,” “rights,” et al. It is therefore not unusual for people to retain the words but change the meaning of these words. The words have what one might call a “halo effect” – an aura of approval which surrounds the words extends to the new meanings given to the words. The same “trick” is used when a definition uses a value word: for example, by defining “socialism” as “economic democracy” the “halo” or “aura” surrounding “democracy” is extended to the word “socialism.”

Ironically – and perhaps confusingly – one key term the meaning of which has changed over the years is the very word “liberal” itself (and thus the word “liberalism.”) Today’s “liberalism” which stresses government intervention in and control of individuals’ lives uncannily resembles the point vigorously attacked by the “classical liberals.” (Look up the word “illiberal” in a dictionary and you will discover an additional reason for people wanting to keep the label “liberal” for themselves and their views!) Hence what political philosophers call “classical liberalism” today sounds like what many people would call “conservatism.”

Enough, however, of the history ideas!

This essay attempts simply to:

- ❑ Outline the analysis of key political value words proffered by past and present “classical liberal” thinkers;
- ❑ Indicate the contrast between this analysis and that of many contemporary theorists;
- ❑ Argue that the classical liberal analysis of key political value words display a consistency lacking in alternative analyses of the same words.

Rights

Literally thousands of books have been written about “rights.” The word is typically used in debates, however, to refer to freedoms or entitlements which all people allegedly ought to enjoy. It is claimed that governments “ought” to respect and defend these “rights” of citizens, “rights” people possess simply because they are people. Frequently such “rights” are indicated by the expressions “human rights,” “natural rights” or “moral rights.”

The obvious contrast is with “contractual rights.” Two parties to a (legal) contract enjoy “rights” specified in that contract. If I employ a builder for some purpose a contract is involved: I contract to pay a certain sum of money for specified services. Given that I pay that money, I have a (legally enforceable) “right” to those services. The builder, given that she carries out the services specified, has a “right” to the sum of money mutually agreed upon when the contract was signed. These “rights,” however, are grounded not in a “shared humanity” but in the

contrast upon which we agreed. Hence the term “contractual rights.”

Compare, however, such claims as “People have a right to life” and “People have a right to a decent income.” Typically, the person making such claims is insisting that all human beings are in some sense entitled to these rights, and that governments “ought” to recognize and defend such rights. This entitlement typically is grounded in what all human beings have in common, namely, a shared humanity.

So far so good: most political theorists agree that all human beings either do enjoy or “should” enjoy “rights” that, unlike contractual rights, are ascribed to people simply because they are people. Yet political philosophers often part company when the nature of these “natural” or “human” or “moral” rights specified.

According to the classical liberal, all rights are negative. What does this mean?

Let us take as an unanalyzed moral concept of the notion of “obligation.” To say that a person has a “right” to do X or to own Y simply signifies, according to classical liberalism, that the person is not obligated, legally or morally, to refrain from doing X or to surrender Y. To assert that you have a right to free speech simply signifies that you are not morally or legally obligated to keep quiet – that is, to refrain from speaking. To assert that you have a right to own a watch simply signifies that you are not morally or legally obligated to surrender that watch.

When a “right” is claimed by, say, a Mr. Jones, he is insisting that other people – all other people – are obligated to respect that right. According to the classical liberal analysis of “rights,” other people are obligated not to coerce Mr. Jones to refrain from doing X or to surrender Y. And that is all.

This may sound absurdly complex or perhaps a verbose fuss about nothing. All that is being said, after all, is that the following “translations” clarify what is meant by the word “right”:

- Jones has a right to do X = Jones is not obligated to refrain from doing X, and other people are obligated not to coerce Jones to refrain from doing X.
- Jones has a right to own Y = Jones is not

obligated to surrender Y and other people are obligated not to coerce Jones to surrender Y.

Yet something vital is at stake. Focus your attention upon the obligations rights generate. According to the classical liberals, these obligations are entirely negative. Jones’ “right” to do something means that other people are obligated not to interfere coercively with Jones’ attempts to do that something. They are not obligated to provide Jones with the material goods or to train him in the particular skills necessary to do what he has a “right” to do.

Jones claims a “right” to climb a mountain. On the classical liberals’ analysis of this claim, Jones is simply asserting that he is not legally or morally obligated to refrain from attempting to climb the mountain. Jones is further asserting that other people are obligated not to coercively prevent him from making this attempt. There is no suggestion that other people are obligated to provide Jones with the equipment or to train him in the skills necessary to successfully climb the mountain.

It is easy though to depart from this understanding of “rights.” If we assert, for example, that every person has a “right” to food or to shelter or to a minimum income we are then doing more than saying people have a right to freely pursue food, shelter, and income. These new “rights” call for other people to do more than simply refrain from interfering with our right to the pursuit of food, shelter, and income (i.e. more than a negative obligation).

Instead they call for positive obligations. In arguing for these new “rights” one must claim that other people are obligated actually to provide the goods and services to which each individual has a (positive) right.

But the claim that there are such things as positive “rights” creates a whole host of new questions. Do we really want to claim that some people’s needs or desires for food, shelter, and income generate positive obligations – legal obligations to do something over other people? Where do these obligations originate? What is the source of the government’s “right” to use force to see that these obligations are carried out? The classical liberals do not have to answer those questions. To be sure, they must answer

the question “From whence the obligation not coercively to interfere with the liberty of other people?” but when this question is analyzed, the onus of proof clearly rests upon those claiming coercive intervention by some is warranted. Since human beings “by nature” are capable of setting their own (peaceful) goals and striving to achieve those goals – that is, are capable of self-initiated and self-directed behavior – the onus of proof rests upon men and women making the extraordinary assertion that some people have a “right” to frustrate this capacity in other people and to impose by force their will upon those people. Several points should be stressed:

- ❑ If all people have the same basic “right” – the right to engage in self-directed behavior the object of which is the achievement of self-chosen goals – no person has a “right” to coerce another. Actually, the classical liberals perceived in this realization the basis for setting up governments-governments exist simply to ensure that no individual or set of individuals did initiate coercion against others. Governments, in other words, exist to protect the equal rights of all – period!
- ❑ References to “human,” “moral,” or “natural” rights suggest that all people at all times enjoy these rights and “should” have – or should have had – those rights recognized. Yet what conceivable sense does it make to assert that all people had a “right” to sufficient food to eat in pre-market societies cursed by destitution? What sense does it make to assert that all people had a right to “adequate medical care” before medical science made such care possible? It makes perfect sense to assert that all people at all times and all places enjoy a right to engage in self-directed, peaceful behavior, free from coercion by their fellows – the basic right affirmed by classical liberals, a right implying the more specific rights to which such thinkers referred.
- ❑ Suppose we agree that all people have a “right” to an income above the so-called poverty line. Immediately we are attracted to some redistributionist measure: money must be taken from individuals possessing more than a specified sum and “transferred” to those possessing less than a specified sum. (After all, the “right” to an income above the poverty line implies an obligation upon others to provide that income.) Yet notice that appeal is not being made to what all people have in common – a shared humanity. Rather, the appeal is to what people do not have in common – viz., a certain measure of wealth!

Rules and results for justice and ethics

The following two articles by Paul Heyne and Dale Miller focus on the distinction between rules and results. In business, sports or everyday life, there are rules that we work, play and live by. The well-worn sports saying goes "It's not who wins or loses, it's how you play the game." If winning is all that counts, then why not break the rules in order to win? This question crosses the minds of businessmen and athletes, as well as students trying to get an "A" in a hard class.

When we contemplate how we should behave in order to get the things we want, we are in the field of ethics. The word "ethics" sounds alarms for many of us, it is a classroom word we associate with textbooks, tests and other unpleasant things. But ethics is an everyday, real-world subject that is more fun and more valuable outside the classroom.

Those in sports have the easiest ethics - their rules for proper behavior are clearly written for them in rulebooks. Their coaches explain the rules, and special judges (referees, umpires, etc.) decide and execute sports justice. In business and everyday life we have a tougher time of it. The

games are more complicated and the rules more complex.

Dale Miller, in "Two Approaches to Ethics," takes a look at two long and nearly indigestible words: consequentialist and nonconsequentialist. In evaluating how we should behave, do we concentrate on the results of our behavior, or on the rules for behavior itself? Is it how we behave, or whether we achieve our ends that counts the most?

A similar question can be asked of societies. Should societies adhere to rules like respecting property rights and enforcing contracts, or are there "social goals" that are more important, like achieving an equal distribution of wealth?

Paul Heyne, in his essay "Two approaches to the question of justice," asks whether justice consists of following specific legal procedures, or whether the legal process should be used as a means to achieve "substantive" goals. Heyne suggests our everyday conception of justice actually consists of trying to avoid injustice, and that we can easily be led astray pursuing particular visions of justice.

Two approaches to the question of justice

by Paul Heyne

Resolved: It is better to let ten guilty persons go free than to punish one innocent person.

What is justice? That question is usually asked with a shrug of the shoulders: "Who's to say?" But is such skepticism warranted? While we rarely spell out in any systematic manner our conceptions of justice, we do regularly support or oppose specific actions and public policies because we believe that justice requires them. Could it be that we know more about justice than we realize?

There are two reasons why our deeds might be far better than our creeds in this area. One is that, when we theorize, we tend to focus on

justice; our behavior, however, is guided by a desire to avoid injustice. Justice is extremely difficult to define in any way that is sufficiently concrete to be helpful in decision making. Injustice, however, can regularly be recognized and avoided. We will often show no hesitation in condemning a practice as unfair even though we could not begin to answer the question, "What's fair?"

The second reason helps to explain the first. When theorizing about justice, we are inclined to assume that justice is a characteristic of configu-

rations or patterns: that justice requires some particular allocation of socially created goods. When we are acting, however, and not being misled by our theorizing, we recognize that social justice is primarily a matter of obeying the rules. We avoid injustice by adhering to the rules that govern the situation in which we are acting.

Consider the case of someone who has been accused of a crime. What does justice require? It requires above all that the relevant rules be obeyed, that the proper procedures be followed. The accused person must receive “due process,” which is the process due to him, the process we are obliged to provide in cases of this sort. If the accused is granted due process, if the relevant rules are adhered to, justice is done.

Or is it? What about the occasions on which a guilty person is acquitted or an innocent person is convicted? We all know that due process doesn’t guarantee a correct decision. Do we really want to say that justice has been done when a guilty person escapes punishment because he could not be convicted under the rules of due process? Procedural justice, many would say, is only one aspect of justice. Justice can and should be defined by reference to results or outcomes as well as by reference to rules or procedures. Procedural justice, they argue, does not exhaust the concept of justice. There is also a substantive justice to which we must pay attention.

The distinction between procedural justice and substantive justice strikes most people as too obvious to require defense. That may be why no one ever defends the distinction and why the concept of substantive justice is consequently able to wreak such havoc in the political realm.

Think once more about the problem of justice under criminal law. We all “know” that justice has not been done, even though the

appropriate procedures were followed, when a guilty person goes free or an innocent person is convicted. But how do we know in any actual case that the convicted person is in fact innocent or that the person officially judged to be not guilty is in fact guilty as charged? The problem of knowing is central. When we push it aside in order to focus on the distinction between procedural and substantive justice, we abstract from the very problem that makes procedural justice so important to any social system. The problem is that none of us is either omniscient or impartial.

Suppose we had among us a judge – call her G – who was both omniscient and impartial. We could bring suspected wrongdoers before the bench of G and she would dispense justice – immediately, directly, and without attention to our rules for due process. In G’s courtroom, procedural justice and substantive justice would be identical; just outcomes would be guaranteed by use of a special just procedure, namely, adjudication in the court of G who has complete knowledge and who dispenses rewards and punishments exactly in accordance with what is due to each.

That is most emphatically not the situation we confront in actual courts of law, where the facts are never known with certainty and where the parties to a proceeding cannot be counted on to lay them out fully and fairly. We must discover what justice requires in each particular case. And the rules of due process are rules for discovering what justice requires.

Procedural justice is the only kind of justice that can be effectively and justly (!) pursued within a society. The determination to do more, to achieve a substantive justice defined in terms of results rather than rules, introduces chaos into the social order and produces injustice in the name of justice.

Two Approaches to Ethics

by Dale E. Miller

Lincoln-Douglas debaters are called upon to make philosophical arguments, but all too often they lack the necessary terminology and concepts. To be successful, LD debaters should be familiar with the two major historical approaches to ethical philosophy: *consequentialism* and *nonconsequentialism* (philosophers seem drawn to unwieldy terms.) LD and policy debaters as well as extempers can benefit from understanding both approaches.

Ideally, 'value debate' resolutions raise questions dealt with in ethics, which might be described as a normative approach to the study of human behavior. Ethics is a search for an answer to the question "How should we behave?" And any question of the form "should we do?" has an ethical dimension.

Approaches taken to answering the question of how we should behave are usually either *consequentialist* or *nonconsequentialist*. These two terms refer to types of ethical theories. Consequentialists say the answer will be in terms of results. They interpret the question of how we should behave to mean "What results should we try to bring about by our actions?"

For example, to answer "How should we treat others (and ourselves)?" consequentialists would condone any behavior necessary to bring about an ethically desirable result.

Nonconsequentialists, however, focus on the nature of behavior itself, not the results, and would not allow any result to justify treating individuals wrongly.

A classic example of consequentialism is the utilitarianism of John Stuart Mill. Mill can be read as saying that we should act so as to maximize human utility (which comprises more than brute happiness, and can be described as satisfaction

or contentment). Thus whenever one is faced with a moral question one should choose the alternative which promises the highest degree of human satisfaction (though this is not easily measured). An example of a nonconsequentialist theory is that of Mill's formidable opponent, the German philosopher, Immanuel Kant.

Kant argued that man should always act as he would want others to act and that he should never treat a fellow human as a means to his own ends. Each person should instead, be treated as an end in himself (this is Kant's "categorical imperative"). For Kant, part of an ethical philosopher's job is to discover specific ethical principles that we can use to guide our conduct. Kant's categorical imperative is a rule for determining whether a specific rule is a moral rule; it is a means for discovering specific ethical principles.

Ethical questions should be answered, Kant believed, by formulating rules such as "it is okay to deceive others when it better our position," and then testing those rules for compatibility with the categorical imperative.

Given certain empirical assumptions about human nature, consequentialism and nonconsequentialism can produce similar results. It is hard to imagine a great deal of human contentment in a world where others use us to advance their own ends, even if we do the same. But the two theories can give us very different answers. Often one answer seems more intuitively right than the other, and such hard cases are often used to question the validity of an ethical approach. Consider the following case, which is often used as a counter-example to Millian utilitarianism.

An angry mob believes an innocent individual

is guilty of some heinous crime. The mob knows he is in a certain area of town, and they will simply ransack that area until he is caught and lynched. You are certain that many lives will be lost. But what if you have an opportunity to painlessly kill the individual, whom you know to be innocent, and by presenting his body to the mob you know that you can prevent a riot. Should you assassinate an innocent man to prevent a catastrophe? It would seem that Mill might be forced to say yes.

Consequentialists may be able to save themselves from this dilemma by pointing out that giving in to a terrorist or angry mob now, encourages terrorists and mobs in the future; their success in doing so will depend on their ability to provide the requisite facts. But while Mill would be forced to balance the various possible outcomes of the killing to reach a decision, Kant would always argue that killing an innocent to stop a riot is using him only as means to an end. Kant would agree that the end is a worthwhile one, but for Kant no result can justify human exploitation.

Applying these theories to LD

Understanding these two approaches to ethical questions can be a real advantage to LD debaters. When preparing for a tournament, a debater should consider which approach, if either, each case (including his own, of course) uses to support the resolution. An effective LD negative consists of using one of two methods of attack, or perhaps combining them. An obvious strategy is to take an opposite approach as your opponent, playing, for example, a Kant to his Mill. You then must be ready to show the counter-intuitive results your opponent's approach gives

in extreme cases (the less extreme the better), and thereby raise questions in the judge's mind about the force of your opponent's arguments.

The second strategy is to accept his approach, and then beat him on his own ground. Agree with him that consequences matter, and then point out the unacceptable consequences lurking at the edges of his case. You've probably been doing much of this already; hopefully this article will have sharpened your recognition of what you were doing, and provided some terminology to get your ideas across.

An LD topic of a few years ago was "Resolved: That civil disobedience is justified in a democracy." A utilitarian affirmative could argue that societies work better when civil disobedience is allowed. The end result is a society with an overall higher level of human satisfaction. A natural rights based reply might argue that the effects of civil disobedience on society are irrelevant.

A natural rights based affirmative might argue that individuals have a right to act according to their conscience (as long as their actions do not violate the rights of others, and that civil disobedience is therefore justified - whatever the results to society). A utilitarian response could then counter that the results of civil disobedience should be the grounds for judging such behavior, right or wrong.

Considering consequentialist and nonconsequentialist theories does not mean you will be casting some magic illusion for the judge's benefit, of course. Your answer will involve a lot more thought than before, but a serious competitor is willing to do this-no one ever said enlightenment was easy. And besides, the problem is not any tougher; you are just ignoring less of it.

Debating about rights

by Dale E. Miller

“Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do.”
Robert Nozick, (*Professor of Philosophy, Harvard University*), *Anarchy, State, and Utopia*, New York: Basic Books, 1974, ix.

A great deal of the literature in political philosophy is devoted to the discussion of rights. Important questions in political philosophy include whether or not we have (moral) rights, if so what rights we have, and in what instances others may be excused from recognizing these rights. In a two-person debate, however, which is no more than the organized discussion of applications of political philosophy, talk of rights is often strangely absent. Debaters generally prefer to limit their arguments to those whose significance or impact can be quantified. This means that philosophical issues are rarely taken up. However, I would not want to claim that only issues in moral/ political philosophy are relevant to discussions of government policy. A debater who limited herself or himself to only advancing qualitative arguments would be hampered in the same way as a debater with a fetish for quantification.

What are rights?

The following definition seems to sum up fairly well what people typically mean to capture with the noun ‘right’: a right is a claim which, if it is exercised, others are obligated to recognize. To say that you have a right to something (i.e. free speech), is to say that should you decide to claim this (in this case by engaging in speech) others are obliged to recognize that this is a legitimate claim, and not to interfere in your exercising it.

Rights can be distinguished on the basis of

whether they are ‘negative’ or ‘positive.’ Negative rights are essentially rights which obligate others to stay out of our lives in various ways. The right to be free from assault is a negative right, for example.

Positive rights are rights to something. They obligate others to enter our lives to provide us with something. Those who argue that the poor or the elderly have a right to some benefits from society at large are arguing for positive rights.

The above is a rather rough-and-ready summary of the most important parts of the ‘rights talk’ vocabulary. What it is not, and what won’t be provided elsewhere in this article, is a discussion of what we have rights to (or to be free *from*), and what the source of these rights is. Many attempts have been made to deal with these questions, and debaters will have no trouble finding discussions of various rights theories. My purpose here is only to claim that in general debaters should be more ready, willing, and able to use arguments which incorporate the concept of rights.

How do I convince judges to accept rights arguments?

This is the big question: “How can I use this to persuade the judge?” The answer is two-fold. Half of it is obvious; you have to present solid arguments. You should have planned responses to questions about the source of whatever rights you are claiming exist. Our political heritage is based on our possessing certain negative rights against governmental interference in our lives; the further outside this mainstream your arguments lie, the more you should expect to be pressed on whether or not we really have the rights in question.

Also consider ahead of time ALL the implications of your arguments. For example, suppose

that you claim all Americans have an absolute right to free medical care. What happens if there aren't enough doctors? Can we start drafting people to study medicine, so that no one will be without free care?

The second half of the answer is the tactical question of introducing rights arguments into the round. I'll talk about a special problem with legal rights first, and then go on to talk about the problem in general.

A real temptation is to make Negative arguments based on the claim that the Affirmative plan violates some legal, for example Constitutional, rights. You might run this as a disadvantage, for example, and claim that this rights violation is the impact. Remember, though, that the Affirmative plan automatically supercedes conflicting legislation, so that you will need to do more than saying that the plan conflicts with existing legal rights.

Or you might run this as a solvency argument, claiming that the plan would not solve a problem because it would be nullified by the courts. First, the Affirmative could say that their plan supercedes conflicting legislation, so that this would not happen. And second, the argument is should-would. Maybe the government wouldn't adopt the plan, but the affirmative need only show that it should.

In general, you need to let your judge know that rights arguments aren't like quantitative arguments, or else they might not know how to factor them into their decision. After settling issues like topicality and inherency, most judges (excluding those who vote on better speaking voices or apparel) reason something like this: "On the basis of the arguments I heard, I expect the Affirmative plan to produce x amount of benefit, and to cause y amount of disutility (or negative effects). X is greater than y, so the Affirmative wins." There is little room here for qualitative arguments like rights claims, because one can't "measure" in any meaningful sense, just how bad it is to violate someone's rights.

For the judge to lend credence to your argument, you first need to present it in the right way. If you are on the Affirmative, you will work it in as an advantage. On the Negative, you might run it as a disadvantage, or you might consider

running it as part of a 'negative philosophy,' or perhaps a justification argument. It is a disadvantage, but running it as such might only cause the judge to note how it differs from other disadvantages presented, and therefore deficient on that basis. Running it in some other format might highlight the fact that it is a special argument without making it a weakness.

When your argument is introduced, push the claim that the quantitative, decision-making model is not comprehensive enough to allow for good decisions in every case. The model offers what we might call practical solutions, but practicality and justice are two different things. An unjust decision is hardly a good one.

You might offer a few examples where everyone would agree that it is more important to do what is right than what is convenient. Almost everyone would agree that it is wrong to steal, even when you can get away with it. It might be the practical, convenient thing to do, but prior to considerations of what is practical we must first determine what is right.

If, as is often the case, several different options appear equally just, decide between them on the basis of practicality. But before entering into such calculations, first be certain that the convenient or profitable choice will not cause a violation of the rights of others: "The notion of a personal right is not a utilitarian notion. Quite the reverse: it is a notion that places limits on how an individual may be treated, regardless of the good purposes that might be accomplished." James Rachel (Professor of Philosophy, University of Alabama at Birmingham, from *The Elements of Moral Philosophy*, New York, Random House, 1986, p. 96).

If you can present a solid case for your plan preventing, or the other team's plan causing, some violation of rights, and you can convince the judge that this is a relevant issue, then you have a powerful weapon with which to confront your opposition. Teams which are still locked into a purely quantitative mode of thinking will have trouble coming to grips with your argument. Since the decision about rights should precede any other decisions (except for debate theory, like topicality), they may find that their arguments have no bearing on the outcome.

Demystifying Democracy

by Dale E. Miller

It is not surprising that most Americans have passionate feelings about democracy. From the beginning of our political socialization at our mothers' knees to the end of it in a high school civics or government course, we hear about the wonders of democracy, and the horrible evils inherent in non-democratic systems.

Over time it becomes easy to believe that democracy has some kind of semi-divine nature. It seems self-evident to us that democratic nations are good and just, and that political or social improvements in foreign lands are the result of them becoming more democratic.

Many seem to expect newly elected Eastern European governments to wave a democratic wand over the land and in a flash bring forth dramatic improvements. But how can democracy by itself create food, clothing, housing, and medical care?

In his well-known book *The Road to Serfdom*, Fredrich A. Hayek helps demystify democracy. Hayek's argument is not that democracy is bad, or that nations ought not to be democratic. Instead he argues that democracy is not everything most of us believe it to be.

Hayek begins his case with the claim that democracy is not an end in itself. Instead, he contends, democracy is valuable only as a means, a tool that allows us to protect those things which are ends in themselves. Hayek writes:

It cannot be said of democracy, as Lord Acton truly said of liberty, that it "is not a means to a higher political end. It is not for the sake of good public administration that it is required, but for the security in the pursuit of the highest objects of civil society, and of political life." Democracy is essentially a means, a utilitarian device for safeguarding internal peace and individual freedom. (p. 70)

Second, Hayek argues that democracy is not always necessary for the above ends to be realized. A society can allow its citizens many freedoms worth having for their own sake, but still deny them the freedom to select their own leaders (Singapore is one of many examples). Hayek explains:

Nor must we forget that there has often been much more cultural and spiritual freedom under an autocratic rule than under some democracies - and it is at least conceivable that under the government of a very homogeneous and doctrinaire majority democratic government might be as oppressive as the worst dictatorship. (p. 70)

Finally, Hayek argues that democracy alone is not enough for the protection of our peace and freedom. Hayek's chapter "Planning and Democracy" is a detailed account of the pressures that push democracies toward authoritarianism. In summing up his work, Hayek tells us that we must be careful not to assume that democratic power will never be used capriciously:

There is no justification for the belief that so long as power is conferred by a democratic procedure, it cannot be arbitrary; the contrast suggested by this statement is altogether false: it is not the source but the limitation of power which prevents it from being arbitrary. (p. 71)

As a side-note, those with a special interest in philosophy should bear in mind that the Athenian polis (city-state) which sentenced Socrates to death was so democratic that even his guilt or innocence was a matter for the majority to decide (Socrates lost 220 to 281).

Democracy is only a means, and is strictly neither necessary nor sufficient to the end of good government.

Sanctity vs. quality of life

by Dale E. Miller

The current LD topic, which requires debaters to present the relative merits of the “sanctity” of life on the affirmative, and the “quality” of life on the negative, can be interpreted in two very different ways depending on how one defines “the sanctity of life.” If this means “the preservation of life, then every individual has a right to decide whether their life is valuable no matter what its quality.

On the other hand, if “the sanctity of life” means “the respect that life should be accorded,” it is possible that preserving life is only one facet, and perhaps not the largest one, of respecting it. This interpretation means that it is more important to respect life than to worry only about its quality. A dictionary is not very helpful in deciding this matter, but debaters should find some way to convince the judge that they are offering the superior reading of the topic.

The negative should advance a narrow interpretation of the topic, and try to force the affirmative to argue that life should always be preserved no matter what its quality. This is a difficult position to uphold, since medical technology is so advanced that we are capable of keeping alive individuals who will never truly recover, and who are in such agonizing pain that every second of life is an incredible burden to them. Many of these patients request euthanasia; they ask that they be allowed to die.

A strong negative would insist that a necessary requirement of justice is that the people who suffer the consequences of a decision are the ones who should make it. Since no one else can lead the painful life of a cancer victim, or another person in extreme misery, that only that person can make the decision about whether to continue living.

The negative can suggest that there is something very wrong about their obviously healthy opponent presuming to judge an individual lying in a hospital bed. How can we know what the right decision is in such a case until we have experienced that type of misery?

While we might find the picture of a person who will “fight death to the end” appealing, how quick can we be to judge those around us for failing to live up to this ideal. And how sure are we that a willingness to bear untold suffering (and perhaps consume enormous amounts of medical resources), in a case where there is no hope and where no one else can be saved or lost by one’s decision, is ideal anyway?

The affirmative can open the topic up by insisting that acknowledging the sanctity of life means giving it a certain amount of respect. But there is more to respecting life than merely preserving it. For example, if a person requests euthanasia the only way to accord them the proper respect may be to honor their wishes. To do otherwise is to deny that they are the “owner” of their life, and thus to deny them an important type of respect which they are due (though no one should be compelled to assist euthanasia).

This point may catch negatives off guard, but it is still necessary to argue that this respect for life is sometimes in conflict with the quality of life, and that respect for life should take priority. Such conflict can arise in two ways. An individual might seek to raise the quality of his own or another’s life by denying the rights of a neighbor the respect which they are due. This occurs today under the guise of various social welfare programs, where the government fails to respect the property rights of the taxpayer in order to try to raise the quality of life of others. A powerful statement in opposition to such a tradeoff is found in the preface to philosopher Robert Nozick’s *Anarchy, State and Utopia*:

“Two noteworthy implications of our possessing rights are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.”

As usual in argumentation the first step is to define the terms, and for this topic, unfortunately, that may be the hardest step as well.

J.S. Mill's "On Liberty"

By Dale E. Miller

This short essay is a tribute to one of the most important political and philosophical essays of all time, John Stuart Mill's "On Liberty." "On Liberty" was published in 1859, when Mill was 53. Since that time it has had a substantial influence not only on social and political philosophy, but also on "real world" political decisions; Britain's Wolfenden Report on homosexuality is one example. There are many reasons for students to read "On Liberty," as I hope to illustrate, among which is the way that "On Liberty" can provide a philosophical perspective on debate resolutions. And not only Lincoln-Douglas resolutions; "policy" debate would be far richer and more interesting if debaters were willing to offer more abstract arguments, and doing so at the right time could make a debater's stance more persuasive and more difficult to rebut.

The basic thesis of "On Liberty" is that each individual should be able to act as he or she chooses, without being subjected to legal sanctions or social pressure to behave in a certain way, as long as his or her actions take place in what is metaphorically referred to as that individual's "private sphere." The boundary of this metaphorical sphere is described by Mill's famous Liberty Principle (sometimes referred to instead as the Harm Principle):

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over us is to prevent harm to others (Mill 1975: 15).

Mill says this "one simple principle" is meant ". . . to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion" (Mill 1975:14-5).

So Mill's claim, then, is that neither legal sanctions nor social pressure should be used to seek to control a person's behavior, when that behavior does not harm anyone else. Note that Mill does not believe that preventing a person from harming himself is a sufficient reason for forcibly interfering in his behavior, although he does believe that it is permissible, and perhaps sometimes almost a moral obligation, to try to convince a person that a change in his behavior would be for his own good- if you can get him to listen (Mill 1975: 15, 95). Note also that this principle does not say anything about what actions society can take to control behavior that does harm others. Mill does have some things to say about this in "On Liberty" and also in his many other essays and books, and I find this aspect of his work quite interesting, but I want to put this to the side while I focus on Mill's idea of the private sphere.

Mill's justification for the Liberty Principle is not what you might expect. Some supporters of human liberty, most notably John Locke, have employed the idea of "natural rights" that are justified by appeal to some non-empirical qualities of humans, for example that they are the creations of a God who intends for them to treat each other in a particular fashion. Mill rejects this approach:

It is proper to state that I forgo any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being (Mill 1975: 16).

To understand Mill's use of utility in this passage it is necessary to have some familiarity with his other works, especially another influential essay titled "Utilitarianism." The short definition of utility is "pleasure and the absence

of pain.” A fuller description of Mill’s conception of utility must make reference to his distinction between higher and lower pleasures, which I think corresponds roughly to the distinction between pleasures that can be enjoyed only by humans and those that humans share with other members of the animal kingdom (Mill 1971: 18-20). I believe that when Mill says that “utility in the largest sense, grounded in the permanent interests of man as a progressive being” he means to say that we should look for the ethical code that best permits human flourishing; the greatest balance of pleasure (weighted according to its quality) over pain. Mill, given his beliefs about human nature- which I will discuss briefly below- thinks that code must include the idea of a private sphere as described above.

Why does Mill think this? There are a variety of reasons for his position. The second chapter of “On Liberty” is titled “Of the Liberty of Thought and Discussion,” and here Mill introduces his famous idea of the “marketplace of ideas.” Mill believes that the freedoms of speech and press, as they are commonly understood (so that they do not include yelling “Fire” in a crowded theater), are at least generally protected by the Liberty principle, and he believes that this is conducive to human well-being because it facilitates discovery and retention of truth. When different ideas are allowed to be expressed and debated it should become apparent which are best justified, and therefore most likely to be true. Mill thinks it is valuable to allow even ideas that are widely believed to be challenged, both because they may be wrong and because this will prevent them from becoming stale dogma. And Mill believes, as seems plausible although it is always possible to dream up counter examples, that humans are likely to fare better in terms of utility when they have true rather than false beliefs.

The third chapter of “On Liberty” is titled “Of Individuality, as one of the Elements of Well-Being.” Here Mill argues that each person, to be happy, must be able to develop those parts of her personality that distinguish her from other people. She must be able, in short, to express her individuality. And to discover this part of her own personality, she must be able to engage in

“experiments in living” that will let her see how different lifestyles suit her. Mill believed that a stifling pressure to conform, like that he saw operating in the England of his time, cuts off important areas of human happiness.

One of the most important questions that someone defending Mill’s position has to deal with is just what constitutes harm. At the very least, it surely includes physical pain or damage, and very probably includes damage to property as well. Mill says that harm does not include the feeling of sorrow that those close to us might feel on seeing us harm ourselves (Mill 1971: 99-101). But what else? What about offense, or moral outrage? And how clear must the connection be between my actions and someone else’s harm before my action is subject to control by society? Mill does say that the connection must be more direct than that exists when one sets a bad example that others follow, but this still leaves questions to be answered (Mill 1975: 102). For example, it has been suggested- I admit that I am not sure of strength of the scientific evidence for this contention, if any- that there is some causal connection between men viewing pornography and raping women. Obviously it is not the case that every man who glances through a copy of Playboy will turn into a rapist. How clear and direct must the connection between the action of publishing pornography and an undeniable harm be before we are justified in saying that the action is not protected by the Liberty Principle?

These questions illustrate some of the challenges that Mill’s work leaves us. Yet despite the fact that it leaves unanswered questions, “On Liberty” is a powerful and fascinating essay that can give a debater a consistent philosophical position from which to advance an affirmative or negative case. I think that Mill’s Liberty Principle has a great deal of popular appeal, and that his defense of it in terms of human well-being instead of some more abstract metaphysical doctrine will make its justification accessible to a wide audience. And strategic considerations aside, “On Liberty” is something that every educated person should have read simply because it is so important and so intriguing.

And there is no good reason *not* to have a look at “On Liberty.” While some of the most

intractable pieces of prose ever written have come from the pens (and now word processors) of philosophers, “On Liberty” is highly readable, as is Mill’s work generally. It is widely available; most libraries will have several copies, as will new and used book stores.

And it is a quick read; in the edition I am using, “On Liberty” falls well short of 150 pages.

So for a very small investment, “On Liberty” holds substantial benefits for its reader, especially for those involved in debate.

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Pro Patria: Risking life for country

by Dale E. Miller

Lincoln-Douglas debaters will soon be battling over the proposition that an individual has a moral obligation to risk his life for his country when his government calls upon him to do so. The resolution does not specify that the service in question must be military service, yet a call to arms is the paradigmatic way that governments call upon citizens to risk their lives. I therefore want to look at the issues debaters will face as they consider whether citizens have an obligation to serve in their country’s military when their government calls.

Conscription or an All-Volunteer Force?

First, the phrase “when called upon” in the resolution is ambiguous. We can illustrate the ambiguity with the example of military service. There are two different ways that a government might call its citizens to arms. The first is to call for volunteers; President Clinton might make a public appeal during an address, or “Uncle Sam Wants You” posters might once again appear. A second and very different way that the government might call its citizens to arms is to draft them—to use the police power to compel them to serve.

Clearly there are questions raised by this second way of calling upon citizens that are not raised by the first, e.g. whether conscription is an impermissible limitation of liberty. An Affirmative might wish to refrain from advocating con-

scription, and argue that, while citizens have a moral obligation to volunteer when called by their government, this moral obligation should not be turned into a legal obligation. This would certainly give the Negative a “smaller target”; no doubt every Negative will have prepared arguments against conscription, and this Affirmative strategy would render these otiose.

Debaters should have no trouble finding material related to conscription, which is a subject certain to arise in many rounds. Of course, publications from the time of the Vietnam war will be a good place to look for this material. For a libertarian or classical liberal take on this subject, I recommend looking for a 1960’s periodical, *The New Individualist Review*. *NIR* was published by a group of students at the University of Chicago in the 1960’s, headed by Ralph Raico, and with the advice and support of faculty members including Milton Friedman and Friedrich Hayek. Liberty Fund has collected every issue of *NIR* into a large bound volume, and it would be a good addition to a debate program’s library because of the quality of the writing and the breadth of issues discussed. The Spring 1967 issue, devoted to a symposium on conscription, will be very useful on this topic (conscription is discussed in other issues as well). [The 991-page *NIR* is available from Laissez-Faire Books, 1-800-326-0996]

Just and Unjust War

Another ambiguity in the resolution stems from the word ‘when.’ One obvious reading of the resolution is that the individual has a moral obligation to risk his life for his country whenever called by the government. On this interpretation the resolution makes a strong claim, and this works to the advantage of the Negative. If we understand the resolution in this manner then the Affirmative has to claim that however poor the government, and however bad its decision, the individual has an obligation to heed its call.

Again, this is an ambiguity inherent to the resolution. But it has especially important implications in the context of military service, because there is such a tremendous potential for a soldier, who is employing violence, to act immorally. Wars, or at least parts of wars, can easily be unjust (for a contemporary discussion of the circumstances in which a war is unjust see Michael Walzer’s *Just and Unjust Wars*). If we read ‘when’ as ‘whenever’ then the resolution says that citizens have a moral obligation to participate in unjust wars when called upon by their governments (notice that if ‘when’ means ‘whenever’ then the Affirmative cannot simply choose not to talk about military service)

This position may be exceedingly difficult to maintain—an imaginative Negative can invent an endless supply of examples that show how implausible it is. Did German citizens have an obligation to serve in Nazi armies? Did Chinese soldiers have an obligation to massacre students in Tiananmen Square? If historical examples are not enough, hypothetical ones are fair game also. If the United States called for an invasion of Canada, perhaps on the ground that a foreign World Series winner cannot be countenanced, would our citizens have an obligation to participate in this absurdity?

It is unfortunate that the resolution lends itself so easily to an interpretation that makes one debater’s position so difficult. Since the resolution does not put any explicit limitations on the instances in which an individual is obligated to heed his government’s call, it will be hard for the Affirmative to maintain that “when” does not mean “whenever.” The Affirmative should avail herself of the phrase “for their country” in

the resolution by claiming that the resolution does not call for the individual to take risks that do not substantially contribute to his country’s well-being. This will not rule out all of the Negative’s examples, but it will limit them somewhat. Also, the Affirmative can try arguing that as a matter of debate theory any interpretation of the resolution that makes it either obviously true or obviously false destroys the possibility of debate and that any interpretation that undermines the activity should be rejected; hopefully judges can be convinced that the resolution should be affirmed if it applies in a reasonably wide range of cases.

The Affirmative may also want to exploit a distinction that moral philosophers sometimes draw between our “prima facie” moral obligations and the obligations that we have “all things considered.” If I have promised to undertake some act on your behalf that has to be performed at a certain time, perhaps returning a library book before the library closes, then we may want to say that at first glance I have a moral obligation to perform the act. But suppose that on the way to the library I see a baby drowning in a fountain, and that saving the baby will preclude me from returning the book. Probably we will all agree that what I ought to do is to save the baby. We might say that my obligation to return the book evaporates when I see the baby and become obligated to rescue it. Yet we might also say that my duty to return the book persists, but is outweighed by my obligation to save the baby; in this case we will say that even though I have a prima facie obligation to return the book, it is not an obligation that I should act on all things considered. The Affirmative might say that we do have an obligation to risk our lives for our country when our government calls, but that this obligation can be outweighed by others, such as the obligation not to support an unjust regime or the obligation not to fight an unjust war.

Defending One’s Country

I have shown that there is reason to doubt that conscription is justified, and that a citizen has a moral obligation to serve in certain types of wars (e.g., unjust wars). Now I want to discuss the conditions under which a citizen might have an obligation to serve as a soldier for his or her

country. It seems to me that the best case for this obligation can be made in a situation where the citizen's country is the victim of an unprovoked invasion. A war of defense against an unprovoked aggressor is surely a just war if any is, and a citizen's obligation to defend her own country against such an aggressor cannot be any weaker than her obligation to defend any other country and is likely stronger.

The question whether a person has an obligation to defend her country is a controversial one; by saying it is controversial I mean that different plausible moral theories might arrive at different answers to it. Someone who accepts an egoistic moral theory, e.g., Ayn Rand, will believe that an individual is obligated to defend her country just if doing so will benefit her more than not doing so. This may sometimes be the case, especially if the social stigma and other penalties attached to not resisting are sufficiently severe.

Likewise, utilitarians will typically determine whether people have an obligation to defend their country on the details of the circumstances in which the question arises. A straightforward utilitarian will base his determination on the best information that he can get about what the consequences of a given individual's participation or non-participation in the resistance of the invasion; the utilitarian will (more or less, for utilitarians come in many varieties) say that the person should act in the manner that will maximize the overall level of happiness (utilitarians are often vague about their answer to a question that is very important here, which is whether it is the happiness of the person's own society that counts, or overall level of happiness worldwide).

Moral theorists who invoke some form of "social contract" will attempt to determine whether there is some agreement between citizens to contribute to each other's mutual protection. Surely there is no explicit agreement to this effect in the United States, but it may be that United States citizens have tacitly agreed to the defense of our nation. A better case for the existence of such an agreement might be made in countries like Switzerland and Israel, where citizens must either renounce their citizenship or serve a term in the military. Anyone attempting to make a social contract argument for the

existence of an obligation to defend one's country will must take account of, among other things, the fact that not all citizens might be equally party to the contract. For example, black Americans might well believe that their share in the rewards of US citizenship have been less than those of white Americans, and that therefore they have less reason to defend their nation than whites (the rap group Public Enemy has a song titled "Black Steel" that addresses this point).

There really is no classical liberal or libertarian answer to the question of whether citizens are obligated to defend their country against unprovoked aggression. This simply illustrates the fact that what unites classical liberals or libertarians is a basic agreement on certain matters of political policy, which in general translates into a limited role for government. Classical liberals and libertarians often disagree, sometimes bitterly, about more fundamental questions of moral theory (on this see Norman Barry's *On Classical Liberalism and Libertarianism*).

I want to close by mentioning a particular strain of classical liberal thought that especially interests me, and that may well lead to the conclusion that citizens do have an obligation to defend their nation. This is a version of classical liberalism that is influenced by the republican tradition in political thought, a tradition that has its roots in the political thought of the classical Greek and Roman societies. In both of these societies there were traditions of citizen involvement in public affairs and of military valor; citizens were expected to be ready to take up arms on behalf of the polis, or of Rome. These traditions were an important influence on certain later political theorists, especially those who are considered to be part of the republican tradition in political theory. In both *The Prince* and the *Discourses* Machiavelli stresses the importance of a citizen militia to the preservation of a nation; J.G.A. Pocock's *The Machiavellian Moment* is tough reading, but it discusses thoroughly the place of the citizen militia in the thought of Machiavelli and his republican contemporaries. Another republican, Rousseau, chillingly writes in the *Social Contract* that:

Now the citizen is no longer judge of the risk to which the law wills that he be exposed, and

when the prince has said to him “It is expedient for the state that you should die,” he ought to die. Because it is only under this condition that he has lived in safety up to that point, and because his life is no longer only a favor of nature, but a conditional gift of the state.

There are interesting questions to be asked about the extent to which republican ideals are compatible with individual liberty (I find these questions so interesting, in fact, that I have

made them the focus of my Ph.D. dissertation). Some classical liberal thinkers, most notably John Stuart Mill, attempted to integrate certain republican ideals into their work (for more on this see Stewart Justman's *The Hidden Text of Mill's Liberty*). Of course, the extent to which an ideal that states citizens are obligated to serve the country, and perhaps even to die for it, is compatible with liberty will depend in large part on the extent to which political coercion is used to promote the ideal.

Prosecution of guilty vs. protection of innocent

by Dale E. Miller

The 1994 National Lincoln-Douglas debate topic is: “Resolved: When in conflict, protection of the innocent is of greater value than prosecution of the guilty.” In this article, I will try to guide those fortunate enough to be debating this topic in understanding the resolution. I will then look at some of the issues debaters ought to take into account in preparing their cases.

Understanding the Resolution

One virtue of this resolution is that it makes very clear just what values debaters are meant to uphold. Another virtue is that both of the values in question, protection of the innocent and prosecution of the guilty, are things that everyone will recognize as important values – they are both goods that we would like our criminal court system to secure. Ideally, we think, no innocent person should be prosecuted, but every person guilty of a crime should be prosecuted (or, more cautiously, every person guilty of what should be a crime).

With the competing values identified, the next step in understanding the resolution is thinking about when they are in conflict. One obvious situation where they conflict is in the disposition of specific criminal cases. Every time a criminal charge is made, civic officials—agents of the criminal justice system—such as judges, attor-

neys, police officers, and members of juries, must make decisions which will involve assigning relative priorities to these values. When the District Attorney decides to prosecute a suspect for a crime she must rely on the testimony of others along with related evidence.

A second situation is in the design of criminal procedures that will affect the outcome of a number of cases. Decisions about what rights should be given to defendants will involve a weighing of these values, for example.

How and why do the values of protecting the innocent and prosecuting the guilty conflict in these situations? Realize that in a perfect court system, there would no conflict between these values. Consider, for example, the way that justice is dispensed in certain Monty Python sketches: the hand of God descends from the heavens to point out the guilty. In this sort of system there is absolutely no uncertainty about who should and should not be prosecuted; the values of protecting the innocent and prosecuting the guilty can both be secured because every guilty person could be prosecuted and no one else.

But in the real world criminal cases always involve uncertainty; mistakes can be made. There are two different sorts of mistakes that can be

made: a guilty person might be found innocent, or an innocent person might be found guilty. The decision to prosecute or punish a person, if there is even an infinitesimal doubt about his guilt, will mean running some risk of harming an innocent.¹ On the other hand, the decision not to prosecute a person runs the risk of letting a guilty person go unpunished.

Some criminal procedures, and some decisions by individual agents of justice, might promote both of the values in question; this will generally be true when the result is more information being gathered. For example, the decision by police officers to gather more information in a case might make it easier to prosecute the defendant if she is in fact guilty, but harder to do so if she is in fact innocent. But eventually a decision has to be made about whether to punish her or not, and at this point a decision that involves a conflict between the protection of the innocent and the punishment of the guilty has to be made. Further, procedures must be in place to guide this decision, and the formulation of these must have involved a similar conflict.

As I said above, both of the values under discussion are generally recognized as important. It is easy to see, however, that few people would regard either as being absolutely more important than the other; when I say that one value is absolutely more important than another, I mean that it would be a mistake to sacrifice even a little bit of the former to obtain even a great deal of the latter (for example, some would argue that it is a mistake to sacrifice even a little bit of justice for any amount of material comfort, if these two values conflict). If protecting the innocent was regarded as absolutely more important than prosecuting the guilty, then we would never prosecute anyone for anything because we would never be willing to run the risk of a mistaken prosecution. If prosecuting the guilty was regarded as absolutely more important than protecting the innocent, then I suppose we would prosecute everyone for everything, just to make sure no lawbreaker was missed. But both approaches would be silly. Instead of having all of one at the expense of having none of the other, we want our system to be balanced so that it will attach some importance to each value when they

conflict, and will secure each at least partially. Debaters will be contending about just where this balance should be struck.

Affirmatives should watch out for negatives who will argue that since neither value is absolutely more important than the other, they are equally important. This doesn't follow; although it can be tricky to argue for, it does make sense to say that although neither value is absolutely important we should be willing to give up relatively large amounts of one in exchange for a relatively small amount of the other. This resolution offers the perfect example; it is a well-known adage of the American criminal justice system that it is better for twelve guilty men to go free than for one innocent man to be wrongly convicted. This adage expresses one balance that might be struck between the values of protecting the innocent and prosecuting the guilty; neither is given absolute importance, but relatively speaking the protection of the innocent is accorded more importance, even if we take the quantification more as a vague expression of priorities than a literal attempt to formulate an exact equation between the values.

Striking the Proper Balance

In formulating their cases debaters will want to be sensitive to why protection of the innocent and prosecution of the guilty are values. One reason that both matter to us is that they protect our security; on the one hand our security is threatened by the prospect of being punished for crimes we did not commit, but on the other we feel safer when we know that real criminals have been put behind bars, and less secure when they are not prosecuted but left on the streets.² In Chapter V of his essay "Utilitarianism" philosopher John Stuart Mill writes that security is "the most vital of all interests." The Negative will want to point to the rising threat of crime in America, something which everyone has been affected by in one way or another. They should point out that if we make it difficult to prosecute criminals, for example by placing obstacles in the way of police officers gathering evidence (e.g., via the Exclusionary Rule), placing an overly strong presumption in favor of the defendant's innocence (e.g., requiring guilt to be shown beyond a reasonable doubt), stressing the juror's duty not to vote for a

conviction unless certain of the defendant's guilt, etc., this will make it tougher both to get criminals who have been caught off of the streets, and to deter criminals or potential criminals who have not been caught.

Affirmatives will want to counter by stressing that being punished for a crime is one of the worst things that can happen to a person, and that even a very slight risk of this occurring is a grave threat. Negatives may play upon judges' emotions by relating some stories about people who were victims of crimes that might have been prevented if criminal convictions were not so hard to obtain in this country; Affirmatives might counter with stories about the horrors of a contemporary penitentiary (Tom Wolfe's *The Bonfire of the Vanities* does an excellent job of describing the psychological terror many people experience at the thought of being sentenced to such a place). Remind judges that unless the system goes to substantial lengths to protect the innocent, we are all more likely to face unjust incarceration.

Affirmatives may also want to explore this line of analysis: if it is relatively easy to obtain criminal convictions, because neither the procedures of a nation's criminal justice system nor the mindset of individual agents within that system place a high priority on protection of the innocent, then the government - the body responsible for initiating criminal cases - has a powerful weapon that can be used to coerce citizens into serving its ends, whether these are legitimate or not. In the former Soviet Union, the relatively weak concern with protecting the innocent was used as a political weapon against dissidents. Defendants there were presumed guilty, having to prove their innocence, as opposed to the strong presumption of innocence that exists in the American system.

Affirmatives should keep in mind that the resolution does not call on them to defend the American criminal justice system. It is true that the Affirmative must defend the relative importance of protecting the innocent, and that - as I noted above - the American system places a very high value on protecting the innocent. However, this does not mean that the Affirmative case

stands or falls with the desirability of the American system. Suppose the Negative makes out a convincing case that the American system places far too high a priority on protecting the innocent. The Affirmative might respond that while protecting the innocent should be a higher priority than prosecuting the guilty, the Negative is right in saying that America takes this too far. Remember the "twelve-to-one" adage, which loosely expresses the relative weights that the American system puts on these values in theory. Even if the more appropriate ratio was three-to-one or two-to-one, the resolution would still be true. Press the negative by asking: "Is it really just as bad for one guilty person to go free as for an innocent person to go to jail?"; most people will find the second scenario worse, I think, even if not twelve times worse. Also, the Affirmative should not get caught up defending specific American policies. Suppose the Negative attacks the policy of requiring police officers to read suspects their rights before questioning them. Whether or not the Affirmative wants to defend this policy, he should make it clear to the judge that the round should not turn on one specific policy, but rather on whether protecting the innocent is more important than prosecuting the guilty overall.

Notes

1. I will generally use 'prosecute' and 'punish' as synonymous, but debaters might see if they can make use of the fact that they are really quite different, and that by being found 'not guilty' a person might be prosecuted but escape punishment. It should be borne in mind that innocent persons will value protection from having to undergo prosecution, with all of its attendant costs, even if they are assured of ultimately being vindicated and avoiding punishment. Prosecution may feel like punishment, even if it is not.
2. I have been assuming, as I think the framers intended, that "protection of the innocent" means protection of the innocent from criminal prosecution/punishment. But Negatives may be able to do something with the idea that prosecution of the guilty does protect the innocent - from crime. It is not clear where this argument will go; it might be used to show that the two values don't conflict as much as we might think, but it does not really help to establish that prosecuting the guilty is more important when they do.

America's radical past

by Gregory F. Rehmke

History textbooks, in trying to temper the sharp and sometimes bitter controversies of the past, tend to squeeze out the excitement. History is a dangerous subject, and the authentic past is full of alluring and sometimes subversive ideas.

What history text would be comfortable with Patrick Henry's concluding judgement, from the Virginia ratification debates, of the U.S. Constitution's system of checks and balances: "There will be no checks and balances, in this government," roared Henry, "What can avail your specious, imaginary balances, your rope-dancing, chain rattling ridiculous ideal checks and contrivances?" Patrick Henry, George Mason, and other leading anti-federalists argued forcefully and cogently against the new federal government with its, in their view, inadequate Constitution.

Conservatives and market liberals today are regularly chastised for being too skeptical of government, too quick to doubt the state's power to serve the public and heal society. Those who argue against government management of the environment or of health care are labeled free-market ideologues, or Reaganites. Yet American history reveals starkly the growth of state and federal government and the decline of voluntary community institutions. Health care is only the latest casualty.

The people who founded this country shared a skeptical view of government because at root government involves coercion. Only the institution of government could enable one man to legally coerce another. Force and power were themes fresh in the minds of Americans from the pre-Revolutionary years of dealing with the edicts of the English government.

Harvard historian Bernard Bailyn gives us a glimpse of the thoughts - missing from history textbooks - of Americans in the founding era:

The theory of politics that emerges from the

political literature of the pre-Revolutionary years rests on the belief that what lay behind every political scene, the ultimate explanation of every political controversy, was the disposition of power... The colonists had no doubt about what power was and about its central, dynamic role in any political system... What gave transcendent importance to the aggressiveness of power was the fact that its natural prey, its necessary victim, was liberty, or law, or right. The public world these writers saw was divided into distinct, contrasting, and innately antagonistic spheres: the sphere of power and ... of liberty or right. The one was brutal, ceaselessly active, and heedless; the other delicate, passive, and sensitive. The one must be resisted, the other defended, and the two must never be confused.

(Bernard Bailyn, Ideological Origins of the American Revolution, Harvard Univ. Press, 1967, p. 55.)

Is it any wonder that such ideas are missing or watered-down in history textbooks? Lord Acton shared this belief that history was a record of the long and ceaseless struggle for liberty against power in relations between people. For Acton the events of history and the books, beliefs, battles, conquests, and revolutions are steps in the long struggle of men to free themselves from the domination of other men. Individual liberty gradually and fitfully appears in the Western world.

Modern "liberals" often embrace socialistic approaches to social problems. They often perceive social problems as caused by too much private sector power by businesses and wealthy individuals. Modern "liberals" have faith in the centralized politics of power as the means to achieve liberal ends. Market liberals, on the other hand, place *their* faith in markets (not surprisingly) as well as other voluntary institutions.

The approach to universal health care is illustrative. Market liberals recommend eliminating laws and regulations that limit the supply of

less expensive health care and health care insurance. Modern “liberals” call for further price controls and an expanded state role in health care.

History becomes, in part, a struggle between good and evil – a study of good intentions followed by evil results, with “good” and “evil” measured by their actual effects on individuals and societies. The study of history in understanding the events of the past is, in a sense, an act of self-defense.

The study of karate or guns prepares us for possible confrontations with thieves and muggers. The study of history prepares us for defending ourselves and our families against thieves and muggers operating from within the legal system. Karate trains our hands and feet as weapons to attack assailants. History allows us to draw upon a knowledge of the past for political weapons – writing and speaking skills for letters, pamphlets, speeches, and debate.

Hitler came to power in Germany (he was elected!) because of a lack of spirited and informed public arguments against his Nationalist Socialist (Nazi) agenda. If National Socialism or something like it comes to America it will not come with goose-stepping soldiers and swastikas. It will come in an American version, mixing nationalism with democratic themes and concern for the disadvantaged.

For those who wish to research the broader historical background of the push for nationalist socialist health care and other policy debates, recommended readings include: Robert Higg’s *Crisis and Leviathan: Critical episodes in the growth of American government* (Oxford Univ. Press, 1987), John T. Flynn’s *As We Go Marching* (Free Life Editions, 1973 (orig. published in 1944)), and an anthology, *The Politicization of Society* (Liberty Fund, 1979).

Only people have preferences

by Gregory F. Rehmke

It hangs there disembodied, unconnected, floating motionless with meaning mysterious. It says “Resolved: A liberal arts curriculum is preferable to an employment-readiness curriculum.” It is the suggested September/October Lincoln-Douglas debate topic published in *The Rostrum*. “Disembodied” because there is no “body” nearby, that is, no clear indication of who is referred to by the word “preferable.”

The resolution begins, “A liberal arts curriculum is preferable...”, but preferable to whom? Preferable to the teachers who are to teach such a curriculum? To the administrators who are to administer it? To the taxpayers whose taxes will fund it in state schools? Preferable to the business community? Preferable to the parents and students who are apparently to be offered the choice of *either* liberal arts *or* employment-readiness educations? Or, preferable to the

students who will ultimately have to endure what is chosen for them (say the pessimists), or will flourish by it (say the optimists)?

The standard answer is to say “preferable to society,” or, if that is not general enough, “preferable to society as a whole.” But who or what is “society” and “society as a whole”? Does whatever it is that this term and phrase refer to actually have preferences? And if so how are we to know what these preferences are, and how are we to debate them?

Only people have preferences

Societies don’t act--except perhaps as occasional mobs--and societies do not have preferences. Human beings act, have preferences, and are at the center of any value debate topic. And since students, parents, teachers, administrators, and taxpayers all may have their individual preferences with regard to the question of em-

ployment-readiness or liberal arts educations, whose preferences should carry the most weight?

Liberal arts educations

A couple points are worth making. First, it is doubtful that any curriculum could better prepare students for employment than a good liberal arts education—providing, of course, that there is some relationship between the curriculum and what students actually learn. Thinking, reading, writing and calculating skills, along with a broad acquaintance with the history and literature of western civilization—these basics of a liberal education are treasured in the business world. In fact such a liberal arts education enables young people to soon move beyond the realm of “employment-readiness” to the world of “employer-readiness.”

“Employment-readiness” is not really much of a goal. Anyone who can learn to get to work on time and do what they are told is employment-ready. Job skills develop with experience and practice, not in the classroom. Students will continue to learn far more about employment by becoming employees in summer jobs.

A good liberal arts education does not accli-

mate the mind for life as a drone on some assembly-line. An “entrepreneurship-readiness” curriculum would be a higher goal, but would still be all but impossible to teach in the classroom.

A liberal arts education is as much a voyage of self-discovery as it is of world exploration. It is active, not passive, as students are drawn into the dialog of active learning and discussion. People must discover for themselves what their own deepest interests and inclinations are, and must discover in what occupations and industries these interests and inclinations are valued. Those who manage to match their inner desires (or “being-values” as Abraham Maslow called them) with their careers are most likely to lead happy and productive lives.

The average classroom experience, however, seems designed to block such discoveries and experiences. Neil Postman and Charles Weingartner, in *Teaching as a Subversive Activity* forcefully attack most classroom activities (importantly, their criticisms do not apply to speech courses). The two excerpts from *Teaching as a Subversive Activity* included here underscore the difficulty of debating this disembodied value resolution.

Nightmare on Lincoln-Douglas Street

Gregory F. Rehmke

“Resolved:” says the new National Forensic League topic, “The United States Government ought to provide for the medical care of its citizens.” Few national LD or CX topics been so straightforward in their advocacy of socialism. But in recent months the news media has provided a steady drumbeat of stories favoring national health care.

Of course, arguments advocating less socialism for American medical care can always be used on the negative. Or you could strain and twist “ought to provide for” into meaning that the Government should maintain the “infrastructure” necessary for adequate medical treatment

of its citizens (i.e. free markets and property rights). That is, one could argue that “provide for” really means “not provide for”—and then you could claim that “up” really means “down” and “left” means “right.”

No, the resolution says the government ought to provide medical care even if it turns out to be poor medical care—which it has in most countries that have tried socialized medicine. Countries like the old USSR, Romania, and Cuba all insisted that it was government’s responsibility to provide medical care to all. Many of the same advocacy groups lobbying for national health care today were until a few years ago singing the

praises of the Soviet's socialist health care system. More recently, national health care advocates have praised the decaying government health care systems in England, Canada and Sweden.

Debaters can argue that people have a right to medical care that the government ought to provide for. "Rights-based" arguments for national health care have been discussed in past issues of *Econ Update*. (February, 1991. Just write, call or fax for a free copy.)

National health care reminds me of an old *Nightmare on Elm Street* episode. A dreaming teenage patient is resting in bed when an attractive young nurse enters the room. She is a little too attractive though, and when she embraces her teenage patient she transforms into Freddy Kruger and slices him to bits. She was seductive in the way socialized medicine is seductive—it seems to offer the dream of free, high quality medical care for all. But the reality is more like an Elm Street nightmare.

Both economic analysis and historical evidence point to severe problems with socialized medicine. Many debaters will rely on utilitarian rather than natural rights arguments to advocate socialized medicine (and most will steadfastly avoid describing their position as favoring socialism).

National health care, it is claimed, would improve care for the millions who are today uninsured. Free check-ups and early treatment will actually save money, it is argued, since many without insurance or money now wait too long to seek treatment when they are sick.

These are all good reasons for advocating an improved health care system. But while it is doubtful that a more-socialized health care system can achieve these goals, it is likely that a less-socialized health care system can. For more information on why this might be so, contact the National Center for Policy Analysis, Heritage Foundation, Heartland Institute, or Cato Institute for copies of their recent health care policy studies. See also *Reason* magazine's March, 1992 issues on health care.

Medical care, like every other economic good, is scarce. There are a limited number of doctors,

nurses and hospitals and a limited supply of medical equipment. The challenge in any modern society is how to ration scarce medical resources among the multitude of people who want medical care.

It would be a fairly simple thing to provide everyone access to basic medical care, that is, access to local medical practitioners—doctors or nurses with medical bags full of equipment and supplies. Basic medical care like this would probably be enough for 95 percent of the people 95 percent of the time. Such basic medical care (were it not heavily regulated and restricted at the behest of the current medical establishment) would be inexpensive and adequate *most* of the time. If we could ignore the few who on occasion require vastly expensive high-tech care, universal health care would be a much simpler proposition. But we can't ignore these people—and needless to say, they usually do not want to be ignored. England's socialized health care survives in part, for example, by not providing expensive medical treatments for the elderly.

Most medical expenses are incurred in the last few years of life as our bodies gradually cease functioning—our bodies seem designed to die after a certain age, which varies from person to person. Sometimes expensive medical intervention in these last years is painful and ineffective. But sometimes too, such medical treatments allow elderly people to recover and live for years. Who, other than the patient and doctor, should be able to decide whether a particular medical treatment is worthwhile?

In England such decisions are influenced by the National Health Service. Some very expensive treatments for elderly patients are simply not available. The rationale is utilitarian: since health care resources are scarce, younger people with longer lives ahead of them should have priority access to medical care. There is no way to avoid a trade-off somewhere because no country is yet rich enough to provide virtually unlimited medical care to every injured, sick or dying person.

To simply say that the U.S. government ought to provide medical care for everyone gives no clue as to how such scarce medical care will be rationed.

Global national concern about human action . . .

The United States can only drift

by Gregory F. Rehmke

Resolved: That the U.S. ought to value global concerns above its own national concerns.

Economists like to describe themselves as “methodological individualists:” The *method* of economic analysis is to focus on *individuals*. A quick definition of economics is “the study of human action in response to scarcity”. For economists, with their penchant for methodological individualism, the September/October national Lincoln-Douglas topic is puzzling. The resolution, “That the United States ought to value global concerns above its own national concerns,” seems to lack both individuals and action.

Lincoln-Douglas debate is supposed to involve more value analysis and less policy. But in steering clear of policy, many topics seem also to steer clear of action. Unless a resolution calls for an individual or group of individuals to do something, it is difficult to find a beginning point for value analysis. Values are about the reasons people have for the choices they make, and actions they take.

A methodological individualist has trouble imagining how entities like the “United States” can act. Geologically, the U.S. can drift, but only individuals can think, choose, and act.

Individuals in government, however, can and do act – and we can evaluate their actions in light of various principles of right and wrong, good and bad, and (perhaps) global and national concerns. A branch of economics called “public choice” focuses on the behavior of individuals in government.

Public choice economists, like Nobel Prize winner James Buchanan of George Mason University, believe individuals in government have some of the same motivations as people in the private sector. However, because politicians and other

government employees garner their income from votes and from taxes (instead of from selling goods and services), they face different constraints and incentives. To maximize votes, politicians are drawn to policies whose visible short-term benefits often cause less visible but more severe long-term costs.

How, in concrete terms, would the “United States” value global concerns over national concerns? Individuals could follow the Golden Rule, for example, doing unto others as they would have others do unto them (i.e. “think globally, act locally”). But is there a “Global Golden Rule” for countries to follow?

Consider the following United States concerns that could fall under the Lincoln Douglas resolution:

Global food aid & national agricultural policy

Pro-global or pro-national values imply pro-global or pro-national actions or policies. Regardless of the details of implementation (which are not a concern of LD debate), should values be judged by the intentions of implied actions, or by the likely results of these actions? Stating a goal or ideal is not the same as achieving it. Public choice economics can help us understand why it is so difficult for “national” or “global” goals to be achieved.

For example, if the federal government announces a program to give millions of dollars of food “aid” to Third World countries (which, in practice, always means giving aid to their governments), would that be evidence of a global concern about world hunger on the part of the United States?

Food “aid” in the past has often disrupted Third World agricultural systems by bankrupting already impoverished farmers who find it difficult to compete with free food (India in the 1960s, Haiti in the 1980s), or by temporarily masking misguided government agricultural policies (Ethiopia in the 1980s). The governments of underdeveloped countries routinely exploit farmers by mandating crops be sold to state agencies at below market prices. The idea is to subsidize those living in urban areas, for whom higher food prices might be reason enough to riot.

Interestingly, as Milton Friedman has observed, a sure sign of a developed country is one whose agricultural policies are the opposite: routinely exploiting those in urban and suburban areas in order to subsidize farmers.

Why does the United States government tax its citizens in order to provide often-destructive food “aid” to other governments? For public choice economists, the puzzle is not so difficult. Since federal agricultural programs artificially raise the price of many agricultural goods, the government gets stuck with mountains of surpluses. The Department of Agriculture then gives these surpluses to foreign countries in order to save storage costs and avoid criticism of domestic support programs.

Public sector food “aid” is, at least in part, a public relations strategy designed to benefit agricultural interests. Food “aid” programs that appear global in theory, are not in fact.

Global trade: economists vs. politicians

Another topic might be “global” free trade versus “nationalistic” protectionism. Protectionists argue that keeping out imports will help keep American strong. But virtually *all* economists insist that protectionism harms American consumers, makes protected U.S. producers

gradually less competitive, and invites retaliation from U.S. trading partners (“trade wars”).

Why, then, does the federal government continue to pass protectionist legislation? (State governments would, too, except the Constitution forbids it.) Again, public choice economists point out that protectionist policies reflect the lobbying efforts of special interest groups – usually domestic manufacturers and their labor unions. Even though such legislation causes a net loss for society, the benefits are concentrated with producers, while the costs are spread out among far larger numbers of consumers. Neither national nor global interests are served, but such legislation generates “rents” (income) for investors, managers, and laborers in protected industries. Out of these “rents,” special interest groups repay their legislators with contributions and time donated to election campaigns.

Values & trade-offs

Global concerns grow from values. Concern about the killing of elephants and lions in Africa grows from the value many place on these wonderful animals. But global values can conflict – in Africa, lions eat people, and elephants can trample farmland (and farmers) underfoot.

Reality throws further twists at good intentions. Banning the international ivory trade is said to save endangered elephants in Kenya, but it would also threaten thriving elephant herds in Zimbabwe.

Constrained by scarce resources, individuals and policy-makers face constant trade-offs as they pursue various goals. There is no clear reason, however, why national and global concerns should be any more in conflict than separate national or separate global concerns. Perhaps the most students can hope for is a thoughtful discussion of the actual effects of specific values, concerns, and policies.

Locke on property

by Catherine Valcke

Government has no other end but the preservation of Property. . .

John Locke

The above statement has stirred ideas and emotions in many minds and hearts since its first publication in 1690. This is understandably so, because up to that date, property had been understood as a creation, rather than the source, of civil government. The Judeo-Christian tradition conceived of property as it did of any other social and political institution – as only conditionally legitimate. Influenced by Aristotle and his picture of the Greek *polis*, this tradition emphasized the owner's duties to the rest of the world rather than his own rights.

Defending the absolute power of the monarchy, Sir Robert Filmer had argued in his celebrated *Patriarcha* that God made Adam and the sons of Noah kings and owners of the earth and that their authority had then devolved upon the kings of the seventeenth century. In his view, the relation between king and subject was the same as that between father and child, with the father having power of life and death over his child. Individual property could therefore only be initiated as a gift from the Crown. As a corollary, the law of property was considered a royal institution whereby kings regulated the distribution of this gift. From different intellectual quarters, Thomas Hobbes had maintained that complete subjugation of individuals to the absolute will of a governor was necessary for the self-preservation of mankind. He believed that humans would be in a perpetual state of war among themselves without government. In the state of nature, human life could only be "solitary, poor, nasty, brutish, and short." Civil government was a

necessary evil created by a social contract whereby all persons delegated their natural rights to governmental authority. Property, as well as other aspects of social life, existed only as a result of this compact. By focusing on individual rights rather than duties of citizenship, Hobbes broke with the classical natural law tradition embraced by Filmer. Yet, by claiming that individuals lost their natural rights with the advent of government, Hobbes agreed with Filmer that private property is justified solely as a creation of government.

In contrast with Filmer and Hobbes, Locke asserted that private property was prior to government. He advanced this proposition in order to justify the right of revolution in general and the Revolution of 1688 in particular. While agreeing with Filmer that God's law rules the state of nature, Locke rejected Filmer's theory that God bestowed the right of property only upon the monarchy. In Locke's view, God's Law of Nature "obliges everyone: And Reason, which is that Law, teaches all Mankind, who Will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions." Unlike that of Hobbes', Locke's state of nature is not a state of war. Nonetheless, it presents obvious disadvantages. Because God is a rational being, men have access to the Law of Nature through their reason. But such access is difficult, and even when accessed, the Law of Nature is not always obeyed. Mistaken interpretation of, and occasional disobedience to, the Law of Nature have serious consequences, for "every Man hath a Right to punish the Offender, and be Executioner" of this law. As a result, men will want to facilitate social life by tacitly consenting to the creation of government. This

government “is a trustee for its citizens with certain powers which they have relinquished to it to ensure their more efficient use.”

Locke’s explanation for the birth of government justifies the right of revolution. By asserting that private property was naturally antecedent to government and that the latter was created for the sole purpose of protecting the former, he drastically circumscribed governmental power. For Locke, such power:

can be no more that [what] those persons had in a State of Nature before they enter’d into Society, and gave up to the Community. For no Body can transfer to another more power than he has in himself; and no Body has an absolute Arbitrary Power over

himself, or over any other, to destroy his own Life, or take away the Life or Property of another.

If government is bound by the Law of Nature, then deviation by the rulers from the tenets of this law was sufficient grounds for their overthrow.

Reprinted with permission from the Harvard Journal of Law and Public Policy, p. 941, Summer 1989. Catherine Valke is an instructor at the University of Toronto. She received her LL. B. (Civil Law) at the University of Sherbrooke, Quebec; LL.B. (Common Law) from the University of Toronto, Ontario; and LL. M. from the University of Chicago.

Why principle is costly in politics

by Richard L. Stroup

In the political marketplace, where votes, privilege, interests, and so on, are bought and sold to influence policies, one commodity in rather limited supply is principled behavior. Principle here means simply the basing of decisions on stated criteria so as to make a decision on an issue generally predictable by anyone who understands the issue and knows the criteria involved. Citizens put a high value on principle and on its result, predictability. It is predictability that explains much of the international value in, say a McDonald's hamburger franchise, or the good name of Cadbury's chocolate. A known and consistent product has more value than one which varies as the winds blow. Why can citizens buy, for a modest price, predictability in a corner shop they may never have seen before, but have so much difficulty in obtaining that same prized quality - principled, predictable behavior - in the political arena?

The answer, emphatically, is not simply that good people go into private enterprise, while unreliable people enter politics. There are many people of principle in politics, and there are scoundrels in the private sector. The difference is, instead, in the structures of the two systems: private markets and the political marketplace.

In a democracy, the political marketplace is similar in some respect to a private market. Trade, for example, does take place in politics: unions, businesses, and other special interests provide campaign funds and other support in exchange for legislative support. Both marketplaces are generally very competitive, and advertising plays a large role in each. A big degree of success in either market confers power, and sometimes fame.

But there are important differences as well. In the political "market," the consumer (voter) is

often ignorant of even the basic facts on crucial matters. In the USA, for example, fewer than half of all people of voting age can even name his or her Congressional Representative. This has been true consistently over the decades, and across the States. Since my vote is never decisive (statistics show that my chance of being killed in a car accident on the way to vote is higher than my likelihood of influencing the outcome of the election), it does not reward me to shed my ignorance about more mundane budget issues with billions of dollars in the balance. Yet I know where to find petrol or ice cream a little cheaper. There, my "vote" (purchase) is *always* decisive. I reap the benefits of my search and alertness, which I do not with my political purchase. This rational ignorance helps make surface impressions important and ensures that costly advertising is thus even more important in politics than in private markets. Campaign funds and endorsements are vital to political success.

Another critical difference in the political market is the restriction of *quid pro quo* [something for something] exchange. Unlike a merchant, who can say, "I have a reputable bar of chocolate here. Cross my palm and it is yours," the politician in office cannot say, "You know my principles and how I want to vote. Donate money to my campaign and I shall vote that way." Of course, donations (or pledges) during the course of a heated debate may sway the uncommitted politician, to explain the compelling argument of the donor's cause.

A large part of all campaign support is given and pledged while legislative bodies debate. How are decisions made by lobbying groups on who gets the limited campaign funds? Limited funds are most effective when targeted on "swing" votes - those which are uncommitted. It is the

people on the fence who are wooed and courted.

By the same token, another critical advantage goes to people not already committed (by principle, for example) to a course of action – that is the ability to logroll, exerting pressure to obtain privilege. If the issue is of secondary importance to the (uncommitted) political decision-maker, it is material with which he can trade. A politician without trading material has no logrolling power.

Thus the politician, appointed or elected, has value at any point exactly to the degree that he or she is uncommitted on an important issue. A government or an administration can twist arms on one issue only if it has something to offer on other issues. The Minister who cannot or will not be flexible has very little value to the government when it requires help.

Of course, principle is not always a disadvantage. On a very few issues, a politician can earn political “revenue” by selling leadership – saying to important supporters “I will always vote your way, but I must be given support for my campaign if I am to be able to afford lots of time being a leader on this issue.” At election time, furthermore, a specific promise of a legislative

stand can earn support from an organized interest *only* if the election seems close. Otherwise, limited campaign funds of the organization will be allocated to potential supporters whose elections are most likely to be influenced by those donations – those in close elections.

To a distressing degree, then, even the most principled politician must choose between acting consistently on principle, on the one hand, and being effective on the other. Consistently principled behavior, and the predictability it implies, are not traits which will help a politician survive, except on a few selected issues where leadership, not one’s vote, is the “product” sold.

A corollary of this argument is that most votes should not be expected to reflect principle, and nobody should be surprised (or angered) when a politician does what he or she has to do to survive and to be effective in politics. The solution, instead, is to consign fewer issues to the political arena, and those of lesser importance. This reform is not only a practical matter – it is also a matter of principle.

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When Virginia joined the Union

Debating the role of government

Resolved: That an unjust (federal) government is better than no (federal) government at all.

The following essay, reprinted from the Richmond News-Leader, takes us back in time to the fierce clashes between the Federalists and the Anti-Federalists, between Patrick Henry, James Madison, George Mason and other great Virginians, on the role of government in a free society. This debate carries special meaning to us today: the darkest forecasts of those opponents of a powerful central government seems to have come true.

The greatest drama in American political history came to its climax in Richmond Virginia years ago when Virginia ratified the Constitution of the United States.

To re-read the debates of the Convention of 1788 is to find oneself caught irresistibly in the unfolding of a play on some vast historic stage. Among the delegates were a dozen of the greatest figures of the Revolutionary period – Patrick Henry, Edmund Pendleton, James Madison, John Marshall, James Monroe, Edmond Randolph, George Mason, George Wythe, Henry Lee, William Grayson, George Nicholas. They met in the New Academy on Shockoe Hill, and for three weeks of brilliant and often passionate argument, they subjected the proposed new Constitution to exhausting debate.

In the end, Virginia ratified. The vote was 89 to 79. A switch of half a dozen votes from the Madison-Pendleton Federalists to the Henry-Mason Anti-Federalists would have kept Virginia, at least temporarily, out of the new Union. It is not too much to say that such a change in the vote would have stopped the infant nation in its tracks. Virginia was then the most powerful State in the Confederation. Without her concurrence,

Georgia and South Carolina would have been separated from their sister States to the North and most likely North Carolina would not have agreed at all.

But the vote was to enter the Union. Madison and Pendleton won, and Henry and Mason lost, but the antagonists mutually left to posterity a fascinating example of shrewd prophecy, keen insight, and learned debate on the towering questions of the role of government in a free society.

The student of American history who is not familiar with Elliot's *Debates of the Virginia Convention* owes himself the pleasure of discovering these remarkable addresses. David Robertson, a leading short hand reporter of the post-Revolutionary period, took the speeches down as they fell from the orators' lips. In 1828, Jonathan Elliot published a five-volume edition of proceedings attendant upon adoption of the Constitution.

The Virginia Debates in 487 pages, form Volume II of the series; they are by far the best of the several reports. Out of the yellowing pages, the figures emerge with a startling and immediate clarity--the brooding, doubting Randolph; the soft-spoken and scholarly Madison. Mason of the golden tongue; the sober Marshall; and dominating the whole play, as statesman, prophet, Shakespearean actor, the eloquent figure of Patrick Henry, chief foe of the Constitution.

The convention was called to order on Monday, June 2, 1788. Pendleton, though he was well known to be an ardent supporter of the Constitution, was elected unanimously as the convention's president. It was the last moment of har-

mony the convention was to experience.

Monday and Tuesday passed in the routine business of organizing the convention, considering contested elections, and naming committees. A little before noon on the morning of Wednesday, the fourth, the convention resolved itself into a committee of the whole, with George Wythe, teacher and jurist, in the chair.

A brief skirmish followed at once, as the sides tested each other. Patrick Henry moved to explore the authority of the Convention at Philadelphia in 1787 to draft an entirely new Constitution, rather than merely to revise the Articles of Confederation. Pendleton moved swiftly to head off an exercise in futility; he could not find "any degree of propriety in reading those papers." Henry withdrew his motion, quite content at having nettled an old antagonist so early in the game. The preamble and the first section of Article I were read.

Wilson Nicholas, a proponent of ratification, opened the debate with a long and tedious discussion of the Constitution's provisions for a House of Representatives. He wandered over the whole scene, reviewing legislative bodies from the reigns of Edward I in England and Louis XI in France. He attempted to anticipate the objection that the proposed new Congress would usurp powers of the State legislatures. He thought this most unlikely. At last he subsided and Henry obtained the floor.

"Mr. Chairman," he began, "the public mind, as well as my own, is extremely uneasy." A year ago, in the summer of 1787, the people were in a perfect repose. What extreme danger could justify the drastic measures here proposed? The object was to sever the confederacy by which the States had been bound together. And for what? Is the real existence of the country threatened?

Henry laid down the theme he was to develop constantly for the next three weeks: "This proposal of altering our Federal government is of a most alarming nature. You ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights, you may lose them forever. If this new government will not come up to the expectation of the people, and they should be disappointed, their liberty will be lost, and tyranny must and will arise."

Then Henry pounced upon the preamble by members of the Convention of 1787. He had the highest veneration for those gentlemen, but, sir, what right had they to say "We, the people," instead of "We, the States?" If the States are not the agents of this compact, then the instrument must provide for one great consolidated national government. He yielded the floor.

Henry's opening barrage had been unexpectedly brief. Governor Edmund Randolph, 35, a handsome figure of a man, arose to reply. He had been a delegate to the 1787 convention; he had there refused to sign the proposed new Constitution; he had distributed a public letter outlining his objections to it. Now he had reversed his position completely. Eight States already had ratified. Only one more was necessary to bring the Constitution into operation. Obviously the union would be formed, but if Virginia refused to accede, the union would be as promptly dissolved. "And I will assent to the lopping of this limb (meaning his arm) before I assent to the dissolution of the union."

Randolph (and later Madison and Pendleton) then sought to brush aside Henry's attack on the preamble. Plainly, "we the people" was to be understood to mean "we the people of each ratifying State," for no State would be bound by the Constitution unless it agreed. He thought Henry's objection trivial. Randolph's speech was strong, but it was short of the violent exchange that later was to see the two Virginians inches apart in white-faced fury.

George Mason obtained the floor, for the first truly brilliant speech of the convention. He was then 63, an aristocrat, cynic, critic, intellectual. The very idea of converting what was formerly a confederation into a consolidated government seemed to him totally subversive of every principle which hitherto had governed the confederation. This power is calculated to annihilate totally the State governments. These two concurrent powers cannot exist long together; the one will destroy the other, and because the general Government will be in every respect more powerful than the States, the latter must give way to the former. Was there ever an instance in history of a general national government extending over so extensive a country, with such a variety of cli-

mates and local interests, in which the people retained their liberty?

Mason spoke for no more than half an hour, before Madison ended the day's proceedings with a few conciliatory remarks, but the lines of the conflict had been clearly established. The overriding questions went to the people's liberties: Would they be kept secure under a new Constitution that contained no bill of rights? Second, could the States prevent the central government from assuming such massive powers that a national despotism would result?

Pendleton opened debate on the fifth by denying that the new government would result in despotism. The power delegated to the central authority extends only to the general purposes of the union. "It does not intermeddle with the local particular affairs of the States." Could the Congress make a law controlling the transfer of property in Virginia? Plainly not. He wondered how any gentleman could conceive an idea of a possibility of the former's destroying the latter.

Henry Lee of Westmoreland, the incompa- rable "Light-horse Harry," obtained the floor briefly, in order to goad Henry with a burst of savage sarcasm. He had expected Henry to demonstrate that éclat and brilliancy which had so distinguished him in the past, but had heard nothing but an expression of horrors and apprehensions which had left the gentleman tremblingly fearful for the fate of the commonwealth. Had the gentleman come to judge, or merely to alarm?

Then, for the space of several hours, Henry turned the full eloquence of his oratorical powers and the full range of his mind to the pending proposal as a whole. He was to speak many times again before the convention adjourned, but his address of June 5 summed up the whole of his position.

His first argument was that men who wish to preserve their liberty must always be suspicious of government. Was it suggested that our magistrates be freely trusted? Sir, he cried, suspicion is a virtue, as long as its object is the preservation of the public good, and as long as it stays within proper bounds. "Guard with jealous attention the public liberty! Suspect everyone who approaches that jewel!"

He referred to certain provisions, later to be thoroughly discussed, by which the central government could put down licentiousness, tumult, and riot. The new form of government, he acknowledged, might effectively prevent this, yet there is another thing it will as effectually do: It will oppress and ruin the people. "I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers? I imagine, sir, you will find the balance on the side of tyranny."

Henry's dominant theme was *power!* All power, he foresaw, ultimately would end in the hands of the central government. What then? Will the oppressor let go of the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example, where rulers overcharged with power, willingly let go the oppressed? The willing relinquishment of power is one of those things which human nature never was nor ever will be, capable of.

It was said that the new Constitution provided adequate checks and balances, against such a catastrophe. Henry denounced the idea. "There will be no checks, no real balances, in this government. What can avail your rope dancing, chain rattling ridiculous ideal checks and contrivances?"

What was the primary object of changing the government? Was it merely to achieve union? He counted himself a friend of union. "I am a lover of the American union; the dissolution of the union is most abhorrent to my mind; but, sir, the first thing I have at heart is American liberty; the second thing is American union."

Henry liked no part of the proposed Constitution. In colorful, biting phrases, he swept the instrument fore and aft. The provisions relating to the judiciary had been praised, "but on examination you will find this judiciary oppressively constructed." The President had been given very great powers--the powers of a king! "If your American chief be a man of ambition and abilities, how easy it is for him to render himself absolute! The army is in his hands, and the President in the field at the head of his army can prescribe the terms on which he shall reign master. Your militia will leave you and assist in

making him king, and fight against you; and what have you to oppose this force? What then will become of you and your rights? Will not absolute despotism ensue?"

When Henry at last took his chair that Thursday afternoon, the Convention of 1788 had been badly shaken. Governor Randolph was plainly irritated. "Mr. Chairman," he said testily, "if we go on in this irregular manner, instead of three to six weeks, it will take us six months to decide this question." He adjourned the day's proceedings, and on the following day took the floor himself to respond to Henry's attack.

This was Randolph's great speech beginning, "Mr. Chairman, I am a child of the Revolution." In masterful fashion, he defended the necessity for a new Constitution, defined the flaws of the old Confederation, insisted that the powers delegated to the central government were necessary for the formation of a strong and adequate authority.

So the debates continued. Patrick Henry and George Mason foresaw abuse of the Federal government's power of direct taxation. Francis Cobin and James Madison discounted the possibility. Corbin thought "no danger was to be apprehended from the power of direct taxation, since there was every reason to believe it would be very seldom used." Henry did not believe it: "The splendid maintenance of the President and of the members of both houses, and the salaries and fees of the swarm of officers and dependents of the government will cost this continent immense sums."

With biting invective, Henry turned on Randolph personally. Randolph once had opposed the Constitution. Now he supported it. "This seems to me strange and unaccountable. Something extraordinary must have operated to produce so great a change in his opinion." Randolph had painted a terrible picture of the dangers to which Virginia would be subjected, from within and without, if she refused to ratify. "I am not acquainted with the arts of painting. Some gentlemen have a peculiar talent for them. They are practiced with great ingenuity on this occasion."

An angry Randolph replied: "I find myself attacked in the most illiberal manner by the

honorable gentleman. I disdain his aspersions, and his insinuations. His asperity is warranted by no principle of parliamentary decency, not compatible with the least shadow of friendship; and if our friendship must fall, let it fall, like Lucifer, *never to rise again!*" Randolph read the text of his public letter of the preceding fall, objecting to the Constitution, and in a gesture of contempt threw it upon the clerk's table "for the inspection of the curious and malicious."

During the second week of the convention, debate turned again to the prospective fate of the States. Monroe was strongly impressed with the necessity of having a firm national government, but this one, he thought, must end in tyranny. Was it possible, he asked, for the Congress to fashion laws that would operate fairly upon such different States? Would the men of Georgia understand the situation of the people of New Hampshire? He could see "no real checks" upon the government.

Madison, speaking so quietly that the shorthand reporter often had difficulty in hearing him, repeatedly insisted that the central government would not overwhelm the States: "Will any gentleman compare the number of persons, which will be employed in the general governments? The number of dependents upon the State government will be infinitely greater than those on the general government. I may say with truth that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence."

Patrick Henry came roaring back at Madison: "The State governments, says he, will possess greater advantages than the general government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the Federal allurements, and compare them with the poor, contemptible things that the State legislatures can bring forth! A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat Federal emoluments - your rich, snug, fine fat Federal offices, the number of collectors of taxes and excises will outnumber anything from the States. Who can cope with the excisemen and tax men?"

William Grayson of Prince William County, a

brilliant countryman and soldier, supported Henry's position. Madison had pointed to constitutional provisions prohibiting members of the Congress from being appointed to other Federal offices. The Senate's powers of confirmation would act upon the growth of presidential powers. Grayson was not convinced: "Is there any clause to hinder them from giving offices to uncles, nephews, brothers, and other relations and friends?" The contentions of Marshall and Pendleton that good men would be chosen for Federal office made no impression on Grayson. The followers of Cromwell must have used the same argument; other factions in times past had pleaded the excellence of human nature to justify the delegation of power: "But power ought to prevent bad men from abusing it; it ought to be granted on a supposition that men will be bad, for it may be eventually so."

Henry concurred: "Too much suspicion may be corrected. If you give too little power today, you may give more tomorrow. But the reverse of the proposition will not hold. If you give too much power today, you cannot retake it tomorrow--for tomorrow will never come for that purpose."

Scarcely a provision of the Constitution escaped the critics' fire. They did not like the idea of a District of Columbia. Said Mason; "It may be a sanctuary for the blackest crimes." They did not like the creation of a Vice President. "The Vice President", said Mason, "appears to me to be not only an unnecessary but a dangerous officer." They did not like the clause giving the Supreme Court jurisdiction over all cases "arising under the Constitution."

"What objects will not this expression extend to?" asked Mason. "Such laws may be formed as will go to every object of private property. When we consider the nature of these (Federal) courts, we must conclude that their effect and operation will be utterly to destroy the State governments."

Grayson agreed with Mason: "The jurisdiction of all cases arising under the Constitution, and the laws of the Union, is of stupendous magnitude. It is impossible for human nature to trace its extent. This court has more power than any court under heaven. One set of judges ought not to have this power--and judges particularly who

have temptational ways before their eyes."

Even Randolph expressed grave misgivings: "What do we mean by the words arising under the Constitution? What do they relate to? I conceive this to be very ambiguous. If my interpretation be right, the word 'arising' will be carried so far that it will be made use of to aid and extend the Federal jurisdiction."

By Monday, June 23, the convention's temper was badly frayed. Henry and Madison had quarreled publicly. George Nicholas so roundly insulted Henry that Pendleton had to restore order. One rough countryman, weary of Patrick Henry's "bugbears and hobgoblins," among them an apprehension for the validity of Indian purchases, noisily suggested that "if the gentleman does not like this government, let him go and live among the Indians."

On Tuesday, the 24th, so violent a storm arose that the convention had to suspend for a time, while thunder crashed around Shockoe hill. In the late afternoon, agreement finally was hammered out between the contending sides upon a resolution or ratification. This resolution of ratification is not long. It usefully may be read in full:

We the delegates of the People of Virginia duly elected in pursuance of a recommendation from the General Assembly and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention and being prepared as well as the most mature deliberation hath enabled us to decide thereon, Do in the name and in behalf of the People of Virginia declare and make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their unjury or oppression *and that every power not granted thereby remains with them and at their will:* that therefore no right of any denomination can be cancelled abridged restrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States except in those instances in which power is given by the Constitution for those purposes;

& that among other essential rights the liberty of Conscience and of the Press cannot be cancelled, abridged, restrained, or modified by any authority of the United States.

With these impressions, with a solemn appeal to the Searcher of hearts for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein than to bring the Union into danger by a delay with a hope of obtaining Amendments previous to the Ratification, We the said Delegates in the name and in behalf of the People of Virginia do by these presents assent to and ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by Federal Convention for the Government of the United States hereby announcing to all those whom it may concern that the said Constitution is binding upon the said People according to an authentic Copy hereto annexed in the Words following;...

Then the weary delegates turned to the task of recommending no fewer than twenty amendments to the Constitution, which they felt necessary if the people's liberties were to be made secure. These amendments, willingly agreed to by both factions of the convention, were drawn primarily from Virginia's famous Declaration of

Rights of May, 1776.

On Wednesday, the 25th, the first decisive vote was taken. Henry's forces moved to postpone ratification until a further convention of all the States could be called for adoption of a Bill of Rights. They lost 88-80. The final vote on ratification then was taken immediately. One delegate, David Patterson, switched from Henry's side to Pendleton's and the Constitution was ratified 89-79.

In one sense, the historic vote was anticlimatic. Apparently unknown to the Virginia delegates the new union already had come into being the previous Saturday, when New Hampshire became the ninth state to ratify. But the role of Virginia, largest and wealthiest of the States, was so vital to the undertaking the Federalists set up a cry of rejoicing. A month later, on July 26, New York reluctantly came along by a convention vote of 30- 27; the later ratifications of North Carolina, in the winter of 1789, and Rhode Island in the spring of 1790, made all of the "thirteen separate sovereignties,' as Madison always called them, equal parties to a compact that now binds fifty indestructible States to an indestructible Union.

The final act of the Virginia Convention of 1788 was to approve certain proposed amendments to the Constitution, and to recommend them to the first Congress.

The Collision between government activity & individual rights

Alex Kozinski

This essay by Ninth Circuit Court of Appeals Judge Alex Kozinski is reprinted from the introduction to the book Economic Liberties and the Judiciary. Kozinski questions former Supreme Court Justice William Brennan's arguments that because of the

pervasive growth of government, the Constitution should be interpreted to protect human dignity, rather than the limited functions the language of the Constitution seems to describe for the federal government.

We are in the midst of a very important phenomenon in jurisprudence: the emergence of a new school of thought. For the first time in a generation, legal scholars are mounting a serious challenge to the jurisprudential approach that has dominated American legal thinking since the New Deal. The articles in *Economic Liberties and the Judiciary* are at the forefront of this challenge, providing a reassessment of attitudes that have long dominated constitutional law. In response, disciples of the current doctrine have been forced to defend positions that for years were accepted on faith. And defend they have, frequently revealing a good deal about the premises underlying their thinking. What many consider to be the most important response to the challenge is Justice William Brennan's speech titled "The Constitution of the United States: Contemporary Ratification," given at Georgetown University in 1985. Justice Brennan's views of how the Constitution should be interpreted are at the center of a very important debate over the roles judges should play in constitutional adjudication. What is perhaps most fascinating about Justice Brennan's speech is the rationale he gives for his noninterpretivist approach to the Constitution. It provides important evidence as to the linkage between the erosion of economic liberties and departure from other constitutional values. If Justice Brennan's speech actually reflects the prevailing jurisprudence – and there is every reason to believe it does – this renders the essays in *Economic Liberties and the Judiciary* timely indeed.

On reading Justice Brennan's speech, one is surprised to find a single idea repeated again and again. This is the concept defined by the term "dignity." In various configurations, such as "human dignity," "fundamental dignity," or just plain "dignity," the expression appears no fewer than 35 times. According to Justice Brennan, "the Constitution is a sublime oration on the dignity of man, a bold commitment by a people to the ideal of libertarian dignity protected through law," and "a sparkling vision of the supremacy of the human dignity of every individual."

Although the term "dignity" nowhere appears in the Constitution, Justice Brennan uses it to justify sweeping departures from the Constitutional text. The way Justice Brennan derives the concept of human dignity and the way he applies it in interpreting the Constitution provide an illustration of how we have come so far from the text of the document in so short a time. Justice Brennan notes that things have changed since the Constitution was drafted. At that time, freedom and dignity "found meaningful protection in the institution of real property." In those distant days, "property relationships formed the heart of litigation and of legal practice, and lawyers and judges tended to think stable property relationships the highest aim of the law." But those days are forever gone Justice Brennan assures us:

To a growing extent economic existence now depends on less certain relationships with government – licences, employment, contracts, subsidies, unemployment benefits, tax exemp-

tions, welfare and the like...government participation in the economic existence of individuals is pervasive and deep. Administrative matters and other dealings with government are at the epicenter of the exploding law. We turn to government and to the law for controls which would never have been expected or tolerated before this century.

Justice Brennan recognizes the danger of allowing unbridled expansion of governmental power. He notes that "the possibilities for collision between government activity and individual rights will increase as the power and authority of government itself expands, and this growth, in turn, heightens the need for constant vigilance at the collision points."

For someone like me, who is firmly committed to the concept of individual freedom and highly suspicious of government power, it is difficult to disagree with Justice Brennan's conclusion, given his premises. If government is going to have free rein to meddle into every aspect of our existence, I, too, favor strict controls on the way it does it.

But Justice Brennan and I part company on a very basic assumption. In his view, government control over people's lives is unavoidable: "The modern activist state is a concomitant of the complexity of modern society; it is inevitably with us."

It is this aspect of Justice Brennan's analysis that is the cause for the greatest alarm, but it also provides the opportunity for the most thorough reassessment of jurisprudential attitudes toward economic regulation. Rather than accepting "the modern activist state" as a given and quibbling over how much "human dignity" we can squeeze out of the remaining portions of the Constitution, we might question whether we have not taken a wrong turn somewhere and yielded to the state too much power over our lives.

Justice Brennan is quite accurate in noting that ownership of property is an aspect of human dignity and autonomy, although he inexplicably limits the concept to real property. There can be no serious suggestion, however, that rights in real property have a different status under the Constitution than rights in personal or intellec-

tual property. Moreover, one can dismiss as silly the anthropomorphic notion, popular among college students and law professors until recently, that property rights should be subordinated to human rights, as if property can have rights.

For the last 50 years or so, however, courts have tended to treat certain rights differently from others. Those rights that have been classified as fundamental or human rights have been given preferred treatment. Among them are rights to speech, religion, travel, and privacy, and a variety of rights pertaining to arrest, conviction, and punishment.

Other rights, even where specifically articulated in the Constitution, have been disfavored. Government has been given a free hand to create, destroy, and adjust individual rights in the economic sphere. For example, a law forbidding Penn Central from constructing an office building over Grand Central Terminal was upheld against a taking claim, and land use regulations that diminish property value by 75 percent, 90 percent, and even 95 percent have been found not to amount to takings under the Fifth Amendment. Ellen Frankel Paul points out in her essay in *Economic Liberties and The Judiciary* that the public use restraint on taking private property by eminent domain has all but vanished under recent Supreme Court interpretation.

While summarily upholding laws that drastically curtail property rights, the courts give laws infringing personal rights close and painstaking scrutiny. The right to display obscene words on your jacket or shout them at police officers is constitutionally protected. A jailer who cuts a prisoner's hair too short before release commits a Constitutional offense, and male prisoners have a Constitutional right not to be supervised by female prison guards when taking showers.

Someone unfamiliar with the text of the Constitution reading some of these decisions would naturally assume that the Constitution is replete with references to such things as what obscene words one can display and the amenities one must provide prisoners. But one would be certain that the Constitution has little or nothing to say about property. Similarly, if one knew nothing about the Founding Fathers, one would

guess that they had a deep suspicion of government when it came to personal rights but were entirely sanguine about majority rule in matters of economics.

The text of the Constitution and the historical record conclusively refute these notions. The Constitution, as amended by the Bill of Rights, shows much solicitude toward the individual. It certainly safeguards his right to speak, pray, and be secure from unwarranted government intrusion into his home. But it shows at least equal concern for the individual's right to the fruits of his endeavors: the Fifth Amendment prohibits the taking of property without due process or just compensation; even with just compensation, property may only be taken for a public purpose. Article 1, Section 10 forbids the states from interfering with contracts. The Third Amendment prohibits quartering of soldiers in private homes during peacetime.

Moreover, the entire document reflects deep concern about the excesses of governmental power and the unbridled will of the majority. The federal government is limited to functioning in certain specified areas, and its actions are constrained by internal checks and balances. The power of the states is limited by the supremacy clause; the Ninth Amendment declares that enumeration of certain rights shall not be construed to deny or disparage others retained by the people.

Nor can it be seriously disputed that the Founding Fathers were men to whom property was important and who were intensely aware of the need to safeguard property rights from majoritarian abuse. As Richard Epstein points out in his recent work on takings, the Framers were deeply influenced by natural rights thinkers such as Locke and Montesquieu. They were well aware that government, as the holder of a monopoly on the lawful use of force, can be used to siphon off the property of some for the benefit of others.

The suspicion of unchecked governmental power, and the excesses to which it could lead, created a heavy presumption against laws that restricted individual rights, whether they involved liberty or property. While the courts were not always consistent, Bernard Siegan has demonstrated that for the first century and a half after

ratification there was considerable judicial oversight of legislative enactments that impaired property interests.

These early judicial decisions were based on principles that were antimajoritarian and anti-democratic, much as the Constitution itself. They were based also on the idea that the interests of society are best served by protecting the rights of the individual. As Justice George Sutherland stated in *Adkins v. Children's Hospital*, in the waning days of the substantive due process era, "To sustain the individual freedom contemplated by the Constitution is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."

To be sure, this view was not universally shared. And the degree of scrutiny over economic regulation has varied from time to time according to the issues presented and the composition of the Supreme Court. Yet, until this century there was a commonly shared belief that individual rights were cut from a single cloth and that whatever power government had to limit those rights applied more or less equally to all. I find significant, for example, Justice Brennan's observation that as late as 1922 the only portion of the Bill of Rights that had been held applicable to the states was the Fifth Amendment's guarantee of just compensation for official takings.

This century brought a different view, leading to the deconstitutionalization of economic rights. The reason Justice Brennan gives for this is that "the modern activist state is a concomitant of the complexity of modern society." The idea seems to be that things have gotten so complicated that "common law property relationships" are no longer adequate to govern the intricacies of modern life. I can see at least three problems with this view.

First, property rights, that is, the legal relationships between people pertaining to the use and enjoyment of property, become more important as resources grow scarcer and society more complex. Metes and bounds may suffice to separate adjoining farms, but city lots are measured in feet and inches; land is leased by the

decade, computer time by the micro-second. Complexity calls for more certainty and precision in defining legal relationships, not less.

Second, the substitute for precisely defined property rights is an increase in the scope and power of government. As Justice Brennan recognizes, this increases “the possibilities of collision between government activity and individual rights.” This, in turn, “requires a much-modified view of the proper relationship of individual and state.” In other words, we must rewrite the Constitution to give the government wider discretion, and then rewrite it again to give people a renewed sense of dignity. The spiral is endless.

Finally, individual rights simply are not divisible or fungible. As F.A. Hayek says, “The importance of freedom...does not depend on the elevated character of the activities it makes possible. Freedom of action, even in humble things, is as important as freedom of thought.”

I would be the last to denigrate the importance of freedom of speech and religion, the right to participate fully in the political process, or the right to be free from arbitrary arrest, conviction, and punishment. But it is not clear to me that these rights are any more important than rights pertaining to property. I can certainly conceive of rational people who, if pressed to a choice, would be willing to give up the right to wear a jacket with obscene words on it in order to retain the right to construct a building or run a railroad.

Economic rights are not only a crucial component of individual liberty, but an important check on governmental power. In *Capitalism and Freedom*, Milton Friedman notes as follows:

Economic arrangements are important because of their effect on the concentration or dispersion of power. The kind of economic organization that provides economic freedom directly, namely competitive capitalism, also promotes political freedom because it separates economic power from political power and in this way enables the one to offset the other. Historical evidence speaks with a single voice on the relation between political freedom and a free market. I know of no example in time or place of a society that has been marked by a large measure of political freedom, and that

has not also used something comparable to a free market to organize the bulk of economic activity.

To simply accept, as Justice Brennan does, that “government participation in the economic existence of individuals is pervasive and deep,” and likely to get deeper still, can only lead to an erosion of constitutional values and endanger the system that served us well for most of our existence as a nation. Just as individual rights are not divisible, so too the Constitution must be viewed as an integral whole. When a portion of it is ignored or abused, this tends to throw the entire system out of balance, with significant repercussions.

The danger signals are clear. The most important is the one so candidly articulated by Justice Brennan – the perceived need to create new constitutional rights to make up for those we lose when government intrudes into every aspect of our lives. This gives judges a roving commission continuously to rewrite the Constitution in the guise of upholding human dignity, further destabilizing the constitutional process.

There are other danger signals as well. Since the 1930s there has been a proliferation of regulatory agencies at both the state and federal levels. It sometimes seems like the only free competition left in our economy is between government agencies as to which can grab the most power. James Miller, Robert Tollison, and Henry Manne, in their essays in *Economic Liberties And the Judiciary*, articulate some of the costs of this trend: decreased regulatory efficiency, market disruptions due to lack of predictability and the loss of civil liberties.

Another sign of distress is the massive increase in litigation, what Justice Brennan calls “the exploding law.” An alarming proportion of our productive resources is now devoted to fighting each other and our government. It is also no accident, I think, that significant peacetime budget deficits first began appearing in the mid-1930s, about the time that judicial control over government intrusions into the economy began to disappear. Epstein points out that our Constitution reflects a general distrust of the political process. It may be that entrusting elected offi-

cials with unrestrained authority to shuttle economic resources between different individuals, regions and interest groups is a power that is not capable of containment. Much as the Framers feared, the temptation to serve the interests of faction, at the expense of the whole, may simply be too great.

These are difficult questions, and the answers are neither simple nor immediately apparent. My friend and esteemed colleague, Justice Brennan, has lived longer and seen far more constitutional adjudication than I have. He may be right in both his premises and his conclusions. But it is our duty not to accept without question what may be serious and irreversible changes in our system of checks

and balances. It is important to challenge the assumptions of the modern activist state before we abandon ourselves and our lives to it. The New Deal, and the case law that supports it, is itself an experiment of relatively recent origin. The time has come to assess where we stand and, if necessary, to change direction, slowly and cautiously, but without fear.

The importance of a volume such as *Economic Liberties and the Judiciary*, with its ground-breaking essays, is that it provides a forum for raising these ideas and creating what Justice Antonin Scalia calls “a constitutional ethos of economic liberty.” It is difficult to imagine a work better suited to this important purpose or published in a timelier fashion.

In Pursuit...of better speech & debate

by Gregory F. Rehmke

Charles Murray competed in two national debate tournaments, and ended up third in the country in NFL points. Murray said that speech and debate “was the most exciting part of my high school days, and my record is undoubtedly what got me into Harvard.”

After graduating from Harvard, Murray rolled up his shirt sleeves and went to work trying to solve America’s social problems. Like many other idealistic young social workers, Murray believed that the government could end poverty in America. The Johnson administration’s social programs could eliminate poverty, they believed, with hard work, know-how and enough money.

Years later, still idealistic but increasingly frustrated with the failure of so many well-meaning federal programs, Murray set out to write a comprehensive critique of welfare. His findings and analysis were published in his pathbreaking book, *Losing Ground*.

Designing solutions

Losing Ground was about what didn’t work. It chronicled the unexpected problems undermining those sincere efforts to help the less fortunate in American society. Murray wanted to offer positive proposals, and in this his debate background was, in part, an obstacle.

In cross-examination debate, if existing programs are not solving a social problem, a new program is proposed and evidence offered in its support. Perhaps a blue-ribbon panel is set up to oversee its implementation, and the affirmative prepares to argue fiercely that whatever problems beset the old program would be handily overcome by the new.

In Murray’s second book, *In Pursuit of Happi-*

ness and *Good Government*, he carefully and systematically argues that there is no new and magic fix for current social programs. The problem is with the whole idea of “fixing” society with “programs.”

Murray recommends changing the standard social program metaphor:

Since large-scale social programs began, the metaphor for the process by which the government attempts to solve social problems has been engineering ... I am in effect arguing on behalf of a metaphor that describes social problems in terms more like the healer’s than engineer’s (p. 232.) Murray continues:

I am suggesting that if policy planners - diagnosticians? - are to be successful, they must think in terms of solutions that permit a naturally robust organism to return to health... Does the nation suffer from too many children being born into fatherless families? The task is not to devise a public relations campaign to discourage single teenage girls from having babies, but to neutralize whatever is impeding the age-old impulse of human beings to form families. Does the nation suffer from lack of low-income housing? The task is to understand why an economic system that pours out a profusion of cheap-but-decent shoes, food, clothes, and every other basic of life is prevented from pouring out a profusion of cheap-but-decent apartments for rent. (p.233)

Enabling the pursuit of happiness

Murray’s search for solutions begins only after 200 pages of reexamining more fundamental questions about social policy. As his title suggests, “the pursuit of happiness” is at the

center of Murray's social policy goals. And by happiness Murray means more than the pursuit of temporary and material things.

"Happiness," Murray says, "is an honorable word fallen on hard times. It lends itself to thinking about, puzzling over, playing with. Doing so can profoundly affect how we conceive of good laws, social justice, and some very practical improvements in the quality of American life."

Murray derives a new and powerful criteria for evaluating social policy: "A social policy that induces people to believe they are not responsible for their lives, is one that inhibits the pursuit of happiness and is to that extent immoral."

A policy that would have the federal government guarantee retirement security for the elderly, for example, seems likely to diminish people's sense of responsibility in planning for their own future happiness.

By linking social policy to value judgments, *In Pursuit* bridges the gap between policy debate and Lincoln-Douglas or value debate.

Murray focuses on the "enabling conditions" of happiness by using noted psychologist Abraham Maslow's "hierarchy of needs." First people have physiological needs, then safety needs, then needs for belongingness and friendship, then self-esteem, and finally self-actualization ("expressing one's capacities, fulfilling one's potential"). The conditions of each level must be achieved before progress on the next level can be

made.

Murray argues that what government programs can do for people is limited to helping them reach certain thresholds, through some minimal provision of goods - but even that is difficult. Food and shelter may be needs, but the individual act of working to provide food and shelter is itself an important element in developing self-esteem. "Free" food and shelter undermine the motivation needed to struggle through entry-level jobs and thereby develop the skills needed to succeed in more fulfilling work.

Murray demonstrates, in a variety of ways, that material goods are not a limiting factor in healing poor communities in America. These communities suffer from more complicated ailments than lack of material wealth.

Solutions to social problems are complex because people and the societies they create are complex. Murray takes the reader through recent advances in psychology and sociology, through carefully chosen thought experiments and examples - all to provide a deeper understanding of the hidden complexity in the world around us.

The ecology of human societies is as subtle, fragile, and complex as the ecology of wetland and forest communities. And too few social engineers stop to prepare environmental impact statements.

In Pursuit of Happiness & good government

by Edward H. Crane

When Charles Murray wrote *Losing Ground* in 1984, he singlehandedly and radically altered the way in which we view American social welfare policy. Today no one addresses the issue without addressing the arguments of Charles Murray.

With his next book, *In Pursuit*, Murray has solidified his position as the preeminent social scientist in America. If *Losing Ground* made waves, *In Pursuit* should make tidal waves. Here we are not challenging the welfare state so much as the state itself. “Man acting in his private capacity,” writes Murray, “if restrained from the use of force, is resourceful and benign, fulfilling his proper destiny; while man acting as a public and political creature is resourceful and dangerous, inherently destructive of the rights and freedom of his fellow men.”

In Pursuit [is] the most exciting book on political philosophy since Robert Nozick’s *Anarchy, State, and Utopia*. The full title of the book, *In Pursuit of Happiness and Good Government*, neatly summarizes the thesis of the text. By “good government” Murray is referring to what the Founders viewed as “right” or “proper” government.

Part One of the book is devoted to a discussion of the nature of happiness – contrasting Aristotelian and Lockean notions – to developing a working definition of the term: Happiness “is lasting and justified satisfaction with one’s life as a whole.” Murray writes, “It is appropriate and even essential to be dogmatic that life must be lived with self-awareness and self-judgment.”

Enabling conditions

The second section of *In Pursuit* deals with what Murray terms the “enabling conditions” that allow for the pursuit of happiness. Based roughly on psychologist Abraham Maslow’s work of forty

years ago, the enabling conditions Murray identifies are material resources, safety, self-respect, and enjoyment. He devotes a chapter to each, arguing that “government can ‘do as much as it can’ to enable, but it can do no more than enable.”

Material resources, the lack of which we identify as poverty, has become, he says, “the generic stand-in for the social problems of our age.” Consistent with the case he made in *Losing Ground*, Murray argues that “the pains and damages that we associate with contemporary poverty in Western societies has little to do with a lack of material resources.” He points out, for and community. He turns the “atomistic libertarian” canard on its head by arguing “people become atomized in modern urban settings” precisely because government takes over social responsibilities that in its absence the church, family, neighbors, and voluntary associations – the “tendrils of community” – would assume.

In the concluding chapter of *In Pursuit* Charles Murray contends: “Much of what central government must do first of all is to leave people alone, and then make sure that they are left alone by others.” A major rethinking of the nature of public policy analysis in America has been long overdue – if we ever expect to overcome the institutional bias toward greater government growth. “If we have learned nothing else from our problems in formulating good social policy in recent decades,” Murray writes, “it is that we need better questions about what we are doing and why.” With *In Pursuit*, Charles Murray has provided them.

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Charity without choice, An Enemy of justice?

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If helping others is such a good thing, why not make it mandatory? Why not force people to do good by others, since we believe they should do it anyway? In the United States, and in most other countries, it is mandatory. Income taxes are designed to take from each according to ability (higher income equals higher taxes and higher tax rates), and to give to each according to need - through a variety of income redistribution and welfare programs.

We can evaluate government welfare programs

Charity is a virtue, and compassion is its motivating force. However, the institutionalization of compassion, as the dominant political principle, leads to moral corruption and intellectual fraud. This most personal of feelings grows from an encounter between individuals, in which the conscience of one is touched by the plight of another. Severed from its personal roots and recast in 'objective' form, it is at once denatured. Applied without warmth or discrimination, and changed from a human emotion to an abstract principle of order, compassion becomes a social disease - a permanent excuse offered to the irresponsible, and an obstacle to human endeavor.

The 'compassionate society' breeds the moral disorder. The sentimental cant that now dominates the Labour Party's rhetoric encourages us, not towards charity, with its burden of responsibility and sacrifice, but towards a universal and grudging dependence, a mean-minded refusal to take responsibility for either self or other. Moreover, made into an abstract principle, 'caring' becomes the enemy of justice, and the excuse for tyrannical social engineering. The 'caring' attitude, divorced from individual duty, begins to need an enemy, and lights on the rich, the successful and the responsible as its favored objects of punishment. As long as *they* suffer, it feels, as long as *they* are dragged down, compassion will triumph.

by asking the pragmatic question: have they achieved, or are they achieving, their stated goals? But Lincoln-Douglas debaters are asked to address value issues, rather than pragmatic policy ones. The first value question would be: ought we, as individuals, try to help those in need? Many who answer in the affirmative still oppose making charity mandatory. The following essay from The Salisbury Review discusses the benefits of voluntary charity and the harms caused by involuntary charity.

This is why hostility to the rich has been a stronger motive in socialist politics than any true and unsentimental concern for the poor. The fiscal consequences have been both economically disastrous and an affront to natural justice. The idea has become rooted in the social consciousness that property comes into the world unowned, and may therefore be distributed by the machinery of government without any regard to historical entitlement. Such an idea is fundamental to the theory of 'justice' given by John Rawls, and to many cruder and more self-serving socialist prescriptions for the 'good society'. For such theories, the primary question of politics concerns the 'distribution of a social product' - the 'social product' being a cake that is 'socially' owned. By means of that idea, it is possible to argue that 'socialist' distribution (i.e. equality of outcome) is required not merely by sentiment, but also by justice itself. Such a revised idea of 'justice', indifferent to all claims of work, sacrifice and history, licenses the harshest expropriations, and rides roughshod over the real moral world of human agreement. "Social justice," fortified by abstract compassion, becomes the solvent of social order, placing in every human heart the hope for a reward that need never be deserved or worked for.

Justice, beneficence, & the law

by Howard Baetjer Jr.

There is much more to the full life in society than merely respecting other persons and their property. A good society will be marked not only by respect for one another's rights, but by a generous concern for one another's well-being, by friendship, good taste, health of mind and body. Why not use government to achieve these positive goals, rather than simply preventing the obvious negatives of theft, violation of contract, and personal injury? For example, why not use government to provide a social safety net, to eliminate the effects of bigotry, to encourage generosity, to prevent self-destructive behavior?

We will leave aside for now the economists' answer to this question – that in practice, government intervention usually makes worse the very conditions it is intended to improve. For now, let us ignore these practicalities and attend to principle. The classical liberal view holds that on principle, even if government intervention beyond the minimum could accomplish the ends at which it aims, it would still be inappropriate, it would still be wrong. Why?

Perhaps no one has presented this train of reasoning as well as Fredric Bastiat, in *The Law*.

“What, then, is law? It is the collective organization of the individual right to lawful defense.

“Each of us has a natural right – from God – to defend his person, his liberty, and his property. These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties?

“If every person has the right to defend – even by force – his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right – its reason for existing, its lawfulness – is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot

lawfully use force against the person, liberty, or property of another individual, then the common force – for the same reason – cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.

“Such a perversion of force would be, in both cases, contrary to our premise. Force has been given to us to defend our own individual rights. Who will dare to say that force has been given to us to destroy the equal rights of our brothers? Since no individual acting separately can lawfully use force to destroy the rights of others, does it not logically follow that the same principle also applies to the common force that is nothing more than the organized combination of the individual forces?

“If this is true, then nothing can be more evident than this: The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all.”

On this view, government does not have rightful authority to do more than the minimum of protecting “persons, liberties, and properties.” As a matter of political philosophy, this is all government can rightly be. Henry David Thoreau puts it well in “Civil Disobedience” when he says, “...government is an expedient by which men would fain succeed in letting one another alone.”

It is helpful to remember, in this regard, that rights are essentially a negative concept. One person's rights mean that others must not do anything to him. Your right to life means that the rest of us may not interfere with your life; it does not mean that we must provide you with food and shelter. Your right to free speech means that we may not prevent you from speaking or publishing your mind, on and with your own property or property you have been permitted to use. It does not mean we have to provide you with a microphone or printing press.

Because real rights are negative, because they do not entail positive obligations, for the govern-

ment to make people serve others – through taxation – is to violate their rights to their own property.

This issue we are dealing with here is the proper function of government, that is, of the proper role of force in human relationships. What obligations among people may be required by force, and which should be left up to persuasion and conscience? This subject is addressed eloquently in Adam Smith's other great work, *The Theory of Moral Sentiments*. [Adam Smith is best known for *The Wealth of Nations*, published in 1776.]

Smith distinguishes two different kinds of duties or obligations for people. One is beneficence, the other is justice. Under beneficence he includes gratitude, friendship, generosity, and charity. The laws of justice he describes this way: "The most sacred laws of justice. . . are the laws which guard the life and person of our neighbor; the next are those which guard his property and possessions..."

Thus, for Smith, beneficence encompasses positive obligations of good will and fellow-feeling. Justice has to do with negative obligations, to respect the rights to life and property.

It is noteworthy that Smith places beneficence higher on the scale of virtues than justice. "[T]he greater exertions of [beneficence] appear to deserve the highest reward. By being productive of the greatest good, they are the natural and approved objects of the liveliest gratitude...[O]n the contrary..., the observance of the rules of [justice] seems scarce to deserve any reward. There is, no doubt a propriety in the practice of justice, and it merits, upon that account, all the approbation which is due to property. But as it does no real *positive* good, it is entitled to very little gratitude. Mere justice is, upon most occasions, but a *negative* virtue, and only hinders us from hurting our neighbor. The man who barely abstains from violating either the person or the estate, or the reputation, of his neighbors, has surely very little positive merit. He fulfills, however, all the rules of what is peculiarly called justice.... We may often fulfill all the rules of justice by sitting still and doing nothing."

But although there may be more merit to beneficence than to justice, in Smith's view, only

justice is enforceable. Hence, only justice is within the function of government. "Beneficence is always free," he says, "it cannot be extorted by force, the mere want of it exposes to no punishment; because the mere want of beneficence tends to do no real positive evil...[T]he mere want of the beneficent virtues, though it may disappoint us of the good which might reasonably be expected, neither does, nor attempts to do, any mischief from which we can have occasion to defend ourselves.

"There is, however, another virtue, of which the observance is not left to the freedom of our own wills, which may be extorted by force, and of which the violation exposes...to punishment. This virtue is justice: the violation of justice is injury: it does real and positive hurt to some particular persons."

Here is an argument similar to Bastiat's that the proper use of force is for defense only. "We must always...", says Smith, "carefully distinguish what is only blameable, or the proper object of disapprobation, from what force may be employed either to punish or to prevent. That seems blameable which falls short of that ordinary degree of proper beneficence which experience teaches us to expect of every body...."

"Even the most ordinary degree of kindness or beneficence, however, cannot, among equals, be extorted by force... When a father fails in the ordinary degree of parental affection towards a son; when a son seems to want that filial reverence which might be expected to his father;... when a man shuts his breast against compassion, and refuses to relieve the misery of his fellow creatures, when he can with the greatest ease; in all these cases, though every body blames the conduct, nobody imagines that those who might have reason, perhaps, to expect more kindness, have any right to extort it by force. The sufferer can only complain, and the spectator can intermeddle no other way than by advice and persuasion. Upon all such occasions, for equals to use force against one another, would be thought the highest degree of insolence and presumption."

In a justly ordered society, then, for Smith as for Bastiat, force is to assure fundamental justice. The higher virtues, positive acts of good in society, are left to the voluntary good will of free individuals.

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Civil Rights at the Crossroads

by Gregory F. Rehmke

Resolved: That affirmative action programs to remedy the effects of discrimination are justified.

The resolution states that affirmative action programs are justified, but notice it also implies that such programs do indeed remedy the effects of discrimination. Though affirmative action programs are intended to provide a remedy, it is not at all clear that they do. And this complicates the job of both the affirmative and the negative.

Affirmative action programs have become more complex over time. Though originally designed to make sure federal contractors did not exclude minorities in their hiring practices, affirmative action programs gradually evolved toward quotas and “equality of results” (replacing the earlier “equality of opportunity” intent). Thomas Sowell reviews this gradual shift in his book *Civil Rights: Rhetoric or Reality*.

A broad objection to affirmative action programs is that they force employers to judge people not as individuals with specific skills and abilities, but as members of groups. Individual abilities take second place to minority group membership. This objection can undermine the justification for affirmative action programs even if they are effective in remedying discrimination. But do affirmative action programs provide this remedy?

Clint Bolick, in his new book *Changing Course: Civil Rights at the Crossroads*, cites Harvard Professor Glenn Loury’s view that “racial preferences detract from the quest for black progress by reinforcing the notion that successful blacks are ‘supplicants of benevolent whites’:

[T]he broad use of race preference to treat all instances of “under-representation” introduces uncertainty into the process by which individuals make inferences about their own abilities... It undermines the ability of people to confidently assert...that they are as good as their achievements seem to suggest. It therefore undermines the extent to which the personal success of one group member can become the basis of guiding the behavior of other individuals.”¹

Bolick cites William Raspberry’s description of the experience of Dayna Matthew, a University of Virginia law student whose success in a writing competition was about to earn her a position as one of the first black members of the Law Review. But before she made it on her own, the Law Review passed a special program designed to qualify blacks. Ms. Matthew’s response was: “Affirmative action was a way to dilute our personal victory. I see this well-intentioned, liberal-white-student affirmative action program as an intrusion.”²

Clearly, affirmative action’s good intentions are not enough. In order to put affirmative action programs in perspective, we should look at the history of the broader civil rights movement in America.

A brief history of civil rights

The civil rights movement begins with the efforts of Northern abolitionists like William

Lloyd Garrison to end slavery in the South. After the Civil War, the early hopes that the rights of blacks would be protected was dashed by the Supreme Court's narrow interpretation of the newly passed Fourteenth Amendment. By a 5-4 majority the Supreme Court upheld each state government's ability to grant monopolies and generally limit economic liberties.

Following the Civil War southern white supremacists passed a series of laws restricting black voting rights, which gave them control over state governments. Once in control, white supremacists passed legislation limiting the economic freedom of blacks – laws which have become known as the “Jim Crow” laws.

Clint Bolick explains the reasons why white supremacists were unable, in a market economy, to effectively discriminate against black workers without passing coercive legislation:

“At first, [the white supremacists] relied upon persuasion and peer pressure to convince Southern landowners to limit employment opportunities and restrict wages [of blacks]. But [d]espite these admonitions,’ observes Jennifer Roback, professor of economics at George Mason University, ‘white employers vigorously competed with one another for black labor.’³ Recognizing that a competitive labor market provided powerful economic disincentives to discriminate, the supremacists soon resorted to coercion through law. As Robert Higgs explains [t]he fountainhead of effective discrimination lay in the government of the southern states, counties, and cities, where the racial monopoly of politics allowed the hostile whites to treat the blacks as they pleased”⁴

These laws, according to Bolick, “constituted a pervasive, interlocking system of economic restraints.”⁵ Bolick cites four varieties of Jim Crow laws designed to hold down black wages. But blacks progressed even with the burden of these early Jim Crow laws, and over their first fifty years of freedom, individual black incomes rose by over 300%.⁶

Dramatic progress in black education was achieved during this period by the American Missionary Association, whose hundreds of schools brought the black illiteracy rate down from 80% to 45% (from 1865 to 1892). W.E.

DuBois noted that in a single generation, the missionary schools produced “thirty thousand black teachers in the South” and “wiped out the illiteracy of the majority of black people of the land.”⁷

Unfortunately, the very successes blacks were achieving under existing Jim Crow laws motivated white supremacist politicians to tighten the screws. New legislation further limited the economic liberties of blacks, including “separate but equal” laws enacted to prevent social contact between blacks and whites. Sadly, the Supreme Court approved “separate but equal” legislation with its *Plessy v. Ferguson* decision in 1896.

According to Bolick, “In *Plessy*, the Court retreated fully from the principle of constitutional color-blindness, substituting instead a ‘reasonableness’ standard that is still invoked today to sustain the current breed of state-imposed discrimination.”⁸

Justice John M. Harlan dissented in the *Plessy* decision, “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. ...The law regards man as man, and takes no account of... his color when his civil rights as guaranteed by the supreme law of the land are involved.”

But Harlan was in the minority, and the *Plessy* decision opened the door for segregation: “In the two decades following this infamous decision, the Southern states imposed segregation in virtually every public facility, from railroads and streetcars to schools and prisons.”⁹

The end of separate but equal

The Supreme Court put an end to the *Plessy* “separate but equal” doctrine with its 1954 decision in *Brown v. Board of Education*. Bolick quotes from the National Association for the Advancement of Colored People’s brief in *Brown v. Board of Education*, which he calls “perhaps the most brilliant and comprehensive statement of the development and philosophical underpinnings of the civil rights vision”¹⁰

The importance to our American democracy of the substantive question can hardly be overstated. The question is whether a nation founded on the proposition that “all men are

created equal” is honoring its commitments to grant “due process of law” and “the equal protection of the laws” ... when it, or one of its constituent states, confers or denies benefits on the basis of color or race. (Brief for Appellants, p. 16)

Bolick continues:

The [NAACP] brief traced the evolution of civil rights from their origins in natural law as interpreted by Jefferson and Locke through the ratification of the Fourteenth Amendment. The framers of that amendment, the NAACP brief demonstrated, ‘were formulating a constitutional provision setting broad standard for determination of the relationship of the state to the individual.’ Their primary intent, the brief emphasized, was to ‘prohibit all state action predicated upon race or color.’”¹¹

Thomas Sowell traces the gradual shift from equal opportunity laws that required individuals be judged without regard to race, sex or age, to later affirmative action laws that require individuals be judged with regard to race, sex or age. Though many civil rights advocates have followed this shift in objectives, a growing number, mostly economists, have broken away. Their new focus is on the remaining economic legislation that still today has the effect of limiting economic opportunities for blacks, on the destructive consequences of various welfare programs, and on the poor management and quality of inner-city public schools.

Instead of calling for quotas and affirmative action in black hiring, economists like Thomas Sowell, Walter Williams, and Jennifer Roback along with Glenn Loury, Clint Bolick and others, have called for repealing regulations and licensing restrictions that block access by poor black people to entry level jobs and enterprises.

The State Against Blacks

Walter Williams, in his book *The State Against Blacks*, focuses on modern occupational and business licensing that locked-up many occupations. The original intent of many trade associations, for example, was to limit competition from black laborers. Licensing restrictions today for plumbers, electricians, barbers, beauticians and

other occupations hurt those on the bottom rungs of the economic ladder most. And regulatory laws have, for example, forced blacks out and kept them out of sectors of the transportation industry (see Chapter 8, “Negroes and the Railroad Industry,” and Chapter 9, “Interstate Commerce Commission: Truck Regulation.”)

Williams argues that current civil rights efforts should be directed at eliminating these economic barriers to entry in the workplace, and to economic policies that generate economic growth. Economy-wide growth helps everyone, but tends to help lowest income groups the most.

The Role of Economic Growth

Economic growth creates job opportunities, and periods of strong economic growth have been periods of economic progress among blacks. Bolick cites a study by James P. Smith and Finis Welch for the Rand Corporation which revealed:

that in the forty years between 1940-80, blacks rapidly narrowed the socioeconomic gap. During that period, wages of black males increased 52% faster than white wages... Gains by black women during this period were even more rapid. Moreover, the black middle class experienced enormous growth, and for the first time it outnumbered the black poor. Similarly, the percentage of black families in poverty decreased substantially, from 75% in 1940 to 30% in 1980.

“But strikingly, the study found 80% of black progress between 1940-80 was made *before* 1965 - before racial preferences, before massive busing, before skyrocketing welfare spending. Indeed, the decline in the percentage of black families in poverty ceased altogether between 1970-80, at the very height of the welfare state.”¹³

As Robert Higgs pointed out above “[t]he fountainhead of effective discrimination lay in the government of the southern states, counties, and cities...”

A little economics explains how the free market system punishes racial, ethnic, and gender discrimination. Like basketball teams, companies either hire the most qualified people they can find, or they get hammered in competi-

tion with other teams or firms that do. This is why the most intensively competitive industries tend to have the least discrimination, while the more heavily regulated and sleepy industries have historically experienced the most discrimination.

What would happen to a NBA franchise run by white supremacists? (Answer: they would lose by big margins, ticket sales would drop, and the franchise would lose money and soon be taken over by new management.) Employers who refuse to hire the highest-qualified applicants because of skin color or gender must compete against firms that do.

Economist Alvin Rabushka explains:

Free markets separate economic efficiency from other irrelevant characteristics. A businessman, entrepreneur, or a consumer who expresses preferences that are not related to cost or productive efficiency is at a disadvantage compared to other individuals who do not. These discriminating persons impose higher [money] costs on themselves when they discriminate [and]. . . will ultimately be forced out of business, unless they can rely upon the power of government to protect them from competition.¹⁴

For evidence to support his analysis, Rabushka cites studies of Ceylon (now Sri Lanka), Trinidad, Malaysia, and other multiracial societies. Each study found strong correlations between government spending and regulation, and racial discrimination. Rabushka also cites a 1965 U.S. study that documented extensive discrimination against Jews in the then-regulated industries of transportation, utilities, and finance. Again, discrimination in these regulated industries is less costly since profits do not depend on hiring the most qualified workers.

Hope for the Affirmative?

I have offered little encouragement for the affirmative position. But in reflecting on the arguments above, it is hard to muster optimism for those defending affirmative action as it is practiced today. Instead, I would encourage affirmatives to defend the earlier principles of the civil rights movement, and the earliest definitions of affirmative action, as discussed in Thomas Sowell's article.

Whether man or woman, white or black, if you put your mind to something, and devote yourself to it body and soul, chances are you will succeed. But people don't succeed at things they don't try for things they don't think are possible. Quotes can undermine the power of minority success stories to serve as beacons, drawing others toward successful careers.

Footnotes

1. Clint Bolick, *Changing Course: Civil Rights at the Crossroads*, Transaction Books, 1988, p. 88.
2. W. Raspberry, "Affirmative Action That Hurts Blacks," *Washington Post*, Feb. 23, 1987, p. A11.
3. J. Roback, "Southern Labor Law in Jim Crow Era," *U. of Chicago Law Review*, Vol. 511, p. 1161 (1984).
4. Robert Higgs, *Competition and Coercion*, Cambridge Univ. Press, 1977, p. 134.
5. Bolick, *Changing Course*, p. 33.
6. *Ibid.* p. 35.
7. *Ibid.* p. 35.
8. *Ibid.* p. 36.
9. *Ibid.* p. 37.
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11. *Ibid.* p. 45.
12. Walter Williams, *The State Against Blacks*, McGraw Hill, 1982
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Culture, ideas & values...Frantz Fanon & John Locke at Stanford

George H. Smith

In 1814, Thomas Jefferson denounced one of the “Great Books of the Western World,” Plato’s Republic:

While wading through the whimsies, puerilities, and unintelligible jargon of this work, I laid it down often to ask myself how it could have been, that the world should have so long consented to give reputation to such nonsense as this? [F]ashion and authority apart, and bringing Plato to the test of reason, take from him his sophisms, futilities and incomprehensibilities, and what remains?

John Adams agreed with Jefferson’s assessment. Recalling the “tedious toil” of reading Plato’s works, Adams declared: “My disappointment was very great, my astonishment was greater, and my disgust shocking.” Adams believed that Plato’s defense of communal property (including a community of wives) was “destructive of human happiness” and was “contrived to transform men and women into brutes, Yahoos, or demons.”

The great books are under fire once again, this time at Stanford University. Stanford has scrapped its required Western culture course and replaced it with a program called “Cultures, Ideas, and Values” (CIV). The pilot course for this program, “Europe and the Americas,” retains some great books, but it has also made room for minority, feminist, and Third World writers—including Rigoberta Menchu, Zora Neale Hurston, and Frantz Fanon. These writers, their advocates

argue, will offset the racism, sexism, and cultural bias inherent in the traditional great books. (One traditional author, Augustine, was born and reared in Africa, but his culture and race presumably strip him of African credentials.)

The traditionalists, of course, are duly alarmed by Stanford’s attack on Western civilization. If the reformers have their way, if Stanford freshmen no longer read the great books, what will become of our treasured Western values? What will become of Plato’s communism, Augustine’s spiritual masochism, Machiavelli’s cynical amorality, More’s critique of private property, Luther’s strident irrationalism, Marx’s authoritarianism, and more?

How important is this debate? Will the great books read by freshmen profoundly influence their lives? Probably not, especially when students breeze through several books (or selections from books) in a semester or two. The great thinkers of the past were not addressing American college students of today. As Robert Hutchins observed, “To read great books, if we read them at all, in childhood and youth and never read them again is never to understand them.”

A great books program, skillfully conceived and executed, can accomplish two things: it can fire students with the love of reading and learning, and it can acquaint students with some perennial problems confronting human existence. If a student does not leave an introductory course with the desire to learn more, then that course was a waste of time.

This is where the instructor's skill comes into play. A great book, when taught by a bore, is boring. A great book, when taught by a professor who doesn't understand its relevance, seems irrelevant. A great book, when taught by a professor with an axe to grind, will be chopped into small, unrecognizable pieces.

Required reading in college may become despised reading in later life. Even today I do not enjoy reading Shakespeare. I want to read Shakespeare, but when I try, I am flooded with horrific school-day memories—flashbacks of barely literate students stumbling aloud through Elizabethan verse in monotone draws—flashbacks of drudgery, pedantry, and suppressed yawns. Who has not had similar experiences?

If the Stanford faculty does to Fanon what my teachers did to Shakespeare, then traditionalists can take heart: No Stanford student, after leaving that institution, will ever read Fanon again.

Social Justice at Stanford

Stanford's CIV program has been defended by Charles Junkerman, assistant dean of undergraduate studies. "[B]ooks," Junkerman asserts, "are to be read and valued for what they have to say, not for the name recognition of their authors." This is reasonable enough, though it would be difficult to find anyone who advocates reading great books because they bear famous names.

Fanon's *The Wretched of the Earth* is now required reading for Stanford freshmen; John Locke's *Second Treatise of Government* is not. Junkerman defends this peculiar choice as follows:

50 years ago John Locke seemed indispensable in answering a question like "What is social justice?" In 1989, with a more interdependent world order, a more heterogeneous domestic population, and mass media and communications systems that complicate our definitions of "society" and "individual," it may be that someone like Frantz Fanon, a black Algerian psychoanalyst, will get us closer to the answer we need.

An interdependent world order, a heterogeneous domestic population, and mass media and

communications systems—seldom are so many clichés crowded into one sentence. But what do they mean? England doesn't have an especially heterogeneous population—even today. Should we therefore dismiss all English theorists of social justice? As for mass media and communications, is Locke outdated because he didn't have a television, a phone, or a computer? If Junkerman uses these devices, do they render him a more able philosopher than Locke? And have modern conveniences really complicated our definitions of "society" and the "individual"? (Here's a useful test: If you can touch it, it's definitely not a society.)

Junkerman apparently finds Fanon more to his liking than Locke; that is his prerogative. But to recommend Fanon over Locke in a course on "Europe and the Americas" is intellectually irresponsible. Few writers have exerted more influence on modern Western thought than Locke. Adam Smith and Karl Marx are possible candidates, but, of these, only Marx has found his way into the Stanford program. A course on Western thought without John Locke or Adam Smith is like a course on ancient Greek philosophy without Plato or Aristotle.

Locke vs. Fanon

Junkerman has targeted Frantz Fanon and John Locke for comparison, so let's take a look at these two authors.

First published in French in 1961, *The Wretched of the Earth* emerged from Fanon's experiences during the French-Algerian war. Fanon's angry indictment of colonialism and racism is insightful, sometimes brilliant. The same cannot be said, however, of Fanon's socialist agenda for an independent Algeria.

Fanon writes of "the necessity for a planned economy" and "the outlawing of profiteers." A revolutionary government, if it is to rescue the economy of a newly liberated country, "must first and foremost nationalize the middleman's trading sector." While under French rule, Algerian peasants learned a valuable economic lesson—a lesson that Stanford's wealthy donors should ponder as well:

The people come to understand that wealth is not the fruit of labor but the

result of organized, protected robbery. Rich people are no longer respectable people; they are nothing more than flesh-eating animals, jackals, and vultures which wallow in the people's blood.

The government, Fanon writes, should educate the masses politically; this will "make adults of them." Fanon's elitism becomes even more apparent in this passage: "We ought to uplift the people; we must develop their brains, fill them with ideas, change them and make them into human beings."

Why don't Algerians qualify as adults and human beings until their brains are filled with ideas by Fanon and his ilk? Partially because the "young people of the towns, idle and often illiterate, are a prey to all sorts of disintegrating influences." In other words, Algerian youth may pursue activities of which Fanon disapproves—corrupt "capitalist" values, including "detective novels, penny-in-the-slot machines, sexy photographs, pornographic literature, films banned to those under sixteen, and above all alcohol." (Apparently the idle youth have sufficient money to spend on slot machines and movies, and the illiterate youth are sufficiently literate to read detective novels and pornographic literature.) Even the "capitalistic conception of sport," according to Fanon, poses a serious threat to underdeveloped countries.

To combat such evils, "the government's duty is to act as a filter and stabilizer." Youth commissioners will combat the main evil, idleness, by putting young people to work. "For this reason the youth commissioners ought for practical purposes to be attached to the Ministry of Labor"—and this Ministry of Labor ("a prime necessity in underdeveloped countries") will cooperate with the Ministry of Planning ("another necessary institution in underdeveloped countries").

With his call for a planned economy and its attendant bureaucracy, Fanon appears to favor a highly centralized government. But this is not true, he assures us. Throughout his book, Fanon stresses the need to keep power out of the hands of a ruling elite and in the hands of the people. This requires "decentralization in the extreme."

But how can a socialized economy function (to the extent it can function at all) without a centralized government? Perhaps Stanford freshmen can

mult this problem over while they wade through Fanon's book.

Fanon vs. Africa

Fanon's economic program is a prescription for disaster modeled, ironically enough, after Western theories of economic planning. So where is the African perspective that Fanon is supposed to offer Stanford freshmen? Does he call for a revival of African culture? Far from it. Fanon attacks African culture with a vehemence second only to his attack on capitalism.

European colonizers demeaned Africans culturally and racially. Understandably, therefore, many Africans seek to reclaim their African heritage through literature, poetry, music, and art. This love of African culture, Fanon says, is shared by some black Americans who "experience the need to attach themselves to a cultural matrix."

But the quest for an African culture, Fanon warns, leads up a blind alley; "There will never be such a thing as black culture." It is "mystification, signifying nothing."

[E]very culture," Fanon believes, "is first and foremost national." An Algerian who seeks out a precolonial African culture "feels the need to turn backward toward his unknown roots and to lose himself at whatever cost in his own barbarous people." The native should tear himself away from these roots, "painful and difficult though it may be"; otherwise, "there will be serious psycho-affective injuries." (The psychiatrist Fanon, the enemy of Western culture, revels in Western psycho-babble.)

African traditions—"the good old customs of the people"—should be jettisoned. Why? Because Fanon worries that Algerians, freed from the yoke of colonialism, will reject his vision of how they should live; they might choose instead to return to the tribalism and feudalism of precolonial Africa. Presumably, those misguided Algerians who feel they have a right to live as they see fit have been corrupted by that Western value known as freedom of choice.

Instead of adopting old customs, Algerians should develop an authentic (Fanon's favorite word) national culture based on revolutionary realities. Authentic culture "is opposed to custom, for custom is always the deterioration of

culture.” During a revolutionary struggle, the desire to attach oneself to tradition or to revive old traditions means “opposing one’s own people.” The African artist who looks to the African past for inspiration turns away from actual events and embraces “the castoffs of thought, its shells and corpses.” If the native artist wishes to produce an authentic work of art, he must join the revolutionary struggle.

What does all this mean? Put simply, it means that Fanon regards African culture as a pernicious and reactionary myth; it is “a stock of particularisms,” “mummified fragments,” and “symbols of negation and outworn contrivances.” If these elitist remarks had come from a white writer, he would be excoriated as racist, culturally biased, and unsuitable for the Stanford CIV program. But Fanon was a black revolutionary socialist, so never mind.

Was Fanon included in the Stanford program to represent African culture? If so, the Stanford planners have perpetrated a cruel hoax. Fanon is pushing a revolutionary socialism and its national culture, nothing more.

John Locke’s Revolutionary Ideas

While in college, I imbibed my John Locke through a professor who was under the spell of C.B. MacPherson’s book, *The Political Theory of Possessive Individualism*. I was told that Locke was a political conservative, a defender of a nascent capitalist class, and a member of the “bourgeoisie” (i.e., “middle class” uttered with a sneer). Even this mangled view, however, is a cut above an interpretation based on Locke’s culture, race, sex, and time. We may concede the point: Locke was Western and white and male, and he died a long time ago. If these flaws expel him from Stanford classrooms, so be it.

Whether Locke should be included in the Stanford program narrows to a single point: Should freshmen read one of the most influential philosophers of the modern era—a man whose philosophical, political, and educational writings profoundly influenced leading thinkers in England, Scotland, France, America, Germany, and elsewhere?

Locke’s *Essay Concerning Human Understanding* set the stage for modern empiricism, and it

was deeply admired by the luminaries of the French Enlightenment, such as Voltaire. The impact of Locke’s *Second Treatise of Government* is difficult to exaggerate. Reading that tract is essential if students are to understand the ideological background of the American and French Revolutions—two of the most cataclysmic events of the modern era.

In short, it is virtually impossible to understand the past 250 years of Western civilization without referring to Locke. He upheld natural rights, government by consent, religious tolerance, the right to resist unjust laws, and the right to overthrow tyrannical governments. These principles have become indispensable to our vision of a free and open society.

Nevertheless, in the mind of Junkerman, Fanon may “get us closer to the answer we need” in the search for social justice. Ironically, Fanon occasionally sounds like Locke. “The land belongs to those that till it,” Fanon asserts. Locke agrees wholeheartedly:

The *labor* of man’s body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labor* with, and joined to it something that is his own and thereby makes it his *property*.

Fanon tells how Algerian revolutionaries refused “to tolerate any encroachment of this right of ownership.” The Algerians, he boasts, “are men of property.” Locke would have been very pleased indeed.

Locke, like Fanon, was a revolutionary. Wanted by the English government for sedition, Locke spent six years hiding out in Holland. And his *Second Treatise* is one of the most vigorous and compelling defenses of violent revolution ever penned.

Who decides when a revolution is necessary? Locke answers: “The people shall be judge.” In a passage later drawn upon by Jefferson for his Declaration of Independence, Locke writes:

If a long train of abuses, prevarications, and artifices, all tending the same way, make the design [to oppress] visible to the people, and they cannot but feel, what they lie under, and

see, whither they are going; 'tis not to be wondered, that they should then rouse themselves, and endeavor to put the rule into such hands, which may secure to them the ends for which government was first erected.

What if a revolution involves considerable bloodshed? In this event, argues Locke, the fault lies with the oppressors, not with the oppressed:

If any mischief come in such cases, it is not to be charged upon him who *defends* his own right, but on him that *invades* his neighbors. If the innocent honest man must quietly quit all he has for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence

and rapine; and which is to be maintained only for the benefits of robbers and oppressors. Who would not think it an admirable peace betwixt the mighty and the mean, when the lamb, without resistance, yielded his throat to be torn by the imperious wolf?

Perhaps Junkerman can explain why these and many similar passages no longer apply to the modern quest for social justice. Locke, far more than Fanon, provides a philosophical justification for restoring the rights of life, liberty, and property to oppressed peoples everywhere.

Reprinted from Cato Policy Report, July/August 1989. George Smith is a fellow of the Institute for Humane Studies at George Mason University.

Economic limits on Freedom of the Press

by Gregory F. Rehmke

Resolved: That limitations upon the content of student publications by secondary school administrators are justified.

A booklet entitled “How We Live” explains the “Ten Pillars of Economic Wisdom,” and one of these pillars applies to this LD topic: Pillar #1: “Nothing in our material world can come from nowhere or go nowhere, nor can it be free: everything in our economic life has a source, a destination and a cost that must be paid.” (American Economic Foundation, Cleveland, Ohio, 1988).

A school newspaper is a material thing, from the paper and ink to the typesetting and printing. It has a cost that must be paid. The First Amendment to the Constitution does not give us the right to demand our writings be published in someone else’s publication. Instead, it prohibits government from making laws that interfere with our efforts to publish.

If you walk into the local American Speedy Print store and ask them to print 1,000 copies of your speech, what would they say? Of course they would say no - unless you offered to pay them money to compensate their costs for paper, ink, machines, labor, and taxes.

What if you offer to pay them, and they still say no. Your speech may argue, for example, that print shops should not charge students or poor people, since students and poor people can’t afford the costs, and are therefore unable to exercise their right to freedom of the press. The American Speedy Print proprietor may take one look at your speech and say something unprintable. Does he have the right to refuse to print debate speeches he doesn’t like, and if so, upon

what is that right based?

His right to discriminate is based on his property rights - based on his ownership of the print shop and printing equipment. He owns them, and he can decide what he wants to print. He may decide he doesn’t want to print an essay calling for the violent overthrow of the government, for example. (Which is why foresightful revolutionaries get into the publishing business.)

The First Amendment says only that Congress shall make no law abridging the right of the owners of American Speedy Print to print or not print what they choose. The pamphleteer is protected only by competition among print shops - a nearby Quik Print shop might be happy to print your speech (along with a denunciation of American Speedy Print). If we cannot convince anyone to print our words, we can, ultimately, acquire the necessary equipment and do our own printing.

So there you have it. Whoever owns the equipment and pays the costs has the ultimate right to pass judgement on the content. But that clears up only those cases where property rights are clear - in private schools, for example. In public schools, who owns the property? And who has clear title to the printing equipment, or to the money needed to pay outside printing costs?

Things get sticky

This gets sticky because public schools are operated by state and local governments. Taxpay-

ers put up the money for schools, but ownership is a murky issue involving school districts, administrators, politicians, and taxpayers.

The government must abide by various Constitutional safeguards which do not restrict private owners. Protections of the First Amendment: "Congress shall make no law...abridging the freedom of speech, or of the press..." apply to state governments as well, via the Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

On the one hand even a government school is prohibited from abridging freedom of the press, yet on the other, the school is supposed, in principle, to be accountable to the taxpayers who finance it. People who have paid their taxes should have a voice in the operation of tax-supported institutions. What is to be done then if the taxpaying public pressures school administrators into limiting the content of school newspapers? This dilemma is without solution.

Economics can offer no neat solutions where property rights are muddled. If it is not clear who owns what, then it is not clear what rights apply to whom. School administrators work under school district administrators, who are overseen by elected or appointed school board members, who in turn are accountable to the public. It is no wonder that when students and parents have a gripe with their school they hire lawyers and go directly to the courts to get things changed.

The affirmative can argue that a school principal – its top manager – should have final say over school operations like the student newspaper. The managers of other government agencies and departments control the content of their publications. Why shouldn't the management of government schools have the same control over the editorial content of publications printed in their institutions and paid for from their budgets?

To this the negative can counter, first, that the schools are not the property of school administrators, and that public schools are different

kinds of institutions altogether than most others operated by government (most like prisons, perhaps, where attendance is commanded by law. Prisoner's and student's rights should be carefully considered, since they are not employees, as those in other government institutions are).

Second, the negative position can hold that the First Amendment does not exempt public schools when it says Congress "shall make no law abridging freedom of the press." Paradoxically, it may be that the only way to guarantee freedom of the press in public schools is to not have school papers at all, since none are likely to satisfy both the absolute shield of the First Amendment as well as the taxpaying public's right, through the school administration or the courts, to have a voice.

The Green Weenies died today

In my sophomore year at Highline High School in Washington state, the most popular student organization, the "Green Weenies," and their off-beat newspaper, came to an abrupt end one Monday morning. The Vice-Principal announced he "wasn't born yesterday, and the Green Weenies died today." He was upset about an incident at the previous Saturday's football game where the Green Weenies led an off-color cheer.

It was the Vice Principal's job to monitor the student body, and he simply banned Green Weenie activities on school grounds and at school events. The Green Weenies, he said, had no right to associate *on school grounds*, just as they had no right to print their newspaper *on school grounds* and with school equipment. The Vice Principal's ability to crush a voluntary association of students and ban their newspaper turned on his *de facto* control of the school property involved.

Again the issues seem unsolvable. Maybe the Vice Principal exercised good judgement – who knows what the Green Weenies would have done next if they had gotten away with their risque rhyming. Maybe a judge and jury would have agreed that the Vice Principal's response was justified (and that the cheer was indeed off-color). But to rely on the good judgement of school or government officials regarding freedom

of the press is asking for trouble.

“Good judgement” is likely to last only until someone’s ox is gored. The Green Weenies happened to be more interested in dirty cheers than politics, but they may have fared little better cheering controversial policies – such as calling for a new Vice Principal, or advocating school choice (i.e. where students could choose to attend schools with more sympathetic Vice-Principals).

The Soviets had a Constitution too

Some may argue that it would be a valuable educational lesson for students if administrators would treat student publications as if they had Constitutional protections. But that argument can be turned around.

Perhaps the best Constitutional lesson for students is having their school paper threatened with censorship. They learn that public property and freedom of the press do not mix. Freedom of the press is ultimately grounded on the economic right to own and freely use the raw materials needed for printing. Why pretend students have freedom of the press when they do not, and cannot, as long as school or other state officials own or control the presses?

It is worth noting that every citizen in the former Soviet Union was guaranteed freedom of the press by the Soviet Constitution. But since Soviets did not have the economic rights to own and operate printing presses or photocopiers, they had little opportunity to exercise their constitutional rights to a free press.

Access to health care

by Gregory F. Rehmke

Resolved: That the U.S. government has a moral responsibility to insure access to quality health care for all citizens.

Most would agree that in America at least, everyone now has access to quality food and clothing by virtue of being able to walk into private stores and simply purchasing food and clothing. Very poor (or very frugal) people might buy their clothing at St. Vincent de Paul, or buy their food at Costco, or even receive their food from a local charitable food bank. But everyone has access to quality – new or used – clothing, and quality food. To say that everyone ought to have access to quality food and clothing does not imply that the government ought to provide these goods to people at no charge.

Quality medical care seems a somewhat different case since major medical expenses can cost far more than a week’s supply of food, or a year’s supply of clothing. But if major medical

insurance is reasonably priced, what is it that might deny access to medical care. There is nothing in theory that prevents even poor people from buying inexpensive medical care and inexpensive medical insurance. There is no obvious principle in political philosophy or economics that sets medical policy in a different world from food, clothing, shelter, or other goods and services available to all. But the reality of medical policy in America must of necessity draw the value debater into the policy world. For it is in the policy world that problems with medical care, especially for the poor, become visible.

One of the most valuable background sources for this topic is a slender volume by S. David Young titled *The Rule of Experts*. Access to inexpensive but quality modern medical care and

insurance is indeed hindered in America, but not by poverty alone. Why is it that poor people can find cheap but adequate shoes and meals, but not cheap but adequate medical care? The core reason is that the medical experts who decide what medical care will be available, and at what price, have simply outlawed cheap but adequate medical care. Only state-funded medical doctors can provide medical services in America, not because we lack for capable nurses, pharmacists, midwives and other healers, but because the medical profession controls the health care regulatory structure and the medical schools.

U.S. troops invaded Grenada not too long ago to rescue Americans at a medical school there. What was a medical school doing in Grenada of all places? The answer is that the medical profession has limited the number of medical schools in America so it can limit the number of people who can train to become doctors. The American Medical Association is the lobbying force for doctors, and it is in their interest to limit the number of people who become doctors so they can maintain today's high incomes. Businessmen dislike competition, but few businesses have been as successful as the doctor business in tightly resisting entry into their markets.

Plumbers associations try to limit the number of people who can become plumbers; taxi companies try to limit the number of people who can get taxi licences; and lawyers associations push for tougher bar examinations that will flunk potential competitors. The interests of profes-

sions is like that of all businessmen - to protect themselves from competition wherever possible.

Chrysler, GM, and Ford want to further limit the number of Japanese cars that can be purchased by Americans, American rose-growers have limited the number of foreign-grown roses available to Americans. American doctors likewise have essentially banned foreign-trained doctors from immigrating to America to practice medicine. Quality is an issue, but in practice it has been secondary to throttling competition wherever possible.

This is the general economic perspective on professionals and competition and has its roots as far back, at least, as Adam Smith's famous quote about businessmen in *The Wealth of Nations*: businessmen seldom meet for mirth or merriment but that the conversation soon turns to restraint of trade or some other conspiracy against the public. The "free enterprise" perspective is not that businessmen ought to be free to do as they wish, but that all should be free to launch an enterprise. The medical profession, unlike the food or clothing industry, is not particularly open to free enterprise.

This view of the role of the American Medical Association, and other professional organizations, is certainly debatable. Members of these professions will claim that their interest is in public safety, and on maintaining high standards. The weight of historical evidence, however, and the weight of economic theory, is against the continued rule of medical experts.

The Counter-Revolution of Science

Studies on the Abuse of Reason

Friedrich A. Hayek

During the first half of the nineteenth century a new attitude made its appearance. The term science came more and more to be confined to the physical and biological disciplines which at the same time began to claim for themselves a special rigorousness and certainty which distinguished them from all others. Their success was such that they soon came to exercise an extraordinary fascination on those working in other fields, who rapidly began to imitate their teaching and vocabulary. Thus the tyranny commenced which the methods and technique of the Sciences in the narrow sense of the term have ever since exercised over the other subjects. These became increasingly concerned to vindicate their equal status by showing that their methods were the same as those of their brilliantly successful sisters rather than by adapting their methods more and more to their own particular problems. And, although in the hundred and twenty years or so, during which this ambition to imitate Science in its methods rather than its spirit has now dominated social studies, it has contributed scarcely anything to our understanding of social phenomena, not only does it continue to confuse and discredit the work of the social disciplines, but demands for further attempts in this direction are still presented to us as the latest revolutionary innovations which, if adopted, will secure rapid undreamed of progress.

Let it be said at once, however, that those who were loudest in these demands were rarely themselves men who had noticeably enriched our knowledge of the Sciences. From Francis Bacon, the lord chancellor, who will forever remain the prototype of the “demagogue of science,” as he has justly been called, to Auguste Comte and the “physicalists” of our day, the claims for the exclusive virtues of the specific methods employed by the natural sciences were mostly advanced by men whose right to speak on behalf of the scientists was not above suspicion, and who indeed in many cases had shown in the Sciences themselves as much bigoted prejudice as in their attitude to other subjects... Francis Bacon opposed Copernican astronomy, and... Comte taught that any too minute investigation of the phenomena by such instruments as the microscope was harmful and should be suppressed by the spiritual power of the positive society, because it tended to upset the laws of positive science...

Reprinted from The Counter-Revolution of Science, (pp. 20-22) published by Liberty Press, 1979. The late Friedrich A. Hayek, a Nobel winning economist, is the author of The Constitution of Liberty, Law, Legislation and Liberty, The Fatal Conceit, and The Road to Serfdom. All are recommended for students of political, social and economic policy.

Limits: toward good or away from harm?

by Gregory F. Rehmke

Resolved: That the pursuit of scientific knowledge ought to be limited by a concern for avoiding societal harm.

Large institutions have an intellectual inertia that often unintentionally leads them to oppose advances in scientific knowledge. Large corporate research operations and large government research operations have a tendency to stifle the creativity and entrepreneurship of individuals and small teams. John Jewkes notes that “Many [great inventors] are, by temperament, wholly unsuitable for work in any research institution which is formally organized.” Research organizations tend to resist advances proposed from the outside. Jewkes cites the adage, “Is not every new discovery a slur upon the sagacity of those who overlooked it?” Jewkes’ analysis in “The Sources of Invention,” reprinted in the January 1991 issue of *Econ Update* applies as well to the advance of scientific knowledge as it does to the advance of technical knowledge (inventions).

Synthesizing

How could the pursuit of scientific knowledge conceivably be “limited,” as the topic resolves to do? Who would do the limiting and how? John Jewkes is wary of any kind of limitation on individual scientists, “There is no kind of organized, or even voluntary, coordination which approaches in effectiveness the synthesizing which goes on in one human mind.” Apart from the problem of who is to decide what comprises societal good is the problem of an outside agency attempting to limit the advance of science, and thus the activities of individual scientists.

A major difficulty with this resolution is that it attempts to limit the pursuit of scientific

knowledge “toward good” rather than limiting it “away from harm.” In a free country, the laws do not describe what we should do, only what we should not do. Laws make clear that we should not take or damage other people’s property, they do not tell us what we should do with our own property. If the resolution read: “Resolved: That the pursuit of scientific knowledge ought to be limited by a concern for avoiding societal harm,” then it would be a more straightforward task to describe the values – and conflict of values – involved. For example, a company or government research lab doing biotechnology research has the potential to cause enormous harm just as it has the potential to create enormous benefits with new wonder drugs. How should such research be dealt with?

If all research that may cause damage is prevented (as many want to prevent biotechnology research), people will lose all the potential benefits that would follow from new scientific discoveries. And in the case of limiting biotechnology research, we would also be less prepared for the unexpected arrival of new diseases like AIDS.

But how are we to limit potentially dangerous research? One proposal calls for some sort of “science court” or fact forum to hold open hearings on scientific research that is potentially dangerous. Such a proposal for evaluating the risks of new scientific research and new technologies is discussed by Erik Drexler in *The Engines of Creation* and in a number of publications from Drexler’s Foresight Institute.

Politically correct at 600 words-per-minute?

Gregory F. Rehmke

High school debate teachers often complain about the modern style of debate with its widely-aimed and rapid-fire bits of arguments. But it is not just the style that is bothersome. Particular arguments snipped from the frenzy (and slowed electronically) reveal content that invites criticism. Unrelated arguments are often linked together in strange ways so that any action anywhere seems to end up linked to thermo-nuclear war, world-starvation, and the heat-death of the universe. There seems to be an “anything goes” attitude with “championship” debate – an attitude students are shrilly warned against with regard to drugs and sex, but apparently encouraged to adopt with ideas and arguments.

Modern style debating, I suspect, found its original inspiration in the modern style of social science teaching and research. In “Harvard’s Hollow Core” in the September, 1990 issue of *The Atlantic Monthly*, Caleb Nelson traces Harvard’s 1979 core curriculum reform, “which required undergraduates to take special courses designed to reveal the methods – not the content – of various academic disciplines.” To some extent the reforms just confirmed the gradual departure of core-required history, humanities, and science courses from the undergraduate curriculum. Harvard’s new curriculum was copied at universities all over the country.

Nelson argues that the new core was a bad idea: “[T]he history of the core is a study in what’s wrong with American universities. We often hear that our colleges are in decline because they lack what once guided them: a coherent vision of an educated person. Those who are

tempted to dismiss such arguments as pretentious rhetoric should consider the Harvard core.” Nelson’s article is subtitled: “A widely copied core curriculum illustrates the futility of trying to teach students to think like scientists, for instance, without bothering to teach them much science.”

In a similar way, debaters are often taught to concentrate on the method of modern debate and amass mountains of evidence cards. But in doing so they give up or at least severely limit their ability to study the broad history and political economy of the topic.

Speed debate’s hollow core

High school debaters catch the speed debate contagion from college speed debaters. While attending summer college debate institutes, students catch a mixture of modern philosophy, social science, and debate theory from college debaters and from the ex-college debaters who now lead their own high school teams into this brave new forensic world.

Lincoln-Douglas debate is steadily trudging down this same pathway, as summer institutes inculcate increasingly convoluted strategies for debating value topics. Lincoln-Douglas handbooks and evidence briefs have appeared, flooding the minds of LD debaters and, in some schools, smothering the wide-ranging individual research that has made Lincoln-Douglas debate more interesting and valuable than cross-examination debate.

The drifting social "sciences"

A flurry of books and articles have argued

that the social sciences in American universities have drifted into irrelevance. History departments prepare students to study the past (and thereby gain insight on the present), science departments prepare students to study science and nature, business and engineering departments prepare students to create and trade goods and services in the world of enterprise, but what do the social sciences teach students? The March *Atlantic Monthly* cover story, "Illiberal Education" describes some of the recent battles over course content and "politically correct" college thinking. *Newsweek's* 1990 cover story "Thought Police," and *New York* magazine's "Are You Politically Correct" cover story offer similar analyses (as does the April 1, 1991 *Time* cover story). A *New York Times* piece by Richard Bernstein, "The Rising Hegemony of the Politically Correct" may have helped kick off the latest round of this debate (October 28, 1990, p. E1).

Bernstein quoted Roger Kimball, author of *Tenured Radicals*: "[Political Correctness] is a manifestation of what some are calling liberal fascism. Under the name of pluralism and freedom of speech, it is an attempt to enforce a narrow and ideologically motivated view of both the curriculum and what it means to be an educated person, a responsible citizen." But the roots of the "political correctness" controversy are deeper than ideological differences between college conservatives, liberals, and socialists.

A Poly. Sci. Ponzi scheme?

Consider this thought experiment: if university social science departments – anthropology, sociology, communications, psychology, political science, ethnic studies, and yes, even economics – were to disappear tomorrow, would the world be better off or worse off? Do these separate academic fields provide benefits that are higher than their opportunity costs? That is, given the time and effort scholars invest researching articles and preparing lectures, the time students spend studying textbooks and attending classes, and the money students, parents, and taxpayers spend – is it worthwhile? Would scholars, students, and taxpayers be better off if the multitude of social "sciences" were somehow collapsed into the traditional fields of history, philosophy, and political economy?

Life can be frustrating for graduates that depart college full of a social science know-how that leaves them only knowing how to teach the same stuff to others. A stand-up comic tells of his political science professor trying to convince him to go to graduate school and get a Ph.D. in political science. "What could I do with a political science Ph.D.?" he asked.

"Well," came the answer, "you could lecture to other students getting political science degrees."

"And what would they do with their political science degrees?"

"Well, they could teach others..."

The comic said it sounded like a giant Ponzi scheme, and left college immediately.

Various events have been offered as *the* cause of decline in the social sciences. Three are discussed below. One is the drift of the social sciences away from their real-world roots in the study of history. A second cause is the proliferation of "paradigms" that encourage social science scholars to circle their wagons around their niche discipline, and steadfastly ignore the outside academic world.

Hard Science Envy

A third explanation for social science decline is what Friedrich Hayek calls "scientism." The humanities and social sciences have tried, says Hayek, to remake themselves in the image of the "hard" sciences (physics, chemistry, biology, mathematics). The stunning progress achieved in the hard sciences over the last century has come in part from the bit-by-bit accumulation of data. Science is seen as a vast pile of empirical observations and findings; and individual scientists add to this wealth of knowledge by narrowing their focus and publishing their results. F. A. Hayek notes that many of those who early called for the application of hard science tools to moral, social and political subjects had themselves a poor understanding of scientific methodologies (see *Counter-Revolution of Science* article).

The hard sciences have received billions of dollars in government support for further research within this model of gradually accumulating knowledge about the physical universe. Partly it was the federal research money that drew the social scientists and partly it was the esteem accorded the hard scientists, but whatever the

reason, the hard science model of piece-by-piece accumulation of data came to dominate the social sciences. Getting a Ph.D. in history, sociology, psychology, or economics became a matter of researching more and more obscure people or subjects – and then doing regression analyses. Even Shakespearian scholars were counting nouns and verbs and feeding the ratios into computers. The Ph.D. became an exercise in discovering (or inventing) a new piece of data and depositing it on a single social science's presumably growing pile of knowledge. And each social science has its own pile resting comfortably upon its own foundation and within its own walls. These foundations and walls are "paradigms."

"Paradigm, paradigm, where's your paradigm!?"

A sometimes shouted question in speed-and-spread debate rounds is "where's your paradigm?" as if any evidence is okay as long as some paradigm breaths meaning and relevance into it. Many debaters come to believe there are no truths, only arguments. Arguments and evidence abound, both for and against any resolution – and resolutions don't get resolved, they just get argued endlessly. Spread debate strategies flourish in the splintered academic world of insulated analysis and evidence blocks, each clipped, collected, and indexed in debate handbooks.

But how can arguments about single subject areas – whether space exploration, criminal justice, or homelessness – remain isolated from each other? Paradigms serve as the isolating social science shield. Each field rests securely behind its own paradigm, its own special way of looking at its subject (which in the social sciences is man and society).

Thomas Kuhn's book, *The Structure of Scientific Revolutions*, which popularized the idea of paradigms and paradigm-shifts, is one of the most widely cited books across the social sciences. The late William Bartley III was critical of Kuhn's paradigms paradigm: [Paradigms] cannot be compared with one another, and thus one cannot be used to judge another. In short, Kuhn is a relativist. In his view, scientists constantly rewrite their textbooks not to chart progress towards the truth, to record what really happened...but, rather, to suppress resurgence of

ideas already overthrown and to reinforce those in fashion or in power.

William Bartley was a student of Karl Popper, whose work in the philosophy of science is highly regarded in the hard sciences, but generally ignored in philosophy and the social sciences (Popper's book on the history of totalitarian thought, *The Open Society and Its Enemies*, is highly recommended). Bartley's comments above are from his idiosyncratic book: *Unfathomed Knowledge, Unmeasured Wealth: On Universities and the Wealth of Nations* (Open Court, 1990, and available from Laissez-Faire Books). Particularly relevant to rationales for speed debate, is Bartley's discussion of how the paradigm splintered academic world helped give rise to the often trumpeted "information explosion."

The information implosion

The speed-and-spread debate style burst on the college scene in the heyday of the "information explosion." Book after book breathlessly reported an "explosion" of discoveries and publications in hundreds of fields. Again and again it was claimed that modern man could no longer keep up with all this new information. College debate strategists responded to the "information explosion" with speed debate. The least debaters could do in response to all this new information, they argued, was to talk twice or three times as fast. That way a debate round could, in theory, process two or three times as much information. Debate was to become an information processing event for the information age.

Though Bartley agreed that publications and information were expanding rapidly, he was not so sure knowledge was:

Actually, growth in knowledge occurs in universities less often than commonly supposed and only under special circumstances. An impression to the contrary is created by the expansion of...state universities and the creation and growth of the national research foundations (in both cases institutions that may work against the growth of knowledge). Also contributing to the impression of growth is the so-called publication explosion. There is indeed an information explosion as well as its

accompanying publication explosion. But its size is exaggerated, it is wrongly interpreted, and much of it contributes to the advancement not of knowledge but of professors who must (or think they must) publish or perish. The bulk of this publication is of little worth, consisting chiefly of misreadings, and is well known to be so by those immersed in it. Which is one of several reasons why it is, for the most part, not read. (pp. 117-118)

“[O]ur universities,” Bartley argues, “are in the midst of an intellectual slump; they are, in terms of the generation of new knowledge, in a depression.” Bartley believed that considerable innovative new work is done outside the universities, and his review of independent academic entrepreneurs is remarkably similar to John Jewkes’ review of independent inventors and innovators in “The Sources of Invention” (*Econ Update*, January, 1991).

Bartley asks why so little intellectual advancement flows from the halls of academe:

At the same time that much innovation flourishes outside universities, many areas of the university – especially the humanities and the social sciences – have [degenerated]... University departments, especially in the humanities and social sciences, tend to serve as bastions for resistance, and for the entrenchment of false philosophies – just as, not so long ago, they served as bastions for more explicit forms of religion. This is not surprising. For certain kinds of groups, Universities are handy places in which to have a strong redoubt. They are handy for groups that are not competitive, that are peddling ideas for which there is little demand – ideas that do not work, that fail to explain.” (pp. 129-130)

The lost role of history

High school speech teachers have assumed that college-inspired debate style and substance are the result of some kind of accident or misunderstanding, or some sort of inadvertent misdirection from college debate-camp profiteers. Instead, the irrelevance of speed-and-spread debate to real world issues is simply a reflection of the irrelevance of modern academic

philosophy and political science to real world issues. William Bartley blames the philosophical work and influence of Ludwig Wittgenstein as an unfortunate turning point.

The recent uproar over “political correctness” on university campuses is also no accident. Many of the same mixed-up academics and their even more mixed-up students form the vanguard of what *Newsweek* labeled the Thought Police in its amazing December, 24, 1990 cover story. *New York* magazine published an even harder-edged cover story, “Are You Politically Correct?” in its January 21st issue. The essence of the political correctness story is the politicization of knowledge and learning on university campuses.

Stanley Fish, head of Duke University’s English Department, writes, “There is no such thing as literal meaning...there is no such thing as intrinsic merit.” John Taylor, author of the *New York* article, cites Fish’s statement then notes, “That being the case, any attempt to assign meaning to art, literature, or thought, to interpret it and evaluate it, was nothing more than an exercise in political power by the individual with the authority to impose his or her view.” Many social science and humanities professors actually believe such things, and they teach them to their students. Their students, in turn, teach the same bland relativism to high school students at summer speech and debate institutes, and as hired-guns coaching part-time at nearby high schools. And since these same college debaters handle the judging at major debate tournaments, they have the opportunity to enforce what they teach.

Conclusions?

Many debate teachers carry warm memories of their high school debate experiences in “the old days.” For them the right thing to do may just be to decide that speed-and-spread debate is an activity they do not wish to participate in, nor to broker to their students. To the extent that debate teachers who share this conclusion put in the effort to organize and run their own debate tournaments and recruit lay judges, they can try to live and teach in their own speech and debate world.

But when top students go away to summer

college debate camps, they are likely to come back as converts to the new order, and enemies of the old. Their month-long investment in research on the new debate topic will likely carry over as authority on debate style. They will regale other students with stories about champion college debaters they met at camp – *professional* debaters who explained the *truth* about debate. And that truth was that there is no truth, no reality, only words, only arguments, only masses of evidence thrown quickly, spectacularly, by speed-talking, speed-thinking experts, and then expertly caught, countered and hurled back. Speed debate is an appealing world for debaters just mastering the basics and eager to excel in this exciting new self-esteem nourishing activity.

A well-executed high speed debate round is certainly an accomplishment. It requires preparation, concentration, and advanced skills. Similarly, the preparation of articles for today's social science journals is an accomplishment also requiring preparation, concentration, and advanced skills. Nevertheless, both activities seem irrelevant to the real world, to the world of people, countries, conflicts, histories, revolutions, wars, progress, and peace. Modern debate, like modern philosophy and social science, resembles the hundreds of other eccentric hobbies pursued by Americans in this age of affluence. But for students these time-consuming activities have enormous opportunity costs.

Time spent mastering speed-and-spread debate, is time lost from researching real world issues and real world policy debates. A million people still languish in American prisons, but

tens of thousands of debaters spent the 1989-90 school year researching and debating arcane topics with only the vaguest relationship to America's stunningly ineffective, repressive, and outrageously costly prisons. America's space program has ground virtually to a halt, and real world debate about NASA's future direction was more intense during the 1990-91 school year than at any time in two decades. Yet real-world space policy issues seemed to play only a small roll in high school debates, which instead proposed a wide variety of esoteric and sometimes off-the-wall space programs.

Speed-and-spread debate is simply irrelevant outside its own narrow world. People don't think, discuss, or debate that way in Congress, courtrooms, boardrooms, or anywhere else outside high school debate. Even after accounting for the restrictions debate's squeezed format places upon policy discourse, both style and content could be far better.

There is no easy way for either high school debate or university social sciences to repair themselves – there are too many people and institutions who energetically support the status quo (and who are financially and/or psychologically supported by the status quo). My only suggestions for the debate community are to encourage the research and discussion of the history and political economy that surround each new debate topic. And I would recommend doing everything possible to involve the local community – parents, neighbors, organizations involved in the topic area – in helping out with, raising money for, and judging at, local tournaments.

Cooperation, competition & personal projects

by Gregory F. Rehmke

Resolved: That competition is superior to cooperation as a means of advancing excellence.

The Lincoln-Douglas topic, “Resolved: That competition is superior to cooperation as a means of advancing excellence,” provides an opportunity to advance one of my own personal projects – that of writing about personal projects – one step forward.

Personal projects are central to what is excellent about high school speech and debate. Further, some philosophers argue that human beings are by nature “project pursuers.” They suggest that the freedom to discover and pursue our own personal projects is central to understanding our rights to life, liberty, and the pursuit of happiness.

The following discussion draws from philosopher Loren Lomasky’s book *Persons, Rights, and the Moral Community* (Oxford University Press, 1987). Additional discussion of the related idea of personal destinies draws from philosopher David Norton (*Personal Destinies*, Princeton University Press, 1976), and from psychologist Abraham Maslow (*The Farther Reaches of Human Nature*, Penguin Books, 1976).

I will argue first that high school speech and debate can encourage a far better atmosphere for learning than classroom lectures (though this may be perhaps painfully obvious to the average speech student). Second, I suggest the explanation for this is that speech competition gives students practice as project pursuers. And third, the “man as project pursuer” approach to human nature gives us a useful perspective on the competition-cooperation, and other LD topics.

Debate cases as personal projects

High school speech and debate not only encourages students to develop research, speaking, and advocacy skills, but also provides an excellent means to encourage the study of current events, history, and political economy. Stale

classroom exercises can be transformed into personal projects pursued by self-motivated students.

In most schools speech and debate participation is voluntary. Students commit themselves to participate, and thereby accept responsibility for directing their own research time and effort. After acquiring a basic understanding of debate practices and strategies, and of the current debate topic, students choose which proposals they want to research, which books and articles to read, and which arguments to advance.

Speech and debate takes place in a club, rather than class, atmosphere. Students work together – novice students learn from advanced students, and advanced students learn on their own and from each other, and also take on organizational responsibilities. Students are coached rather than just talked at.

Philosopher Mortimer Adler defines three types of teaching and learning: 1) didactic instruction in subject-matters (lectures), 2) the coaching of the language and mathematical skills, and, 3) the Socratic conduct of seminar discussions of the basic ideas and issues to be found in books assigned for study. Adler argues that the first predominates in our schools, and is “the least-effective kind of teaching and the learning that results is the least durable. In truth it is not genuine teaching at all, but rather indoctrination by the teacher, and not genuine learning by the student, but memorization for the sake of passing exams.” (*Los Angeles Times*, January 1, 1988, p.VI).

Speech and debate participation better fits Adler’s much preferred second and third types of teaching. This is not to say that a knock-down drag-out debate round necessarily resembles a Socratic seminar on the great ideas (I wish it did). But the “thrill of competition” at the pinnacle of

the debate experience is the motivating force for the long hours of topic research and discussion that precede and follow. This is where much of the real learning takes place. Competitive debate tournaments provide an arena for students to test the quality of their own topic research and analysis against that of other students.

Such competitions would be unnecessary with mathematics or engineering, for example. Poor preparation and inadequate understanding in mathematics means problems simply can't be solved. In engineering it means bridges and buildings crumble, and planes fall from the sky. But understanding in the social sciences is hard to measure. There seems to be no discernible relation between the intensity of people's beliefs about public policy and values, and their level of understanding.

Without a reality check from science or nature, we rely on other people to point out the weaknesses in our arguments and ideas. We often think we understand an issue or policy until someone questions us closely about it. Buried deep such beliefs seem secure, but dragged out into the open they can be challenged. Debate competition helps us sharpen our own sense of what we really understand and what we only thought we understood.

Choice, relevance, and excellence

Speech and debate students are forced to make choices about which areas of a debate topic they pursue. These research and topic choices are made naturally as students uncover new knowledge about the problem area. Each choice expresses individuality, as students naturally gravitate toward topics, concepts, and styles of argumentation, with relatively more appeal than others. Debate research and argumentation become a personal project. And each weekend students stand up to personally advocate and defend their own proposals for value or policy resolutions.

The LD resolution claims competition is superior to cooperation as a means of advancing excellence. It is not clear what "advancing excellence" is meant to refer to, but it strongly suggests advancing individual skills and abilities, or the quality of workmanship and service. Excellence seems intrinsic, and not externally im-

posed. Excellence is more a process than an end-state – it is something we pursue or advance not something we have or own or buy or sell.

People advance excellence.

An obvious place to start in comparing competition and cooperation in advancing excellence is high school speech itself. Fiercely competitive debates can blind students to the higher goals of discovering truth and achieving wisdom (rather than the lower goals of crushing opponents).

Overly competitive debaters tend to view opponents as obstacles in the march forward to victory – the epic struggle to break into the final tournament rounds. Evidence and arguments become like medieval weaponry – jousting poles to dislodge the enemy and armor worn to defend against the enemy's attack. The educational substance of debate argumentation at tournaments often seems inversely proportional to the intensity of the competition.

Aristotle counseled for moderation in all things, and so it is with competition. A dose of competition adds excitement, encourages study, and rewards preparation.

Without the prospect of competition there is little to motivate students to invest the many hours in research and in developing speaking and organizational skills. And without competition students are more likely to become wedded to the initial impressions formed when they begin their research. In a sense such competition is an advanced form of cooperation. In one sense the phrase "it's not whether you win or lose, it's how you play the game" means that it is appropriate to abide by the rules. But in another sense it means that the purpose of competitive sport is to become better players – to improve our own skills through experience gained over time. Toward this end we cooperate with our opponents to become better players by means of occasional competitions.

If the purpose of debating the space exploration topic, for example, is to better understand U.S. space policy and to actually craft workable proposals for increasing space exploration, then each debate round becomes an exercise in strengthening arguments.

Congressional debate over the merit of

particular policies is the model for high school (cross-examination) debate. Affirmative debaters present their legislative proposals at each tournament round and four individuals carry on the full debate before a silent fifth “congressmen” (the judge), who always casts the deciding vote. But the higher goals are to pass good legislation, and to prevent poor legislation from becoming law. Winning or losing an individual debate (as determined by the decision of the judge) is not as important as the proposed legislation’s merit (or lack thereof).

In this sense the affirmative debaters who see their affirmative cases effectively countered by the negative should be grateful, first that such legislation (or values in Lincoln-Douglas debate), which are now revealed to be ill-considered, are not passed in the make-believe world of the debate round (where the terrible consequences predicted might actually come to pass).

Insightful and compelling arguments and evidence from the negative should suggest to the affirmative that repairs to their current position are in order, or that alternative position to carry out the debate resolution be considered. In either case it has been a cooperative venture on the part of all involved to advance excellence – as well as a competitive exercise.

Freedom, competition, and personal projects in the real world

Competition and cooperation together advance excellence in speech and debate, but what about the “real” world. An interesting precondition is added to our pursuit of personal projects in the real world. Each day of our lives we consume food, wear clothes, use shelter, and perhaps drive cars, that none of us individually have the slightest idea how to produce. The goods and services we consume or use daily are produced by the cooperative efforts of thousands of people we’ve never met. Yet each of these farmers, textile workers, carpenters, factory workers spent from a few minutes to a few hours of their time to help produce goods that we use.

The precondition for our own projects is, that at least part of our day must be spent producing goods or services that we provide to others in exchange for the goods and services we use. Other people are willing to bring their skills and

knowledge to the production of things for use only if we do the same for them. The more people we can satisfy with what we produce, the more people who will be willing to produce things for us.

Millions expected to enjoy Bruce Willis die hard (twice), so they were willing to voluntarily pay \$5 to \$7.50. By pleasing these millions Mr. Willis earns millions, with which he can purchase cars, planes, vacations, houses, and other expensive products that thousands of people spent thousands of hours producing. Willis produced more, therefore he can consume more. And the value of what he produced is not measured by the time and effort he expended producing it, but by the desire of consumers to purchase it. Movie stars make more money than stars of Broadway plays simply because the distribution system for their product allows millions to consume it, instead of thousands.

Oddly it is precisely the competitive nature of the market economy that most efficiently coordinates the voluntary action of these thousands, or millions, of workers. The market economy provides incentives to work efficiently, and sets out rewards for discovering new and better ways to do things. Competition, within the Rule of Law (which establishes clear rules about property rights and contracts), is the only means advance excellence in modern complex economies. Competition is a means to bring about the cooperation necessary for modern economies to operation.

Some economies have tried to ban market competition and instead enforce cooperation as a means. Many political philosophers, not understanding the abstract nature of market economy, considered competition a wasteful (and amoral) chaos. They proposed instead a planned economy where central economic plans guided all economic activity. In order to get the control needed to carry out these plans all property had to be owned by the central authority. The poverty of China, the U.S.S.R., and Eastern Europe are the direct results of the unfortunate belief that centrally planned cooperation would be superior to the unintended cooperation or market competition.

But there are other powerful reasons to prefer

economies that allow competition over those that enforce cooperation. Loren Lomasky argues that people are by nature project pursuers. Yet in the grinding poverty of third world economies, or in the pre-industrial past of western Europe, little leeway was available for personal projects. The vast majority in poor countries past and present pursued the avocation of agriculture – farming is the major occupation in poor countries.

Loren Lomasky

The following are excerpts that relate to the above discussion of personal projects:

One acts in order to attain some end that one values. It may be a remote consequence whose fruit will not be enjoyed for many years. The end also can be the performance of that very action and thus secured immediately. The two are not exclusive; the action may be chosen for its own sake, for the pleasure of doing that very thing, *and* it may be done for the sake of valued consequences that will flow from it. One who swims does so for the delight of slicing through clear, cold water, of for the health benefits that swimming provides, or both. Bodily movements like a twitch or a knee jerk reflex can occur without there being any purpose to them, but action is inherently purposive.

Although all action is to secure some end or other, not all ends are equally valued. They range from the satisfaction of transitory desires assigned little weight – pausing briefly on one’s walk to sniff a rose – to the pursuit of momentous goods to which one is wholeheartedly devoted. Were we unable to evaluate ends differentially, then there would be no prospect of rationally deliberating among alternative possibilities. Also, if an agent could simultaneously pursue all the ends he values without one interfering with another, then again there would be no place for deliberation... Almost always, though, when a person pursues one good, it is at the expense of others that could have been secured in its place. One who stops on his way to smell the rose will arrive at his destination a little bit later. If an earlier arrival would have been more advantageous, then one end has been sacrificed for another. If you spent your money to buy this book, then you were unable to use those funds to purchase delicacies at the local supermarket. (Even if you borrowed the book from someone else, you expended effort in securing and reading it, effort

that could have been applied elsewhere.) To appropriate a handy term from economics, the employment of a scarce resource, including one’s own time, has an *opportunity cost*, which is represented as the next most highly valued use forgone. Only if a resource has no other uses valued by the agent is it free of cost.

It is because (1) action is purposive, (2) ends differ in assigned value, and (3) actions are costly in the opportunity sense that choice is a matter for rational appraisal. The rational chooser is one who, not being able to secure everything that he values, selects his actions in a way that gives precedence to more highly valued goals over those held in lesser regard. If lives were either infinitely long (so that all pleasures would eventually be enjoyed) or momentary happenings (so that causal connections could be disregarded), then the problem of rationality would be less involved. But since lives are neither of these, rational calculation involves both satisfaction and satisfaction *over time*, with no assurance as to how much time that will be. Uncertainties abound, but they are the uncertainties that each human being meets on a continual basis. One weighs the disagreeability of going to the dentist today against the pleasure of playing tennis instead, but also against the misery of the toothache that might or might not eventuate in the future. Luck is involved – but also skill. The skill involved in juggling possibilities for action in the light of their opportunity costs and probabilities of future goods and ills in the virtue of *prudence*.
from *Persons, Rights and the Moral Community*.

Abraham Maslow

Facts just don’t lie there like pancakes, just doing nothing; they are to a certain extent signposts which tell you what to do, which make suggestions to you, which nudge you in one direction rather than another. They “call for,” they have demand character... I get the feeling very frequently that whenever we get to know enough, that then we know what to do, or we know much better what to do; that sufficient knowledge will often solve the problem, that it will often help us at our moral and ethical choice-points, when we must decide whether to do this or to do that.

From *Abraham Maslow, Toward the Farther Reaches of Human Nature*, p. 26.

Science, Value, & the (in)visible hand

by Gregory F. Rehmke

Resolved: That scientific research should be limited by a concern for societal good.

The first step with this topic is to try to figure out what it might mean. And it might mean a lot of things. For example, every high school science student pursues scientific knowledge – the resolution doesn't specify the pursuit of *new* scientific knowledge. Should science education be limited in scope to imparting knowledge that someone claims to have “concern for societal good”? Very probably the resolution is meant to target only the pursuit of new scientific knowledge. But science is essentially a discovery process, and while most of us eventually stop studying science, the people who don't stop we call scientists. That is, scientists are people who get paid to continue being students of science through their adult lives. The pursuit of scientific knowledge is always a learning process for scientists (if it isn't, they are working more as lab technicians than scientists).

The pursuit of new scientific knowledge is first and foremost a methodology for proposing, testing and disposing of hypotheses about the way the world works. Though a scientist may be motivated by a desire to improve the human condition, “concern for societal good” plays no role in the scientific method. The scientific method, however, has played and continues to play a significant role in advancing societal good. Societal good is the unintended consequence of advancing scientific and technological knowledge.

The scientific method does not include a step called “evaluate potential for social good or harm” – and it seems unlikely that such a step

could be included without compromising the pursuit of scientific truth. Yet the accumulation of knowledge via the scientific method continues to benefit mankind. The research areas considered by many critics to be the most dangerous, biotechnology research for example, are ones that offer the most potential for advancing societal good.

Politicization of science

Science research has become more and more politicized since World War II, and it may be that the topic is meant to focus on the size and scope of federal government funding of scientific research. It may be the topic is directed at government-funded “big science” projects such as the Superconducting Supercollider (SSC), the Space Station, and the Human Genome Project. These will cost billions of dollars each, and politicians justify them by claiming they will advance scientific knowledge. But mixed in with science is pork-barrel politics.

Big science projects promise to bring thousands of jobs and billions of dollars in contracts to particular congressional districts. Each project is opposed by at least as many leading scientists as support it because each will draw federal funds away from a multitude of competing research projects. Which is better, a hundred smaller high-energy physics research projects or a dozen using the SSC? No one knows, but the same dollars cannot pay for both.

The millions of tons of concrete that will be

poured in north Texas for the SSC attracted the support of concrete companies, their lobbyists, and thus their congressional representatives. The lobbies for big concrete, construction, and engineering firms added their weight to the scientists who favored the Texas SSC. The visible hand of interest group politics distorts, as it subsidizes, the pursuit of scientific knowledge.

For further discussion and documentation of this process see Joseph Martino's article "Pork Invades the Lab," (in the March, 1989 issue of *Reason*). Martino, a senior research scientist at the University of Dayton Research Institute, cites various examples of congressmen directing research grants to universities and research centers in their home districts. Martino describes the political battles over the Texas Supercollider: "At stake were 4,500 jobs during construction and an initial operating staff of 3,000, growing to 6,000 in 10 years. During the debate over whether to go ahead with the \$6-billion construction project, Rep. Don Ritter (R-Pa.), who has a science Ph.D. from MIT, complained that none of the lobbyists offered any testimony on the technical need for the SSC. They talked only about why it should be in their state. Nobody paid much attention to the many scientists who argued that the SSC shouldn't be built at all." (p. 33).

The politicization of scientific research accelerated in the 1980s, according to Martino:

Before 1983, all government research funds were allocated through a "peer review" process similar to the way scientific journals decide what to publish. Program managers in the National Science Foundation, the Defense Department, and other agencies had each grant proposal reviewed by researchers working in the same area. Top researchers got the money without regard to the influence of their local congressman - or even the prestige or political clout of their university. The scientific community as a whole played a major role in deciding which research to support and which not, by judging the merit of individual proposals. Money went to the researchers whose proposals satisfied their peers. (p. 33)

The difference between peer review and political log-rolling ("you vote for my research project and I'll vote for yours") in Congress is significant for scientific research in America. Martino notes that though losing another \$100 million or so to pork-barrel spending won't break the country,

What we can't tolerate is the destruction and corruption of our research enterprise... Our national defense, our health, and our economic growth in a highly competitive world depend on good scientific and technological research. But the slide down this route was inevitable. It's time to rethink the decision we as a nation made in 1945: that research money should come primarily from the federal government. By an accident of history we escaped the predictable consequences of that decision - favoritism, pork-barrel politics, and stagnation. Our good luck has run out. We can't escape those consequences any longer..." (p. 35)

So if the resolution is interpreted as critical of the politicization of scientific research, one could argue that decentralizing the funding process to peer-review scientific communities would help restore the concern for advancing societal good which is a natural part of the scientific enterprise. How to decentralize is more a policy decision. Martino suggests a number of alternatives, including tax credits, allowing taxpayers to deduct research contributions as they can now deduct charitable contributions, and setting up scientific research foundations like those "we now have for cancer and heart disease." In supporting the current resolution, however, it could simply be argued that peer-review is more likely to be concerned with societal good (however it is defined) than is politicized funding of research. Research should be limited by concern for societal good, in this approach, and should exclude concerns about which congressional districts will reap the economic benefits of new research funding and jobs. It doesn't seem too much to ask that the expected benefits from

scientific research should carry more weight in the decision making process than the expected benefits from local jobs and contracts.

By-passing bypass surgery

Martino mentions the medical science research foundations that fund cancer and heart disease research. The National Cancer Institute, part of the National Institute of Health, funds peer-reviewed medical science research. This peer-review decision process is free of the blatant pork-barrel politics described above, but it is not immune from pressure by interest groups within the medical science research community. As former Sen. Russell Long asked (rather cynically): "When did we agree that the peers would cut the melon or decide who would get this money?"

When a private company funds research, the goal is to discover processes and products that will improve future sales or reduce costs and thereby increase profits. Improved societal good may be the unintended result, but it is no part of their original intention.

The National Institute for Health *does* claim to be concerned for societal good. By trying to find ways of dealing with heart disease, they can, in theory, help Americans with heart problems (37 million with high blood pressure, 1.5 million with coronary artery disease, 500,000 who suffer heart attacks each year, and 170,000 whose heart attacks are fatal - 1984 data). But critics charge that the National Institute of Health is biased by the very peer-review process that is supposed to insulate science research decisions from politics. Who is better qualified to pass judgment on what new heart disease research projects to fund than the leading heart specialists in the country? But the leading heart specialists are heart surgeons and their approach to heart problems, critics point out, leans strongly toward surgery rather than diet and lifestyle changes.

The National Institute of Health spends enormous amounts of money funding research into new surgical procedures, but has historically been reluctant to support research into alternatives to surgery. Heart bypass surgery is a case in point. A number of researchers have requested NIH funding for studies of lifestyle changes as an alternative for heart bypass candidates. Reducing consumption of red-meat, reducing stress, and

getting regular exercise might, some researchers suspect, do as much to help people with heart problems as bypass surgery.

(The research and practice of other alternatives to heart surgery, such as transluminal angioplasty - the use of tiny balloons to squeeze plaque and open blocked coronary arteries - have advanced gradually against the pressure of heart surgeons dependent upon status-quo techniques. Since the balloon procedure is still one that requires an operation, it faces less intense opposition from the medical profession.)

But getting NIH to fund research into the potential of lifestyle changes for those with heart problems has been difficult. Some studies have been approved in principle but left unfunded at the same time as far more expensive studies of new kinds of surgery have been both approved and funded. If scientific studies discovered that a far less expensive - and less invasive - approach to heart disease would help sufferers, then hundreds of millions of dollars of scarce medical resources could be saved.

That would be good for those with heart disease, and good for society, but would be quite bad for heart bypass surgeons. Medical science research funding decisions at The National Institute of Health are greatly influenced by the visible hand of established surgeons who prefer funding research into new kinds of surgery rather than substitutes for surgery. If half of the 170,000 Americans who now undergo coronary artery bypass surgery could instead treat themselves with changes in diet, stress, and exercise, then the hundreds of millions of dollars that flow to heart-bypass surgeons would abruptly stop. Alternate approaches are unlikely to cure all those with heart problems, of course, but even with bypass surgery only two out of three survive the operation and recovery period (*The Columbia University Complete Home Medical Guide*, 1985). Preliminary studies with people waiting for bypass surgery - carried out with private funding - indicate lifestyle changes are as effective as bypass surgery.

By allowing those with a vested interest in maintaining the status quo to control the funding of medical research, alternatives to the status quo are far less likely to even be investigated,

much less adopted. Again, the point is that the visible hand of federal funding distorts as it subsidizes medical science research.

Radioactive bias & cancer

The funding of cancer research by the National Cancer Institute (NCI) has also suffered from strong pressure to support status-quo medical procedures and treatments. NCI research funding decisions are dominated by invasive therapy advocates, that is, those who believe in and have a vested interest in the status quo surgery, radiation, and chemical treatments of cancer. Yet a growing body of evidence suggests that such dramatic treatments are themselves deadly. Cancer is now understood to be a consequence of a breakdown of the immune system. By blasting cancer sufferers with radiation, their immune systems are further degraded.

America's war on cancer has been deeply politicized right from its starting declaration by President Richard Nixon in 1976. For at least the last decade a number of medical researchers have investigated alternatives to the established surgery, radiation and chemical therapies. They have had to fight the cancer establishment tooth and nail, as well as other government agencies like the Food and Drug Administration.

Medical researchers Stanton Peele and Archie Brodsky note that, notwithstanding all the fundraising rhetoric from the American Cancer Society about winning the war on cancer, cancer rates have stayed about the same since the 1950s (but because Americans now live longer, the number of people who get cancer has increased considerably). Peele and Brodsky cite the findings of a congressional investigation held in the late 1980s: "For a majority of the 12 most common tumors there was little or no improvement from 1950 to 1982 in the rate at which patients survived their disease." ("What's Up to Doc?" *Reason*, February, 1991, p. 36). This lack of progress suggests to many that the radiation and chemotherapy treatments so vigorously supported by federal research dollars should at least be open to question.

Sunk costs are sunk. No matter how many billions of dollars have been spent on radiation equipment and chemotherapy, if alternate thera-

pies show potential they should be researched. But since cancer research dollars are in the hands of the pioneers and supporters of radiation, limited research into substitute cancer therapies have been funded.

Of course, the best alternate therapy is no therapy at all – it is prevention. Just as with heart disease, lifestyle changes that could prevent cancer from taking hold are the most promising approach. But research into prevention is far less likely to be funded by the National Cancer Institute than is further fine-tuning of radiation and chemical therapies. According to Robert Bazell, cancer "prevention studies still receive a tiny portion of the budget compared with the search for better treatments." ("Rethinking the War on Cancer," *Breakthroughs*, December 1990, p. 60. Adapted from an earlier article in *The New Republic*).

Prominent cancer treatment specialists control National Cancer Institute decisions on what research to fund. It is only natural that they would prefer to fund research on potentially effective new treatments than on prevention. "Two years ago," reports Bazell, "the Cancer Institute rejected as too expensive a study of 30,000 women to try to learn the role of dietary fat in breast cancer. (This year it did fund a smaller study...) Thus those attempting to study the causes of cancer face a difficult task..." According to Bazell, the best guess for the increase in breast cancer in recent years "is that American women have been consuming more fat in their diet. Studies of women in different cultures suggest that fat intake correlates with the risk of breast cancer..."

Too bad "the best guess" cause for breast cancer increases doesn't get priority research funding from the National Cancer Institute. Women suffered 117,000 new cases of breast cancer in 1984, and 37,000 died from it. The cancer research establishment that decides how much preventive research should be funded is the same one that encouraged and performed thousands of radical mastectomies (breast removals) only to later realize that most were unnecessary.

Many books chronicle these on-going battles. A recently published account is by Ralph W.

Moss, a former assistant director of public affairs at Memorial Sloan-Kettering Cancer Center. *The Cancer Industry: Unraveling the Politics* (Paragon House, 1990, 460 pages) is reviewed in the April, 1991 issue of *Reason* magazine. Moss argues that the large government-funded cancer research institutes and hospitals have made little progress in finding cures for cancer (they have, however, made progress in the manipulation of cancer statistics so as to convince Congress to keep research funds flowing). The cancer establishment, according to Moss, has been hostile to cancer therapies proposed by scientists and medical researchers outside the surgery/radiation/chemotherapy establishment.

Science & the Invisible Hand

Does it matter whether a scientist is directly motivated by a concern for societal good? What if a scientist's only desire is to make a tremendous discovery, get famous and collect federal research grants (and maybe win the Nobel Prize)? Do intentions matter in scientific research, or only results?

When engineers and entrepreneurs pursue scientific knowledge as part of a business enterprise, an "invisible hand" guides them. Adam Smith, in *The Wealth of Nations*, describes the invisible hand process:

Every individual necessarily labors to render the annual revenue of society as great as he can. He generally neither intends to promote the public interest, nor knows how much he is promoting it... He intends only his own gain, and he is in this... led by an Invisible Hand to promote an end which was no part of his intention... By pursuing his own interest he frequently promotes that of the society more effectively than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good.

Science in the private sector is guided by Adam Smith's invisible hand, and is in this indirect way "limited by a concern for societal good." Biotechnology firms pursue scientific knowledge in order to generate profits. Robert Heinlein's D.D. Harriman in *The Man Who Sold the Moon* says "Good research always makes a

profit." How does research make a profit, and how do profits lead to societal good?

First, profits are never guaranteed, just as scientific advances are never guaranteed. Scientific researchers can never be sure which avenues of research will yield potentially profitable technology. But their intent is to discover the scientific know-how to produce products that will yield profits for their company and perhaps bonuses for themselves. Where do the profits and bonuses come from? Ultimately they must come from consumers or companies who purchase newly discovered and developed products. Consumers and companies will only buy new products if the price is lower and/or the performance is better than alternate products. Consumers thus save money (which they can then spend elsewhere or save), or they get higher performance products, or both.

Through research, aluminum companies discovered ways to make soda pop cans out of aluminum (gradually learning how to reduce each can's weight from 2.5 to only .5 ounces). New aluminum cans drove the steel companies that made the once popular tinplate cans out of business. Now new companies have learned how to make beverage containers out of paper and plastic ("aseptic" packages). Each new advance saves money (and resources), but hurts companies who developed the older technologies. For example, the less-expensive aseptic beverage containers have been banned in Maine on the grounds that they are not recyclable. (The ban is questionable on environmental grounds, see "Make Your Environment Dirtier - Recycle," by Lynn Scarlett, *Wall Street Journal*, January 14, 1991, editorial page).

The company that develops a new product earns profits from additional sales, and individuals in society benefit from less expensive and/or better products. The only losers are the companies whose products lose out to new competition. Not surprisingly, it is these established companies and their employees who lobby politicians and regulators to ban new competition.

Trading for the public good

Adam Smith wrote that he had "never known much good done by those who affected to trade

for the public good.” Yet the resolution wording suggests that the pursuit of scientific knowledge ought to be “limited by concern for societal good.” Does this mean that the research scientist ought to be consciously driven by a concern for societal good? The assertion that profits equal societal good may sound Pollyannish. But as long as a company’s actions do not involve fraud, coercion, or pollution, the profits it earns will benefit society. We may not think many of these benefits are particularly important – high-tech skateboards, for example – but the people that purchase such products do consider them important. That is the trouble with trying to figure out what “societal good” means. Millions may enjoy watching *The Simpsons*, but self-appointed culture experts say the show diminishes societal good by leading young Barts-to-be to show disrespect for their fathers. Are *The Simpsons* producers trying to break down family values in America, or trying to rake in cash from advertisements and T-shirt sales, or are they motivated by a concern for societal good by taking aim at usually boring television fare? Only individual people with their fingers poised over individual remote controls will decide what form of evening activity best advances their own portion of the societal good.

No one can measure or evaluate societal good apart from the improved or diminished well being of individual people. And there is no real way to measure or evaluate what actions, products, or institutions improve or diminish people’s lives apart from the voluntary choices people make. What people choose to do with their scarce time and what they choose to buy with their scarce dollars will reveal what they believe best advances their well-being.

The wider the range of choices people have, the more likely they will be able to freely advance their well-being. Regulations and taxes, for example, diminish this freedom of choice and therefore diminish societal good.

Many flatly disagree with this line of argument. They doubt that people are capable of deciding for themselves what is best for them. People *should* listen to opera, but instead they listen to rock, jazz, and elevator music. People *should* read books, but instead they watch *The*

Simpsons. Scientists *should* concentrate upon improving societal good, but instead they selfishly pursue their own research projects; they work to satisfy their own curiosity and to discover new but often hopelessly abstract truths about the universe. Or, these skeptics argue, scientists are distracted from the pursuit of societal good by corporate research efforts.

Those who do not understand (or approve of) invisible hand explanations of how individual self-interest translates into societal good, will tend to prefer the visible hand of government. If voluntarism cannot be trusted to advance societal good, then they will propose we fall back upon coercion – which we have for most science research in America since at least 1945.

Science in the private sector

IBM employs thousands of scientists and engineers to research and develop new computer technologies. Like Bell Laboratories and other large high-technology corporations, IBM is willing to pay scientists for advanced research that has no immediate prospect of generating new technologies, products, or profits. Top management at IBM and Bell know that science advances in unexpected ways, and encouraging competent and innovative individuals to pursue their own research agendas can lead to significant long-run benefits. Even if only one in ten scientists discovers something significant, the benefit to IBM and to society is likely to more than pay for the expenses of all ten.

All scientific research has a high opportunity cost. That is, money and time allocated to any particular scientific research project is taken away from other research projects, as well as taken away from related professions. Top scientists are often capable engineers or teachers. Who is to decide whether a research project is likely to generate benefits sufficient to compensate for the loss of money and manpower in other science, engineering, or educational pursuits?

We cannot escape the fact that these decisions have to be made by someone. Individual scientists must choose which projects they wish to pursue, and what sacrifice they are willing to accept to pursue their goals. And most modern scientists require access to thousands, sometimes

hundreds of thousands, of dollars of scientific equipment. Unless a scientist is independently wealthy he or she must rely on some outside decision-maker to provide the necessary research equipment. In the private sector, research funds are raised from investors, or are retained from past profits (and held as a company's "retained earnings"). Such research funds are directed to projects that managers hope will generate future profitable technologies.

Other science research, like the big-science projects mentioned above, is funded by state and federal governments which allocate to science some of the money they collect from individuals and businesses. It is important to realize that there is a trade-off between government and private research. Tax money collected from corporations leads them to cut back research budgets. Tax money collected from individuals forces them to cut back purchases and savings – both of which could help fund new research. The visible hand of government decreases science research via taxes, and increases it via spending. Whether government activity leads to a net gain or loss in the quantity of science research no one knows.

Values & limits upon scientific research

"Invisible hand" explanations point out an interesting anomaly with discussions and debates about values. Treating scientists and engineers *as if* they had the natural right to liberty – the right to pursue any scientific advances they choose as long as they do not endanger others – also serves societal good, that is, serves the utilitarian goal of providing the greatest good for the greatest number.

Natural rights and utilitarianism have been called the twin pillars of classical liberalism. The natural rights pillar supports individual liberty, property rights, and the rule of law as ends in themselves. But the utilitarian pillar views liberty, property rights, and rule of law as means to a higher end of societal good. The classical liberal utilitarian pillar is composed of historical and economic analysis and research concluding that societies that protect the rights of their citizens are successful. Through the study of the past we discover that totalitarian societies stagnate and

decline and their people suffer. Free societies advance and their people prosper.

America's founding fathers were natural rights theorists and utilitarian theorists. The Declaration of Independence and the Bill of Rights use the language of natural rights. Certain rights are "self-evident" and are endowed by our creator; they are natural. But Americans of the 1700s were first and foremost students of history, they looked to the past for evidence of what kinds of societies and what kinds of governments were successful. Their studies revealed that over and over decentralized societies with a limited scope for government, and a wide scope for individual and community action, were the ones that flourished.

A decentralized pursuit of scientific advances, limited only by the insight, ingenuity, and dedication of individual scientists under the rule of law will best improve people's lives. Concern for societal good may not be the end that any particular scientist has in mind, but it is the end toward which the institutions of a market economy will invisibly guide him or her.

Property rights & progress

Every country in the world guided by the visible hands of central planners is a cesspool of human misery and poverty. Countries that recognize property rights, profits, and invisible hands have high and generally rising living standards. Science research by itself has rarely been able to significantly raise living standards. India benefited from the pure science of the "green revolution," (the development of new grains and technologies), but the liberalizing of Indian agriculture in the late 1970s and 80s made a far larger difference. Once Indian farmers were free to sell their produce at market prices, they quickly increased production. Market reforms in agriculture in China had similar results.

Scientific and technological progress have gone hand-in-hand with economic freedom in the Western World for over two centuries. Allowing farmers to profit from hard work on their own farms has increased productivity and encouraged the application of new agricultural technologies – from England in the seventeenth century to China and India in the twentieth.

The Right to Health

by Thomas Szasz

In every society – whether it be tribal or industrial, theological or secular, capitalist or Communist – goods and services are distributed unequally. That is, in fact, what the words *rich* and *poor* really mean: it is their “operational definition”: the rich have, and the poor have not. The “haves” eat more nutritious foods, dwell in more comfortable and spacious homes, and travel by means of more luxurious transportation than do the “have nots.” Similar differences exist between the same persons and groups with respect to medical care. When the rich man falls ill, he occupies a hospital bed in a single room or private suite and receives treatment from the best – or at least the most expensive – physicians in town. When the poor man falls ill, he occupies a bed in the charity ward – though it may no longer be called that – and receives treatment from young men who, though called *doctor*, are only medical students. In short, though it is not a disgrace to be poor, it is not a great honor either.

Although it is self-evident that the poor will always have more needs than the rich and the rich more satisfactions than the poor, that fact is now repeatedly discovered and denounced. For example, Ernest Gruenberg declares that there is in our society “a pattern in which the prevalence of illness is an inverse function of family income, while the volume of medical care received is a direct function of family income.” In plain English, that means that poverty begets sickness and affluence begets medical attention. The same statement, of course, could be made about every other important human need and satisfaction. For example, to earn a living, a poor man has a greater need for transportation than does a rich man, who could stay at home and live off his investments; yet the former must do with the inferior public transportation system provided by the community whereas the latter enjoys a fleet of private cars, boats, and airplanes. Such consid-

erations do not deter Gruenberg, and many other physicians addressing themselves to the subject, from observing – plaintively and, I think, rather naively – that “one may doubt... [that] efforts to redistribute medical care have eliminated the paradox.” But there is no paradox – except, that is, in the eyes of the utopian social reformer who views all social differences as contagious diseases waiting to be wiped out by his therapeutic efforts.

The concept that medical treatment is a right rather than a privilege has gained increasing support during the past decade. The advocates of the concept are no doubt motivated by good intentions: they wish to correct certain inequalities in the distribution of health services in American society. That such inequalities exist is not in dispute. What is in dispute, however, is how to distinguish between inequalities and inequities and how to determine which governmental policies are best suited to the securing of good medical care for the maximum number of persons.

The desire to improve the lot of less fortunate people is laudable; indeed, I share that desire. Still, unless all inequalities are considered to be inequities – a view clearly incompatible with social organization and human life as we know it – two important questions remain: First, which inequalities should be considered inequities? Second, what are the most appropriate means for minimizing or abolishing the inequalities we deem unjust? Appeals to good intentions are of no help in answering those questions.

The availability of medical services for a particular person, or group of persons, in a particular society depends principally on the supply of the desired services and the prospective user’s powers to command those services. No government or organization – whether it be the United States government, the American Medical

Association, or the Communist Party of the Soviet Union - can provide medical care except insofar as it has the power to control the education of physicians, their right to practise medicine, and the manner in which they dispose of their time and energies. In other words, only individuals can provide medical treatment for sick people; institutions, such as the church and the state, can promote, permit, or prohibit certain therapeutic activities but cannot by themselves provide medical services.

Social groups wielding power are notoriously prone to prohibit the free exercise of certain human skills and the availability of certain drugs and devices. For example, during the declining Middle Ages and the early Renaissance period, the Church repeatedly prohibited Jewish physicians from practicing medicine and non-Jewish patients from seeking their services. The same prohibition was imposed by the state in Nazi Germany. In the modern democracies of the free West, the state continues to exercise its prerogative to prohibit certain kinds of therapeutic activities. To be sure, the prohibition is no longer based on the ground that the healers have the wrong religion; instead, it is now based on the ground that they are untrained or inadequately trained as physicians. This situation is an inevitable consequence of the fact that the state's licensing powers fulfill two unrelated and mutually incompatible functions: to protect the public - that is, the actual or potential patients - from incompetent medical practitioners by insuring an adequate level of training and competence on the part of all physicians, and to protect the members of a special vested-interest group - that is, the physicians - from competition from an excessive number of similarly trained practitioners and from healers of different persuasions and skills who might prove more useful to their would-be clients than those officially approved. The result is a complex and powerful alliance, first, between the church and medicine and, subsequently, between the state and medicine - with physicians playing double roles as medical healers and as agents of social control. The restrictive function of the state with respect to medical practice has been, and continues to be, especially significant in the United States.

Without delving further into the intricacies of this large and complex subject, it should suffice to note that our present system of medical training and practice is far removed from that of laissez faire capitalism for which many, and especially its opponents, mistake it. In actuality, the American Medical Association is not only an immensely powerful lobby of medical vested interests, but a force that the reformers ardently support. The consequence of the alliance between organized medicine and the American government has been the creation of a system of education and licensure with tight controls over the production and distribution of health care in a context of an artificially created chronic shortage of medical personnel. That result has been achieved by limiting the number of practitioners through the regulation of medical licensure.

The laws of economics being what they are, when the supply of a given service is smaller than the demand for it we have a seller's market; that is good for the sellers, in this case the medical profession. Conversely, when the supply is greater than the demand, we have a buyer's market; that is good for the buyers, in this case the potential patients. One way - and according to the supporters of a free-market economy, the best way - to help buyers get more of what they want at the lowest possible price is to increase the supply of the needed product or service. That would suggest that instead of government grants for special neighborhood health centers and community mental-health centers, the medical needs of the less affluent members of American society could be better served simply by repealing laws governing medical licensure. As logical as that may seem, in medical and liberal circles, this suggestion is regarded as hare-brained or worse.

Since medical care in the United States is in short supply, its availability to the poor may be improved by redistributing the existing supply, by increasing the supply, or by both. Many individuals and groups clamoring for an improvement in our medical care system fail to scrutinize the artificially created shortage of medical personnel and refuse to look to the free market for a restoration of the balance between demand and supply. Instead, they seek to remedy the imbal-

ance by redistributing the existing supply - in effect, robbing Peter to pay Paul. That proposal is in the tradition of other modern liberal social reforms, such as the redistribution of wealth by progressive taxation and a system of compulsory social security. No doubt, a political and economic system more socialistic in character than the one we now have could promote an equalization in the quality of the medical care received by the rich and the poor. Whether that would result in the quality of the medical care of the poor approximating that of the rich or vice versa would remain to be seen. Experience surely suggests the latter. For over a century, we have had our version of state-supported psychiatric care for all who need it - namely, the state mental-hospital system. The results of that effort are available for all to see.

Ironically, it is precisely the inadequacy of care in public mental institutions that has inspired the concept of a right to treatment. In two landmark decisions handed down by the U.S. Court of Appeals for the District of Columbia Circuit, the court affirmed the concept of a right to treatment for persons confined in public mental hospitals. In *Rouse v. Cameron*, Judge Bazelon, speaking for the majority, declared that "the purpose of involuntary hospitalization is treatment, not punishment"; noted that "Congress established a *statutory* 'right to treatment' in the 1964 Hospitalization of the Mentally Ill Act"; and concluded that "the patient's right to treatment is clear."

It might be noted that Rouse had been involuntarily committed to Saint Elizabeth's Hospital in November 1962 after a finding of not guilty by reason of insanity of carrying a dangerous weapon. Had Rouse been found guilty of that offence, the maximum sentence would have been one year in prison. However, having been "acquitted," he had at the time of his appeal already spent four years in Saint Elizabeth's Hospital. Moreover, Rouse contended that he had never been mentally ill, that he was not mentally ill, and that he never needed psychiatric treatment - opinions that Bazelon not only ignored but inverted into their very opposites.

I see two fundamental defects in the concept of a right to treatment. One is scientific and medical, stemming from unclarified issues concerning what constitutes an illness or a

treatment and who qualifies as a patient or physician. The other is political and moral, stemming from unclarified issues concerning the differences between rights and claims.

Who defines illness and treatment?

In the present state of medical practice and popular opinion, the definitions of the terms *illness*, *treatment*, *physician*, and *patient* are so imprecise that the concept of a right to treatment can only serve to muddy further an already extremely confused situation. For example, one can treat, in the medical sense of the term, only a disease or, more precisely, only a person, now called patient, suffering from a disease. But what is a disease? Certainly, cancer, stroke, and heart disease are. But is obesity a disease? How about smoking cigarettes? Using heroin or marijuana? Malingering to avoid the draft or collect insurance compensation? Homosexuality? Kleptomania? Grief? Each of those conditions has been declared a disease by medical and psychiatric authorities who hold impeccable institutional credentials. And so have innumerable other conditions from bachelorhood, divorce, and unwanted pregnancy to political and religious prejudice.

Similarly, what is treatment? Certainly, the surgical removal of a cancerous breast is. But is an organ transplant treatment? If it is and if such a treatment is a right, how can those charged with guaranteeing people the protection of their right to treatment discharge their duties without having access to the requisite number of transplantable organs? On a simpler level, if ordinary obesity, due to eating too much, is a disease, how can a doctor treat it when its treatment depends on the patient eating less? What does it mean then that a patient has a right to be treated for obesity? I have already alluded to how easily that kind of right becomes equated with a societal and medical obligation to deprive the patient of his freedom - to eat, to drink, to take drugs, and so forth.

Furthermore, who is a patient? Is he someone who has a demonstrable bodily illness or injury - such as cancer or a fracture? A person who complains of bodily symptoms but has no demonstrable illness, like the so-called hypochondriac? The person who feels perfectly well but is

said to be ill by others, like the so-called paranoid schizophrenic? Or is he a person who professes political views differing from those of the psychiatrists who brand him insane, like Senator Barry Goldwater?

Finally, who is a physician? Is he a person licensed to practice medicine? One certified to have completed a specified educational curriculum? One possessing certain medical skills as demonstrated by public performance? Or is he one claiming to possess such skills?

It seems to me that improvements in the medical care of poor people and in the care of people now said to be mentally ill depend less on declarations about their rights to treatment than on certain reforms in the speech and conduct of those professing a desire to help them. In particular, such reforms would have to entail refinements in the use of such medical concepts as illness and treatment and a recognition of the basic differences between medical intervention as a service, which the individual is free to seek or reject, and medical intervention as a method of social control, which is imposed on him by force or fraud.

I can perhaps best illustrate the unsolved dilemmas of what constitute diseases and treatment by citing some actual cases. As recently as 1965, a Connecticut statute made it a crime for any person to artificially prevent conception. Accordingly, a mother of ten requesting contraceptive help from a physician in a public hospital in Connecticut would have been refused such assistance. Did what she seek constitute treatment? Not according to the legislators who defined the prescription of birth-control devices as immoral and illegal acts rather than as interventions aimed at preserving health.

Consider the situation of an unhappily married couple. Are they sick? If they define themselves as neurotic and consult a psychiatrist, they are considered sick and their insurance coverage may even pay for their treatment. But if they seek the solution of their problem in divorce and consult an attorney, they are not considered sick. Thus, although unhappily married people are often considered ill, divorce is never considered to be a treatment. If it were, it too would have to be a right. Where would that leave our present divorce laws?

Separating rights from claims

The second difficulty posed by the concept of a right to treatment is of a political and moral nature. It stems from confusing rights with claims and protection from injuries with provision of goods or services. For a definition of right, I can do no better than to quote John Stuart Mill. In *Utilitarianism*, he writes:

I have treated the idea of a right as *residing in the injured person and violated by the injury...* When we call anything a person's right we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion...To have a right, then, is, I conceive, to have something which *society ought to defend me in the possession of.* [Italics added.]

Mill's distinction helps us to distinguish rights from claims. Rights, Mill says, are "possessions"; they are things people have by nature, like liberty; acquire by dint of hard work, like property; create by inventiveness, like a new machine; or inherit, like money. Characteristically, possessions are what a person *has*, and of which others, including the state, can therefore deprive him. Mill's point is the classic libertarian one - the state ought to protect the individual in his rights. That is what the Declaration of Independence means when it refers to the inalienable rights to life, liberty, and the pursuit of happiness. It is important to note that, in political theory no less than in everyday practice, that requires that the state be strong and resolute enough to protect the rights of the individual from infringement by others and that it be decentralized and restrained enough, typically through federalism and a constitution, to insure that it will not itself violate the rights of the people.

In the sense specified above, then, there can be no such thing as a right to treatment. Conceiving of a person's body as his possession - like his automobile or watch (though no doubt more valuable) - it is just as nonsensical to speak of his right to have his body repaired as to would be to speak of his right to have his automobile or watch repaired.

It is thus evident that in its current usage, and especially in the phrase *right to treatment*, the term *right* actually means *claim*. More specifi-

cally, *right* here means the recognition of the claims of one party, considered to be *in the right*, and the repudiation of the claims of another, opposing party, considered to be *in the wrong* – the rightful party having allied himself with the interests of the community and enlisted the coercive powers of the state on his own behalf. Let us analyze that situation in the case of medical treatment for ordinary bodily disease – for example, diabetes. The patient, having lost some of his health, tries to regain it by means of medical attention and drugs. The medical attention he needs is, however, the property of the physician, and the drug he needs is the property of the manufacturer who produced it. The patient's right to treatment thus conflicts, first, with the physician's right to liberty – that is, to sell his services freely – and, second, with the pharmaceutical manufacturer's right to property – that is, to sell his products as he chooses. The advocates of a right to treatment for the patient are less than candid regarding their proposals for reconciling that alleged right with actual rights of the physician to liberty and of the pharmaceutical manufacturer to property.

Nor is it clear how the concept of a right to treatment can be reconciled with the traditional Western concept of the patient's right to choose his physician. If the patient has a right to choose the doctor by whom he wishes to be treated and if he also has a right to treatment, then in effect the doctor is the patient's slave. Obviously, the patient's right to choose his physician cannot be wrenched from its context and survive: its corollary is the physician's right to accept or reject a patient (except for rare cases of emergency treatment). No one of course envisions the absurdity of physicians being at the personal beck and call of individual patients, becoming literally their medical slaves as some had been in ancient Greece and Rome.

The concept of a right to treatment has a different, much less absurd but far more ominous, implication. For just as the corollary of the individual's freedom to choose his physician is the physician's freedom to refuse treating any particular patient, so the corollary of the individual's right to treatment is the denial of the physician's right to reject as a patient anyone

officially so designated. The transformation of the medical relationship, from individualistic and contractual to bureaucratic and coercive, in one fell swoop removes the individual's right to define himself as sick and to seek medical care as he sees fit and the physician's right to define whom he considers to be sick and wishes to treat; it places those decisions instead in the hands of the state's medical bureaucracy. To see how that works in the United States and on a less-than-total scale, coexisting with a flourishing system of private medical practice, one need only look at our state mental hospitals. Every patient admitted to such a hospital has a right to treatment, and every physician serving in such a hospital system has an obligation to treat any patient assigned to him by his superiors or committed to his care by the courts. Missing from the system, and similar systems, are the patient's traditional economic and legal controls over the medical relationship and the physician's traditional economic dependence on, and legal obligations to, the individual he had accepted as a patient.

As a result, bureaucratic, as contrasted with entrepreneurial, medical care ceases to be a system of curing disease and becomes instead a system of controlling deviance. Although that outcome seems to me inevitable in the case of psychiatry, it need not be inevitable for nonpsychiatric medical services. However, in every situation where medical care is provided bureaucratically (as in Communist societies), the physician's role as agent of the sick patient is necessarily alloyed with, and often seriously compromised by, his role as agent of the state. Thus, the doctor becomes a kind of medical policeman, sometimes helping the individual and sometimes harming him.

Returning to Mill's definition of a right, one could say further that just as a man has a right to life and liberty, so too has he a right to health and hence a claim on the state to protect his health. It is important to note here that the right to health differs from the right to treatment in the same way as the right to property differs from the right to theft. Recognition of a right to health would obligate the state to prevent individuals from depriving each other of their health, just as recognition of the two other rights now

prevents them from depriving others of their liberty and property. It would also obligate the state to respect the health of the individual and to deprive him of this asset only in accordance with due process of law, just as it now respects the individual's liberty and property and deprives him of them only in accordance with due process of law.

As matters now stand, the state not only fails to protect the individual's health, but it actually hinders him in his efforts to safeguard his own health; for example, it permits both industries and individuals to befoul the air we breathe. Furthermore, the state also prohibits individuals from obtaining medical care from certain officially unqualified experts and from buying and ingesting certain officially dangerous drugs. Sometimes, the state deliberately deprives the individual of treatment under the very guise of providing treatment.

To be sure, there are good reasons, in an age in which the powerful centralized state is idolized as the source of all benefits, why the concept of a right to treatment is regarded as progressive and is popular and why the concept of a right to health has, so far as I know, never even been articulated, much less recognized by legislators and courts. On the one hand, recognition of a right to health rather than to treatment would impose greater obligations on the state to insure domestic peace, especially the protection from theft of an individual's health as a type of private property; on the other hand, it would impose greater restraints on its own powers vis-a-vis the citizen, especially on its jurisdiction over the licensure of physicians and the dispensing of drugs. Such a government would have to shoulder greater responsibilities for its duties as policeman, while it would have to limit its alleged responsibilities for dispensing services – in short, the very antithesis of the type of state that modern liberal social reformers consider desirable and necessary for the attainment of their goals. Instead of fostering the independent judgment of the individual, such reformers encourage his submission to an ostensibly competent and benevolent authority; hence, they project the image of medical therapist onto the state, while casting the citizen in the complementary role of sick patient. That of course places the

individual in precisely that inferior and submissive role vis-a-vis the government from which the founding fathers sought, by means of the Constitution, to rescue him. Politically, the right to treatment is thus simply the right to submit to authority – a right that has always been dear both to those in power and those incapable of managing their own lives.

The state can protect and promote the interests of its sick, or potentially sick, citizens in one of two ways: either by coercing physicians, and other medical and paramedical personnel, to serve patients – as state-owned slaves, in the last analysis; or by creating economic, moral, and political circumstances favorable to a plentiful supply of competent physicians and effective drugs – letting individuals care for their bodies as they care for their other possessions.

The former solution corresponds to and reflects efforts to solve human problems by recourse to the all-powerful state. The rights promised by such a state – exemplified by the right to treatment – are not opportunities for uncoerced choices by individuals, but powers vested in the state for the subjection of the interests of one group to those of another.

The latter solution corresponds to and reflects efforts to solve human problems by recourse to individual initiative and voluntary association without interference by the state. The rights exacted from such a state – exemplified by the right to life, liberty, and health – are limitations on its own powers and sphere of action and provide the conditions necessary for, but of course do not insure the proper exercise of, free and responsible individual choices.

In these two solutions, we recognize the fundamental polarities of the great ideological conflict of our age, perhaps of all ages, and of the human condition itself – individualism and capitalism on the one side, collectivism and communism on the other. *Tertium non datur*. There is no other choice.

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Thomas Szasz: The politics of addiction

by Andrew Meacham

Thomas Szasz considers himself a misunderstood man. Known widely as the “controversial psychiatrist” who startled the psychiatric world with *The Myth of Mental Illness* in 1960 – and has been offending traditional colleagues ever since with prolific and pungent criticism – Szasz sees himself simply as a person who attempts to think clearly.

“I am really quite conservative,” Szasz said from his office at the State University of New York at Syracuse, where he has taught psychiatry for the last 32 years.

Yet he admits that to say he has upset his peers in the past would be “an understatement.” Upset them he has in hundreds of articles and 19 books, including *The Manufacture of Madness, Ideology and Insanity, Insanity: The Idea and Its Consequences*, and *The Therapeutic State*.

The mural Szasz has been painting over the years depicts a paternalistic and state-controlled theocracy, whose psychiatric enforcers diagnose as deviant any displeasing idea or behavior.

Part of the difficulty even in discussing the problem, Szasz maintains, stems from bad use of language, in which metaphorically descriptive words such as “addiction” – or “schizophrenia:” for that matter – are taken literally to represent medical diseases. In his book, *The Untamed Tongue – A Dissenting Dictionary* (Open Court), Szasz lampoons the word “co-dependence” – as the product of an alcoholism treatment industry emboldened by success.

“Suppose the daughter of a man with angina or cancer colludes with her father in denying his illness and avoiding treatment for it: Does that make her ‘co-anginal’ or ‘co-cancerous?’”

Szasz’ knack for the curmudgeonly comment has helped to shape his controversial reputation, which he views with supreme irony. His, he maintains, is not the cause of a radical reformer or embittered activist, but of a scientific and

philosophical purist.

After emigrating from his native Budapest, Hungary, in 1938, Szasz graduated from the University of Cincinnati College of Medicine in 1944 at the top of his class. He has practiced psychiatry since 1948, always eschewing the use of psychotropic drugs, electric shock, even of mental hospitalization. After publication of *The Myth of Mental Illness*, there were colleagues who felt he belonged on the couch, not in the arm-chair.

“But psychiatrists have always diagnosed people who disagree with them:’ Szasz told *Focus*. “This is nothing new.

Focus: The addiction field has generally regarded calling addicts “sick” rather than “bad” as a liberating development. You seem to consider it an instrument of oppression.

Szasz: I think it is stupid to be boxed into that choice. We can simply say that what is called addiction is a particular form of behavior – which that person obviously prefers to any other, or else he would change it.

I would compare it to any other form of behavior – particularly religious behavior. Is the Ayatollah Khomeini bad? Or good? Or does he just have a religion which you and I don’t have?

Focus: Do you recognize the scientific evidence regarding addictive processes in the brain?

Szasz: I neither recognize it nor deny it. I am not competent to judge that. But it’s irrelevant to my view of addiction.

Focus: In other words, if the addict has an addictive nature, then it is that person’s responsibility to not partake of the drug.

Szasz: Exactly. His susceptibility *enlarges* his responsibility, since he has a disposition to react unfavorably to that drug, much as the person with a fear of high places has to avoid being a construction worker on skyscrapers.

Focus: You have sanctioned voluntary

therapy, but are opposed to coerced therapy of any kind, is that correct?

Szasz: Yes. I am entirely in favor of psychiatry or therapy between consenting adults. To me, that is analogous to freedom of religion. It doesn't mean that I necessarily think any particular therapy is good or bad. If a person wants to try out a form of therapy, that is that individual's choice – just like going to church or taking drugs is a choice.

Focus: Where do you draw the line between coercion and free choice?

Szasz: I draw it the most conventional way possible – at the use, or threatened use, of state-legitimized force. After all, that is the only kind of legitimized force there is. You can't force an addict to go to church, but you can force him to go into a treatment program.

Focus: Isn't it in some way still the addict's choice to cooperate?

Szasz: Yes, but in the face of coercion, choice becomes absurd. Most of us don't feel we have a choice whether to pay our income taxes or not.

Focus: Is it fair to say that you regard the language of addictions and mental health as skewed?

Szasz: I would like to be a little more precise about that. When it comes to addressing socially controversial behaviors – such as taking illegal drugs – it is virtually impossible to be morally neutral in one's language. So all of us are guilty of what I am pointing out. But to describe drinking too much, as in the case of Mrs. Ford – or, supposedly, Mrs. Dukakis – as an illness – excuses the behavior to an absurd degree; just as calling such a person a lush or sinner would be very condemnatory; I prefer simply to say, "They like to drink." And it's their business. It's certainly not the taxpayers' problem. Why should I care? Why should we, the American people, care?

Focus: Many in the treatment field say that they are getting away from putting values on addiction, that they are simply responding to scientific evidence.

Szasz: That's too funny for words. The ultimate moral cop-out is to say, "I base my morality on science." Because science is morally neutral. An oven can be scientifically sound for baking bread or for incinerating people in a concentration camp. Furthermore, a scientific explanation

for the pharmacological effects of alcohol is not in contest. What is in contest is how the alcohol gets into the body. And that process can only occur in one of two ways: Either the person takes it himself or it is given to him forcibly. In the second case he has been poisoned; in the first case he may be poisoning himself or simply enjoying himself. Every one of these is a moral act.

Focus: But some say the evidence shows that some alcoholics cannot stop poisoning themselves on their own.

Szasz: I don't agree with that. But even if I did, it wouldn't affect my argument that changing a person's behavior from drinking to not drinking is a moral act – or that coercing a person to change is a moral act.

We have come to a crucial issue. To endorse coerced therapy, and then say that what one is endorsing is not a moral act, is so radical a departure from what we normally mean by "moral" that at that point one cannot continue the dialogue. There is a profound human rupture: because it is an allegedly supra-moral justification of coercion.

Focus: Suppose we say that forcing treatment is a moral act – that it is sometimes good to protect the individual and society this way.

Szasz: Then we can have an intelligent discussion. One person can say it's good and another that it's bad. Just like people said about slavery, or killing witches or Jews, or putting Japanese-Americans in concentration camps.

Focus: Where is the demonstrable suffering in this treatment? After all, many outpatients from coerced treatment say it was beneficial for them.

Szasz: 'The answer is implicit in your question. In a free society, coercing a person, except as part of the judicial process, *is ipso facto* bad, a cause of suffering. It has nothing to do with the consequences. A person may be drafted into the Army, and that might turn out to be a very good experience for him. That wouldn't affect the fact that being involuntarily conscripted is a form of coercion that causes, at least for a period, suffering. After all, if a person wanted to be conscripted, he could voluntarily join the Army. The same goes for drug rehabilitation. What is bad about coercive drug programs is that they authenticate laws which diminish the self-control of

every citizen. After all, there could be drug centers that, like the Army or like fat farms, would promise to discipline you. Then those who wanted to be coerced in this way could volunteer to be so coerced. And every other law-abiding person would be left unmolested by the state.

Focus: We've heard a lot about prevention lately. If you could write curriculum for school children on drug education, what would it include?

Szasz: I can't address that issue, because as long as we have drug prohibition as a national policy, there cannot be anything educationally and morally reasonable taught in the schools. The context frames politically and morally illegitimate policies, as far as I'm concerned. It's not proper for the American government to prohibit an adult from putting whatever he wants into his mouth. And until that policy is reversed, it doesn't matter what is taught, because children quite correctly learn from the way things are – not from what they are taught.

I have one other comment about schools. What we have in the schools is not drug "education;" it is drug propaganda. "Education" implies telling students the truth. And they are not being told the truth about drugs.

Focus: Propaganda in that children are not being asked to make a choice?

Szasz: Correct. They are given the message, "Just say no to drugs." They are not told, "Just say no to murder"! That would be ludicrous. If drugs are so bad, why do we have "drug stores"? There's something silly about it.

Focus: So, in the wake of crack cocaine, for example – can no measures be taken to stop the loss of life?

Szasz: If we wanted to stop the loss of life we could legalize it.

Focus: How would that help?

Szasz: There would be no incentive for people to kill each other over crack.

Focus: How does the terminology you use as a practicing psychiatrist differ from that of your colleagues?

Szasz: In one respect, my terminology is quite different, and in another respect not different at all. To put it somewhat grandiosely, I prefer the language of William Shakespeare and of the everyday man to the jargon of psychiatric – or

the addictions – professionals. I use such words as "temptation;" "craving," "desire;" "want;" "self-discipline." It's perfectly obvious that there are life events that in some ways induce people to take drugs and other life events that induce them to stop taking drugs.

Therefore I would like to emphasize that the language in which we have been addressing these problems is flawed. Instead of talking about "illness" "addiction" "prevention," and so on, we should be talking about "temptation," "desire," "want," and "self-control," "moderation" and "renunciation." We want things, we crave things. And we become civilized by denouncing them. If we need a lot of money we don't go around robbing banks and jewelry stores. If we crave sex we don't go around raping women. If we crave revenge on someone we don't go around shooting them. And if we crave drugs we should control ourselves – whether it's alcohol, tobacco, food or illegal drugs. It's as simple as that.

Focus: And everyone has the capacity to make these choices equally well.

Szasz: Not equally well, no. No more so than everyone has the capacity to box or write English equally well. The more a person lacks the capacity of self-control the harder he has to work to develop it. But everyone has that capacity, and must have it, if he is to enjoy the rights and liberties as an American citizen. Otherwise they become criminals; not because they take drugs, but because they do something illegal.

Focus: What examples of self-directed addicts do you find?

Szasz: Well, consider that 30 to 40 million Americans have stopped smoking. How could this happen unless we allow that people listen to input and can and do change their habits?

Focus: Are you saying that in no case does an addict lose power over his addiction?

Szasz: Right. It is always a matter of degree of motivation. Imagine approaching an impoverished cocaine addict in the slums of Washington or New York who supposedly can't stop and saying, "Look, Joe, if you stop taking drugs, we will give you \$100 or \$1,000 or \$10,000 or \$1 million?" Does anyone believe that he wouldn't stop? He can stop. He just doesn't have enough reason to stop.

Focus: But many people say they have lost

fortunes to drugs.

Szasz: So what? That, too, is a decision. And if they commit suicide, that is another decision. Whoever said life was a bowl of cherries? The point is that I personally do not see how one can look at the war on drugs as anything but a moral and religious crusade – no different, essentially, from the Ayatollah Khomeini’s crusade against impure books.

Focus: As the treatment industry mushrooms, are you skeptical that profit motives are clouding the way people talk about addiction?

Szasz: I am not skeptical, I know that is exactly the way things work. We are producing fewer and fewer useful things, and are engaged in more and more pseudo-activities, for which the government pays. If drug treatment is so useful – we hear of these long waiting lists – why have we never heard of someone mugging someone else to get into a treatment program? What is treatment worth if no one but the government is willing to pay for it? If all third-party money – including insurance funds – were taken out of drug treatment programs, I think there would be no more than five counselors left in America, if that many.

Focus: They say they are under-funded.

Szasz: Of course. What do you expect them to say? This is a bottomless pit, like the War on Poverty or the war in Vietnam.

Focus: How do you define disease?

Szasz: I define disease the same way pathologists define it: as a demonstrable, anatomicopathological lesion – not as a form of behavior. In other words, cancer, high blood pressure, diabetes are diseases. Drinking is not a disease, despite what the American Psychiatric Association says. It may cause disease, just as boxing or skydiving may cause disease – but it is not a disease.

Focus: What is your reaction to the developing co-dependency field?

Szasz: It is another revealing, rather humorously revealing, example of wanting to expand the category of illness so that those in the therapy business get their hands on more and more government funds. It’s sort of like enlarging the communist menace in order to get more defense funds. The bigger the menace, the more

money you can get. Now we have a kind of open season on undesirable behaviors. Look at the great anti-smoking crusade. And then, there is the overeating person; the anorexic person; the irresponsible AIDS patient; the homeless, poor person; *ad infinitum*. The therapy racketeers can shoot as much game as they want, and the government pays them for every carcass, every pelt.

Focus: Should treatment for these behaviors – or diseases – be reimbursed, in your opinion?

Szasz: Of course not. I think the whole subject should be of much greater interest to industries and insurance companies than it is. They are the ones, after all, who have to pay the bills – which in the auto industry accounts for between \$500 and \$700 a car. Now out of that sum, a large amount – I don’t know what the amount is, but it is substantial – goes towards treatment for these non-diseases. In that category I include all mental diseases, including schizophrenia and manic depression. Not to mention all the behavioral diagnoses such as addiction. So this is a sort of economic cancer. Eventually, if we don’t stop it, it will kill us.

Focus: But doesn’t most of this fall under contractual agreements between consenting adults?

Szasz: No. In the first place, the employee usually has no control over the coverage he gets, or, therefore, the premiums the company deducts from his paycheck. Secondly, the company is not free to refuse offering coverage for so-called diseases – for example, mental illness and alcoholism. It is compelled by the state legislatures, it is mandated by the politicians, to provide coverage without “discrimination” as a condition of being permitted to do business. For example, years ago, Blue Cross/Blue Shield was mandated in Massachusetts to cover alcoholism. How can there be anything contractual about it if the whole business is permeated with government control and coercion?

Focus: Do doctors have the liberty to define disease as they see fit?

Szasz: Everyone has that liberty. The question is, who can impose his definition on others? Again, that is where the government comes in. It’s worthwhile to remember that the American Medical Association was for many years, from the

1920s to well into my own adult lifetime, in the forefront of denouncing alcoholism as a disease.

Focus: You regard the subsequent development as a step backwards?

Szasz: No! I regard it as a circus, as part of the human comedy: The thing to do is to think clearly about this - and whether we are taking a step forward or backward depends on our values. I mean, I don't think it's particularly nice to stigmatize people who drink or take drugs. I'm

not in favor of calling them bad. There is a lot of middle ground between stigmatizing such individuals and glorifying or excusing them. And that is where I want to stand.

Andrew Meacham is associate editor of U.S. Journal of Drug and Alcohol Dependence. A longer version of this Interview was first printed in Focus (August, 1989).

Notes on the American Flag

by George H. Smith

Resolved: That showing disrespect for the American flag is antithetical to fundamental American values.

In 1854, an escaped slave named Anthony Burns was arrested in Boston and returned to his owner in Virginia. On July 4th, a group of anti-slavery radicals convened in Framingham, Massachusetts to protest the Burns case. Henry David Thoreau addressed the gathering, but the most memorable speech was given by William Lloyd Garrison, the famous abolitionist.

Garrison held up a copy of the United States Constitution and condemned it as "a covenant with death and an agreement with hell." Then Garrison burned the Constitution while declaring, "So perish all compromises with tyranny!" A few spectators hissed and booed, but most shouted, "Amen!"¹

Garrison's burning of the Constitution was a symbolic act – an expression of contempt for slavery and its constitutional support. The Constitution's fugitive slave clause was especially relevant to the Anthony Burns case, because it called for the return of runaway slaves.

Garrison's protest has obvious relevance to the current debate over flag burning. Indeed, burning the Constitution is more radical than burning the flag, because the Constitution is the fundamental law of the land, whereas the flag is a symbol that can mean different things to different people.

Was Garrison's "disrespect" for the Constitution "antithetical to fundamental American values"? Garrison didn't think so. He admired the Declaration of Independence, especially its assertion that all men are created equal and endowed with "unalienable rights." He believed (rightly) that the pro-slavery provisions of the Constitution were compromises struck with states in the deep south. When Garrison protested these compromises by burning the Constitution, he saw himself as defending authentic

American values against the nefarious institution of slavery. Many of his contemporaries, of course, saw the matter differently.

The same kind of disagreement arises when we consider the resolution: "That showing disrespect for the American flag is antithetical to fundamental American values." The flag is a symbol, and showing disrespect for that symbol (for example, by burning or defacing it) is what the Supreme Court has called "expressive conduct." But the meaning of expressive conduct can vary according to context, the values held by participants, and the nature of the symbol. These are complex issues. Debaters may find it helpful to begin with some basic information about the American flag.

The Flag in American History

The earliest recorded case of defacing a flag in North America occurred in the Massachusetts Bay Colony in 1634. Some Puritans in that colony, crusaders against "badges of superstition," were deeply offended by the English flag, which at that time featured a red cross known as the Cross of St. George. According to radical Puritans, the Cross of St. George "was given to the King of England by the Pope, as an ensign of victory, and so [was] a superstitious thing, and a relic of Antichrist."²

A local official, John Endicott, took action. He ordered the red cross cut from all infantry flags. The legislature, fearing reprisals from England, chastised Endicott, but it left the choice of regimental colors in the hands of local military commanders. All of them refused to display the Cross of St. George. Thus did the English flag, its upper left corner defaced by obstinate Puritans, flutter over Massachusetts – with a plain white square in place of the revered (and official) red cross.

In 1775, when violence erupted between Britain and the American colonies, many Americans favored reconciliation over independence. Consequently, rebel troops used a flag with British symbolism, known variously as the Continental Colors or the Great Union Flag. This flag bore the now-familiar thirteen stripes, but the upper left corner displayed the Union Jack instead of stars.

After declaring independence on July 2, 1776, the Continental Congress, although taking immediate action to design a national seal, waited for nearly a year before considering a new flag. According to official records, on June 14, 1777, while Congress was discussing naval matters, a resolution was introduced that "the Flag of the united states be 13 stripes alternate red and white, and the Union be 13 stars white in a blue field representing a new constellation."³ We do not know who made this resolution or who designed the flag. (The Betsy Ross story is one pleasant myth among several).

The congressional resolution was astonishingly vague. The dimensions and proportions of the flag were unspecified, as were the design and configuration of the stars. (The popular image of thirteen stars in a circle was largely the creation of nineteenth-century artists.) Whitney Smith, a leading expert on the flag, has noted "how little concern there was in the first decades of the United States for standardized flag patterns. The law of 14 June 1777 gave only the most general description of the flag, and each flag maker liberally interpreted for himself what the Stars and Stripes should look like."⁴

Thus, the founding fathers displayed a casual attitude bordering on indifference to a national flag. This has caused one historian to remark:

[I]t seems obvious that the reverence which all Americans today pay to their flag was foreign to the men of 1777. [T]heir action was animated by considerations of practical need, and but slightly, if at all, by sentiment for the new banner....⁵

The practical need mentioned here was ship identification. The first Stars and Stripes was primarily a naval flag or, in the words of George Washington, a "marine flag." It was not supplied to Washington's army and was rarely seen until

after the Revolution. Even then it was not used by the army except as a garrison flag for over fifty years.⁶

In 1793, after Vermont and Kentucky had become states, a bill was introduced in the Senate that would change the flag to "fifteen stripes alternate red and white" and "fifteen stars, white in a blue field."⁷ After passing the Senate, the bill moved to the House, where it provoked an interesting debate.

Rep. Goodhue called the bill "a trifling business, which ought not to engross the attention of the House, when it was their duty to discuss matters of infinitely greater importance." At this rate, Goodhue predicted, we may go on adding and altering...for 100 years to come...The flag ought to be permanent." Rep. Thatcher "ridiculed the idea" that the Congress should even waste their time with such a bill, calling it "a consummate specimen of frivolity." Rep. Smith said he "could not conceive why the Senate sent over such bills, unless it was for lack of something better to do." He agreed with Goodhue: "Let the Flag be permanent."⁸

This debate "affords our clearest indication of what the generation which created the national flag really thought about it. It becomes painfully evident that they felt no particular veneration for the Stars and Stripes, nor did they regard the subject as one having either interest or importance."⁹

The flag bill passed despite opposition, so, beginning in 1795, a flag of fifteen stripes and fifteen stars flew over America for twenty-three years. This was the flag commemorated in verse by the lawyer Francis Scott Key, as he watched the British bombard Fort McHenry, Maryland during the War of 1812. Scott's poem, when sung to the tune of "Anacreon In Heaven" – a popular English drinking song – became known as "The Star Spangled Banner."

As new states joined the Union, some flags reflected the change with additional stars and stripes. For example, the Coast Guard flag (1799) had sixteen stripes, and the flag flown in Vermont (1804) had seventeen. But this procedure threatened to become unwieldy. Too many stripes would blur the distinctiveness of the flag (especially at sea), so, in 1817, Congress decided

to reduce the number of stripes to the original thirteen, while adding a star for each new state. Nonetheless, flags continued to vary in appearance; not until the mass production of flags in the late nineteenth century was some measure of standardization achieved.

The Flag as Symbol

When we venerate symbols, whether religious or secular, we usually think of them as immutable. No Christian, for example, would alter the Cross, nor would a Jew tamper with the Star of David. No such reverence has been shown for the American flag. Indeed, if tampering with a revered symbol is a sign of disrespect, then Congress has expressed disrespect for the flag on many occasions. The United States has had twenty-eight different flags, all of them official, throughout its history.

This raises an interesting problem: Suppose I burn an old forty-eight star flag that flew in this country for nearly fifty years? Is this desecration, or must I burn the fifty-star flag now recognized as official? What if I burn the original Stars and Stripes containing just thirteen stars? Or, to press the case further, suppose I burn the first national flag -- the Continental Colors complete with its Union Jack?

Did these and many other flags lose their symbolic significance through edicts of Congress? If so, then we are dealing not with symbols per se, but with legally mandated symbols. In other words, the current fifty-star flag (adopted in 1960) is the symbol of America only because Congress says so.

Some Americans may disagree with the government's notion of symbolism, or they may find their vision of American values best exemplified by other symbols, including flags. For example, one of the most popular symbols in colonial America was the snake, which first appeared in Benjamin Franklin's *Pennsylvania Gazette* on May 9th, 1754. This snake was cut into thirteen pieces (representing disunited colonies) and below it was printed: "JOIN, or DIE." Around 1774, the snake emblem began to appear on various colonial flags, but this snake was in one piece, coiled, and ready to strike. These flags bore the motto, "Don't Tread On Me."

The coiled snake, a symbol of defiance,

represented the determination of Americans to resist any violation of their rights. Today, many Americans still admire this principle, regarding it as a "fundamental value" on which the American Republic was founded. If these Americans identify more closely with the "Don't Tread on Me" flag than with the current official flag, who is to say they shouldn't? The government? The majority? Some group claiming to represent the majority?

Symbolism is a tricky thing, and the ambiguous wording of the debate resolution merely adds to the confusion. What does it mean to show "disrespect," and just what are "fundamental American values"? How do we define "flag"? Must it be the official one with correct proportions? Must it be an entire flag or will a portion suffice? Does a flag printed on a napkin qualify? If one pops a balloon that bears an image of the flag, is this an act of desecration? Moreover, does the resolution refer to the message conveyed by (say) flag burning, or does it suggest that flag-burning as such is somehow anti-American?

While pondering such questions, the debater is advised to read the recent Supreme Court decisions on flag burning. Although these decisions concern the constitutionality of flag burning, and so differ from the debate topic, they still contain some interesting arguments that relate to our resolution. Here is some background on this controversy.

Flag Burning and the Supreme Court

In 1989, the Texas legislature criminalized the desecration of the American flag, where "desecrate" means to "deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action." In *Texas v. Johnson* (109 S. Ct 2533), the Supreme Court declared the Texas statute unconstitutional, because messages conveyed by flag burning are protected under the First Amendment.

Congress responded to *Texas v. Johnson* with the Flag Protection Act of 1989. This Act declared: "Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both."¹⁰ After exempting "any conduct consisting of

the disposal of a flag when it has become worn or soiled," this law states:

As used in this section, the term "flag of the United States" means any flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.¹¹

It is important to note that a federal flag-burning statute was already on the books before passage of the 1989 law. The earlier statute, however, referred to those who "knowingly cast contempt" on the flag while "publicly mutilating, defacing, defiling, burning, or trampling upon it."¹² Because this earlier statute mentioned a message (casting contempt), it was probably unconstitutional under *Texas v. Johnson*.

The Flag Protection Act of 1989 was designed to circumvent First Amendment barriers. It did not refer to motives, intended messages, or to the likely effects of desecration upon onlookers. Rather, according to the Government, the new law asserted the government's interest in protecting "the physical integrity of the flag under all circumstances" in order to safeguard the flag's identity "as the unique and unalloyed symbol of the Nation."¹³

The Supreme Court rejected this reasoning and declared the Flag Protection Act unconstitutional in *U.S. v. Eichman*. The dissenting opinion by Justice Stevens is especially pertinent to our debate resolution. According to Justice Stevens, a "flag burner may intend various messages," and these messages need not express contempt for fundamental American values. Indeed, like protesters who burned their draft cards during the Vietnam War, a flag burner may "seek to convey the depth of his personal conviction about some issue...." In this case, the "expressive conduct" of a flag burner may be "consistent with affection for this country and respect of the ideals that the flag symbolizes."¹⁴

Remember, this admission comes from a Supreme Court Justice arguing for the constitutionality of the Flag Protection Act, so it is a valuable source for debaters on the negative side of the resolution.

In addition, Justice Stevens discusses the "symbolic value of the American flag," which "cannot be measured, or even described with any

precision." Nevertheless, he isolates two components of this symbolism, including serving as "a reminder of the paramount importance of pursuing the ideals that characterize our society." The flag, he says, "uniquely symbolizes the ideas of liberty, equality, and tolerance [and] the spirit of our national commitment to those ideals."¹⁵

If, as Justice Stevens asserts, liberty and tolerance are fundamental American values, then flag burning is compatible with those values. Liberty includes the right to express oneself, whether by speech or conduct; and tolerance implies that onlookers should tolerate the expressive conduct of flag burners; i.e., they should not respond with violence. (Of course, we are assuming that the flag in question belongs to the protester, or that he is using it with the owner's permission.)

There is a problem, however. The resolution refers to "showing disrespect" for the flag, not to desecration per se. This wording gives a considerable advantage to the affirmative case. If one shows disrespect for a symbol, then it follows, almost by definition, that one opposes the values it symbolizes.

The negative case will have to find a way around this thorny obstacle.

Footnotes

1. Louis Filler, *The Crusade Against Slavery, 1830-1860* (New York: Harper Torchbooks, 1963), pp. 215-16.
2. Quoted in Whitney Smith, *The Flag Book of the United States* (New York: William Morrow, 1970), p. 36. Smith's book is highly recommended.
3. Quoted in *ibid.*, p. 55.
4. *Ibid.*, p. 58.
5. Milo Milton Quaife, *The Flag of the United States* (New York: Grosset and Dunlap, 1942), p. 67.
6. *Ibid.*, pp. 161-2.
7. Quoted in *ibid.*, p. 97.
8. *Ibid.*, pp. 96-99.
9. *Ibid.*, p. 99.
10. Quoted in *U.S. v. Eichman*, 110 S. Ct., at 2407.
11. Quoted in *ibid.*
12. Quoted in *ibid.*
14. *Ibid.*, at 2410.
15. *Ibid.*, at 2411

Loose cannons in the national interest

George H. Smith

Resolved: That members of the United States Congress ought to value the national interest above constituent's interests when the two are in conflict.

If ever there was a debate topic with an abundance of historical material, this is it. And if ever there was a debate topic fraught with ambiguity and uncertainty, this is also it.

What, for example, is the meaning of “the national interest,” and who determines it? A nation is a political abstraction, not an entity, much less a living entity. A nation does not think or act or feel, nor does it have purposes. Only individuals have these attributes, so only individuals can have interests, i.e., things that promote their welfare.

A nation (or nation-state, as it used to be called) is defined geographically and politically. If, within a given geographical area, there exists a political sovereign (one supreme government), then that area is called a “nation.” Presumably, “national interest” refers to interests held in common by all members of a nation. Thus, national defense – since it protects everyone within a nation – might be offered as an example of a national interest.

In contrast, particular constituents (say, in one county or state) might be said to possess “local interests.” If a large defense contract will benefit local workers economically, this is a local interest. But if that contract calls for building some useless boondoggle, one that does not truly promote national defense, then that local interest might be said to conflict with the national interest.

The point of the debate resolution seems to be this: If a member of Congress perceives a conflict between his local interest (the wishes of

his constituents) and the national interest, which should he choose?

This question cannot be answered or even approached without discussing the nature of representative government. A member of Congress is supposed to “represent” his constituents. But what does this mean, and how far should it go? If a representative is nothing more than an agent acting on behalf of his constituents, then he is morally obligated to pursue local interests. If, on the other hand, a representative is more than a trustee of local interests, then he might be permitted to act for the national interest, as he sees it.

This debate is as old as representative government, reaching back to the later middle ages and the origins of European parliaments (especially in England). The most famous discussion appears in a speech by Edmund Burke (1728-1797), the great Irish statesman and political theorist. So let's begin there.

Edmund Burke

In his *Speech to the Electors of Bristol* (1774), Edmund Burke considers the duties of a member of Parliament, and he disagrees with the position that a representative should always follow the wishes of those who elected him.

According to Burke, the wishes and opinions of constituents ought to be treated with “great weight [and] high respect,” and the representative should always “prefer their interest to his own.” But the representative is also obliged to use his best judgment and “enlightened conscience,” and

he should never sacrifice these to anyone, including his constituents.¹

What of the argument that the representative ought to subordinate his will to that of his electors? This would be true, Burke concedes, if government were nothing more than a struggle among conflicting desires. But legislative government is a matter of “reason and judgment, and not of inclination.” A legislative body should discuss and deliberate before deciding what to do – procedures that would be rendered useless if representatives were bound by the wishes of their constituents.

According to Burke, the theory that a representative is bound by the desires of his constituents rests on a “fundamental mistake” about the nature of the British Constitution. (We should note that Britain does not have a written constitution; the “British Constitution” referred to the framework of fundamental law as established by custom, judicial decisions, and legal precedents.) Burke then presents his famous and oft-quoted opinion about the nature of Parliament:

Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole.²

According to Burke, when electors choose a member of Parliament, he becomes just that – a member of Parliament, not a member of this or that constituency. And since the purpose of Parliament is to serve the national interest, not the interest of this or that constituency, each member is obligated to ignore the wishes of his own constituency if those wishes are “evidently opposite to the real good of the rest of the community.”

Before Burke

Burke’s argument is famous but scarcely original. Indeed, as Burke himself indicated, its roots were planted deep in the British political tradition. In the early seventeenth century, for

example, the famous legal theorist Sir Edward Coke expressed essentially the same view: “it is to be observed though one be chosen for one particular county, or borough, yet when he...sits in parliament, he serveth for the whole realm...”³

Thus, the affirmative for the current L-D resolution can cull a good deal of material from the writings of seventeenth and eighteenth century British theorists. And since British views often influenced American views, it might be possible to extend the “national interest” argument to America.

To those L-D debaters who pursue this line of argument (e.g., those who cite Edmund Burke), I wish good luck; you’ll need it. Americans traditionally upheld an opposing view and maintained that representatives should function as mere agents for their electors. Indeed, many Americans went so far as to call for specific instructions (mandates) from electors to their representatives – as seen, for example, in the writings of Arthur Lee, a distinguished Virginian.

In 1768, Arthur Lee argued that elected representatives, properly considered, are nothing more than “trustees for their constituents,” mere “agents” hired to transact the business of government. Lee firmly believed that to bind representatives with instructions is an “unalienable right of the people” – a right that had been lost as governments became more corrupt and tyrannical.⁴

James Wilson, who would later play a major role in drafting the United States Constitution, agreed with Lee. Writing in 1774, Wilson declared that constituents had “an inherent right to give instructions to their representatives.” Representatives, as “creatures” of the electors, should be held strictly “accountable for the use of that power which is delegated unto them.”⁵

The views of Lee and Wilson were shared by many American theorists; indeed, the idea of local interests – where representatives worked for the clearly defined goals of their constituent – was an integral part of governing institutions in colonial America.

Virtual Representation

After 1765, many Americans spoke out against the “national interest” view of representation. Why? Because this was the foundation for a hated theory called “virtual representation.”

According to that theory, Americans could be taxed by Parliament because, although they were not actually represented in Parliament, they were represented virtually (i.e., in effect).

Beginning in 1764, the debate over virtual representation became one of the hottest controversies between America and Britain. This debate ended in 1775 with the outbreak of the American Revolution. The American literature during this eleven year period contains abundant material for the negative case. Let's take a closer look at this controversy.

In 1764, Parliament passed the Sugar Act, a complex series of trade regulations and restrictions for the American colonies. Since the Sugar Act was expressly designed to raise revenue, it was denounced in America as unjust taxation. The Stamp Act, passed in 1765, was condemned for the same reason. Americans were not represented in Parliament, so, according to many Americans, they should be exempt from Parliamentary taxation.

The best response to this argument came from Thomas Whately, a member of Parliament and secretary to the treasury. In a pamphlet published in 1765, Whately agrees that no British subject can be taxed without the consent of his representative. But, as he goes on to point out, the vast majority of Englishmen, like their American counterparts, cannot vote in Parliamentary elections – so, if we follow American logic, these Englishmen are not represented either. Does this mean, Whately asks, that most Englishmen are taxed without their consent? Or that they are “arbitrarily bound by laws to which they have not agreed?” No, he answers. Most Englishmen are in the same situation as Americans; indeed, “All British Subjects are really in the same; none are actually, all are virtually represented in Parliament.”⁶

Whately coined the term “virtual representation,” and he rested his case for virtual representation on the “national interest” argument that Burke would employ a decade later. According to Whately:

[E]very member of Parliament sits in the House, not as Representative of his own Constituents, but as one of that august Assembly by which all the Commons of Great

Britain are represented. Their Rights and Interests, however his own Borough may be affected by general Dispositions, ought to be the great Objects of his Attention, and the only Rules for his Conduct; and to sacrifice these to a partial Advantage in favour of the Place where he was chosen, would be a Departure from his Duty....⁷

The most famous response to Whately came from Daniel Dulany, a Maryland attorney. In *Considerations on the Propriety of Imposing Taxes in the British Colonies* (1765), Dulany questions whether “virtual representation” is anything more than “a fanciful phrase, the meaning of which can't be precisely ascertained by those who use it, or properly applied to the purpose for which it hath been advanced.”⁸

According to Dulany, the interests of England and America are not similar enough such that both can be represented in Parliament under the umbrella of “virtual representation.” The colonies are represented only “in their [own] assemblies, but in no other manner.” Thus, like most American theorists, Dulany opposed sending Americans to sit in the British Parliament, for even then America would not be adequately represented. The interests of the various colonies could be served only in colonial assemblies, where the people could keep a close eye and a short leash on their rulers.

Other Americans attacked virtual representation and the “national interest” argument head-on. John Zubly of South Carolina wrote the following in 1769:

Every representative in Parliament is not a representative of the whole nation, but only for the particular place for which he has been chosen....[N]o member can represent any but those by whom he hath been elected....⁹

This, as we have seen, was the position adopted by most American theorists during the period of the American Revolution. As these Americans saw the matter, to keep a representative strictly in line with his constituents was a safeguard of liberty. As soon as a representative takes it upon himself to act “independently” – either in the name of national interest or for some other reason – then he becomes a power

unto himself or, as we say today, a loose cannon.

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Notes

1. *The Works of the Right Honourable Edmund Burke* (Oxford University Press), vol. II, p. 164.
2. *Ibid.*, p. 165.
3. Quoted in Hanna Pitkin, *The Concept of Representation* (University of California Press, 1967), p. 245.
4. Quoted in Bernard Bailyn, *The Ideological*
5. Quoted in *Origins of the American Revolution* (Harvard University Press, 1967), p. 171.
6. Quoted in *ibid.*
7. Jack Greene, ed., *Colonies to Nation, 1763-1789: A Documentary History of the American Revolution* (Norton, 1975), p. 49.
8. *Ibid.*
9. Quoted in Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (Norton, 1988), p. 243.

Gaia: Life is robust

by Fred L. Smith Jr.

At the root of the almost luddite attack against sound science is not only the self-interest of environmental advocacy groups but a genuine misperception about the resilience of both human life and of Mother Nature that has led to an almost mystical paganism. This paganism was best illustrated by the recent television series from PBS to the Turner network which glorified among others the earth goddess Gaia who allegedly stands guard over a fragile earth protecting it from us.

Yet that perspective is such a travesty on the concept of Gaia as first enunciated by its creator, the world-renowned biospheric scientist and ecologist Sir James Lovelock, that I want to dwell upon it...

That is because, as Sir James Lovelock presents Gaia, it explains precisely *why* virtually every alleged environmental catastrophe has turned out to be either a false alarm, or a wildly exaggerated *wolf* warning.

In the first place Lovelock saw Gaia not as some actual pagan goddess, but a useful paradigm for the self-regulation and self-correcting power of earth's biosphere: "I have frequently used the word Gaia as a shorthand for the hypothesis itself, namely that the biosphere is a self-regulating entity with the capacity to keep our planet healthy by controlling the chemical and physical environment."

[Lovelock] first evolved this concept during his lengthy work on the Jet Propulsion Laboratories' probes of Mars and Venus, where "our results convinced us that the only feasible explanation of the Earth's hugely improbable atmosphere was that it was being manipulated on a day-to-day basis from the surface, and that the manipulator was life itself."

...[Lovelock] says: "Life on this planet is a very tough, robust, and adaptable entity and we are

but a small part of it." He conducts his readers through millennia of simply colossal "natural insults" both to the planet and its biosystems which nonetheless failed to halt the steady advance of both the complexity and sturdiness of life systems. He concludes that "So far, no doom scenario yet imagined has the slightest chance of achieving such a degree of destruction. Contrary to the forebodings of many environmentalists, finding a suitable [planet] killer turns out to be an almost insoluble problem."

Indeed, Lovelock, himself a committed fighter for responsible conservation, nevertheless saves his most powerful scorn for environmental nihilism. "It is not clear whether their motivation is primarily misanthropic, or luddite, but either way they seem more concerned with destructive action than with constructive thought. The exploitation of human ecology for political ends can become nihilistic, rather than a force working for reconciliation between mankind and the natural world."

The result, he says, is that we have unnecessarily limited economic growth, and the development of technology, and thus held back the improvement of the human condition: "...There can be no voluntary resignation from technology. We are so inextricably part of the technosphere that giving it up is as unrealistic as jumping off a ship in mid-Atlantic to swim the rest of the journey in glorious independence..."

One reason for this, he contends, is that environmentalism's appeal is deeply rooted in our religious beliefs and background, the sense that we are engaged in a modern morality replay of the banishment of Adam and Eve from the Garden of Eden, because of our lust for knowledge--eating that Alar-laden apple .

"Nearly all of us have been told... that things were better in the good old days. So ingrained is

this habit of thought...that it is almost automatic to assume that early man was in total harmony with the rest of Gaia. Perhaps we were indeed expelled from the Garden of Eden and perhaps the ritual is symbolically repeated in the mind of each generation.”

It is just that today, that message has been translated into a contempt for science--for *knowing* too much about our world and using that knowledge to exploit it, to as Lovelock puts it “attribute our fall from grace to man’s insatiable curiosity and his irresistible urge to experiment and interfere with the natural order of things. Significantly both the biblical story and to a lesser extent its modern interpretation seem aimed at inculcating and sustaining a sense of guilt--a powerful but arbitrary negative feedback in human society.”

When the Valdez hit that reef, though it was clearly an accident--and an inexcusable one at that--it elicited a massive public expiation of guilt about our advanced standard of living that has driven us to lug petroleum through pristine waters and risk destroying our Eden for the sake of preserving what many ecologists such as Stanford’s Paul Ehrlich now argue is an essentially immoral way of life.

...[However,] Lovelock says... “Pollution is not as we are so often told a product of moral turpitude. It is an inevitable consequence of life at work. The second law of thermo-dynamics clearly states that the low entropy and intricate, dynamic organization of a living system can only function through the excretion of low-grade products and low grade energy to the environment.”

Indeed, nature itself is constantly generating massive levels of substances now routinely being banned by environmental regulatory agencies around the world. As Lovelock points out: “Almost every pollutant, whether it be in the form of sulfur dioxide, dimethyl mercury, the halocarbons, mutagenic and carcinogenic substances, or radioactive material, has to some extent large or small a *natural* background. It may even be produced so abundantly in nature as to be poisonous or lethal from the start.”

It is always astonishing to me that both newsfolk as well as the consumers still think of petroleum as a man-made product, instead of a

natural hydrocarbon, a *fossil* fuel, ever present even in the most pristine areas of our environment. As the growing army of undersea explorers have been telling those who would listen for over a decade now, the earth’s ocean floor is quite literally littered with vents or geysers from which are pouring some of the most lethally toxic substances known to man, not to mention millions of gallons of petroleum seeping relentlessly into the depths to be gobbled up by hungry microorganisms.

Around all of these hot smoker vents, scientists have discovered massive colonies of giant tube worms, half-foot long mollusks, and other bivalves which, without any help from the photosynthesis of the sun, are converting and metabolizing these toxic substance through chemosynthesis, alone. As Woods Hole biologist George Somero wrote in *Oceanus* in 1984, “From the perspective of the environmental physiologist and biochemist, the vent animals offer some vivid lessons concerning the adaptability of living systems. These animals have one of the most stressful habitats imaginable: high pressures (three oceans worth); no light, therefore no photosynthetic productivity; and waters laden with toxic substances. Through evolutionary changes, the vent animals have met these challenges and can tolerate and even thrive in their unusual environment.”

...This is why he says, “Ecologists know that so far there is *no* evidence that any of man’s activities have diminished the total productivity of the biosphere. Whatever an ecologist may feel as an individual about an imminent problem, his hands are tied by a lack of hard scientific evidence. The result is an environmental movement which is thwarted, bewildered, and angry.”

Lovelock concludes his masterful book *The Ayes of Gaia* with words that should ring in the ears of this conference: “The strong but confused emotions aroused by the worst excesses of public works and private enterprise provide ripe material for exploitation by unscrupulous manipulators. Environmental politics is a lush new pasture for demagogues and therefore an increasing source of anxiety to responsible governments and industries alike. Attaching that overworked adjective ‘environmental’ to the names of depart-

ments and agencies dealing with various aspects of the problem seems unlikely to stem the rising tide of anger and protest.”

One reason for this, of course, is that my industry, the media, especially the broadcast media, has such a massive stake in promoting that anger. What’s more, I think the public knows it. Given what happened to Big Green [the California Initiative] there is clearly more skepticism about environmental claims among ordinary voters than there is in most newsrooms. There is, I think, a very good reason for this which it is essential for you and the public to understand. It has to do with our self-interest not only in *bad* news, but in preserving and expanding what I call the “statist quo,” the power and the role of government, because that is our primary turf...

I have cited this example for only one reason. It illustrates something I have observed over the last six years since I moved to Washington: The national press is not liberal, per se, so much as it is *statist*. That is, it is committed to the promotion of an ever more intrusive government presence in every aspect of our lives, except, of course, our own business.

However, contrary to popular right wing opinion, its [the national press] commitment is not as much ideological as it is a matter of what Nobel economist James Buchanan has defined for the world, namely “public choice,” the idea that politicians and bureaucrats have a totally different set of motivations than the private choice market. The press shares those same public choice incentives.

Why? The press is quite rightly perceived to be the principal watchdog of government, while the market is the principle watchdog of the private economy. Any activity that moves out of the market and into the purview of government exchanges the watchdogs of the market for the watchdogs of the press, and vice-versa. Like it or not, that makes our incentive very clear: The more government, the more media power and jobs.

...So, instead of watchdogging and containing this massive explosion of government, the press became one of its principal beneficiaries. The bigger and more powerful government becomes, the bigger and more powerful we become. Moreover

the watchdogs soon discover that the more government intervenes in any and all aspects of our lives, especially the economy, the more crises, controversy and mayhem there are to report.

All this is by way of explaining why the media have so eagerly seized on the environment as the last and most serious *raison d’être* for statist interference. While governments have obviously mismanaged economies, they are needed we are told, to prevent the destruction of our planet.

This is why despite an almost unblemished record of forecasting failure and scientific distortion to the point of fraud, the press has been so ready to accept even the most outlandish scenarios of doom with unquestioning acquiescence. Nowhere was this more self-evident than in the dreadful coverage of the Exxon Valdez spill which routinely predicted “permanent ecological disaster” despite three decades of careful research by both government and industry demonstrating that Lovelock is right--oil is such a natural part of our environment, the Gaia principles work even more swiftly than usual to mitigate damage and restore ecosystems.

Little wonder the national media totally ignored the October news report in *Science* magazine that the Congressional Research Service was chiding Exxon for handing over its billions to an excessively costly and largely unnecessary clean up of Prince William Sound from the Valdez oil spill. It turned out that the 1990 harsh winter storms did even more clean-up than the \$2 billion they spent. Indeed there is abundant and growing evidence that some of that clean-up may have done far more harm in disturbing ecosystem repair mechanisms than good. Bioremediation, the ultimate extension of the Gaia principle--in areas untouched by the clean-up--produced far more dramatic recovery than the millions spent raking and bulldozing beaches to remove the natural hydrocarbons on which most microbes thrive.

The CRS report by James Mielke says contrary to the hysteria generated by the media and the environmentalists, the ecological effects of even massive spills like the Amoco Cadiz and the Santa Barbara Channel Blowout “were relatively modest, and as far as can be determined, of relatively short duration.”

...But, as you well know, there was nothing new in Mielke's report. In 1976, the CRS produced an exhaustive 400 page report for a Select Committee of Congress on the Outer Continental Shelf which found while "local impacts from a large spill might be quite severe, most indications are that the major effects are short term...the marine environment is resilient and has the ability to absorb oil spill impacts through natural processes."

...Oh well, no use crying over spilt billions. After all they were Exxon's billions, weren't they? Or

were they? And didn't American boys die in Kuwait at least in part because of our hysteria over oil spills, and our refusal to open up the Outer Continental Shelf and Arctic National Wilderness Refuge? And whose fault is it that the public doesn't know what scientists all know?

Gaia is certainly more than ready, willing, and able to save us from the ecological wounds we inflict on our planet; but we cannot expect her to save us from the costs of ignorance, superstition, and demagoguery. That we must learn to do ourselves.

Political Science: Risks and Rewards

by Fred Lee Smith, Jr.

Science is in trouble. Portrayed by the doomsayers as too risky, science and scientific change (we are told) must be controlled by political agencies. A potential disaster is suggested, the media raises the battle flag, and eager politicians rush in to save mankind.

There was a time when ignorance of the nature - or even existence - of such threats, their causes and remedies, would normally block action. But that was before the politicization of science. Today, politicians pass a bill but mandate that studies be undertaken prior to implementation. The politicians are then free to act, in full confidence that any mistakes will be caught in the later policy review.

However, science is poorly equipped to resolve political confusion. This reliance on science as a tool of politics now threatens science itself. "Politically correct" thinking dominates the press releases, the executive summaries, and the policy reports - if not yet the core substance - of such once respectable "scientific" institutions as the National Academy of Science, the Office of Technology Assessment, and the American Association for the Advancement of Science. Science policy is increasingly anti-scientific.

The Competitive Enterprise Institute, with the help of many of the groups and individuals we work with, examines the "science" behind numerous environmental concerns (acid rain, global warming, ozone thinning, dioxin, biotechnology). Science, we have found, provides weak support for government policies that seek to "protect" us from these manufactured risks. Nonetheless, the public is frightened into the belief that thousands die every year from exposure to trace amounts of pollution. Of course, the empirical evidence for such purported deaths does not exist.

People look to reality to vindicate values, not to determine them. Those values are being shaped daily in political committees, where protestations and pronouncements are highly critical of Western society - particularly of such institutions as technology and the market. Indeed, the very pretext for convening most such bodies is that something is wrong and government must fix it. It should be no surprise, then, that most of those who testify claim that technology is out of control, that profit-seeking men threaten the survival of the planet, etc.

Thus, in a politicized information market, the answer as to why the majority believes any given

proposition can be traced to politics, and the incentives that characterize politics – a desire for control coupled with an aversion to responsibility. When government assumes control of risk assessment and management, those political incentives are brought to bear.

As MIT meteorologist Richard Lindzen has said regarding predictions of catastrophic global warming: “There are statements of such overt unrealism that I feel embarrassed; I think it discredits my science...[and] by ruining our credibility now we leave society with a diminished resource of some importance.”

Ideally, the value of science is to advance technologies that benefit mankind and block technologies that would reduce human welfare. The challenge is to determine whether that task is best achieved by allowing individuals freedom to act and holding them responsible for their actions, or whether this process should be subject to the political control of regulatory bodies.

The problem with government decision making is that a vast asymmetry exists. There is a regulatory bias toward control, a political bias toward emphasizing catastrophe and a psychological bias against change. There is nothing new about the fear of change – politics merely gives more power to those wishing to block change.

One way of understanding bureaucratic incentive structures is to recognize that regulators are entrepreneurs, too. The bureaucrat who errs on the side of caution, the side of stasis, does not suffer from his mistake; the bureaucrat who errs on the side of permissiveness, the side of progress, may not advance. Similarly, agencies that tend toward passiveness, that fail to justify their need, don’t get budget increases. The EPA, for example, has every reason to convince the public that they alone stand between the citizens and environmental disaster. Indeed, it appears that EPA has hired Stephen King to write press releases.

Competing Myths: Prometheus vs. Dr. Frankenstein

Myths matter. They summarize the concerns that we have about change and, like stereotypes and shibboleths, they frame the debate. Two myths are helpful in understanding science

policy. On the one hand, there is Prometheus: the scientist as entrepreneur, as the innovative individual willing to challenge the reactionary ruling orthodoxy to introduce beneficial technology to mankind. On the other, there is Dr. Frankenstein: the scientists as villain, as the arrogant individual insensitive to his fellow Man’s concerns, releasing monsters into the world with self-serving abandon.

Dr. Frankenstein epitomizes the prevailing view of non-government scientists. Under this view, if entrepreneurial science is dangerous, we must find ways of keeping science leashed and controlled. Gatekeeper agencies are created and charged with deciding whether a new technology (or a new application, or a larger use of an old application) should be allowed. In an ideal world, such agencies would get it right – always. Dangerous products would be blocked; beneficial products would be approved.

However, this is not an ideal world. An agency can make two type of errors: classifying a dangerous product as safe, or classifying a beneficial product as dangerous. These two risks – the risks of technological innovation and that of technological stagnation – are both serious. But a political agency won’t see them that way. Victims of mistaken bureaucratic approval are visible; victims of mistaken disapproval are not. As a result, agencies all too often only respond to the former.

The policy question is should Man have fire? Zeus and the other status quo political bosses of the day thought not. Why, they asked themselves, should we spread our privileges? “Let humans eat their flesh raw!”, the gods roared. Besides, fire was risky – there had been no double blind controlled tests on the tendency of fire to get our of hand. Moreover, mankind (then, after all, an illiterate cave-dweller) was hardly an informed risk-taker. The gods had to continue in their paternalistic role.

Prometheus disagreed. Mankind, he believed, faced many risks worse than those posed by fire (weather, wild animals, etc). Prometheus decided to violate the regulatory guidelines and provide mankind with fire. He recognized that fire (i.e., technology) was inherently neither safe nor risky

- harm would be contingent on how it was used.

Of course, having violated bureaucratic fiat, Prometheus was punished. The political authorities seized him, and chained him to the side of a mountain where an avenging vulture would feast upon his liver every day for all eternity. Such was the price for pursuing technological progress.

Historically, modern government has not treated scientists as harshly - Galileo got off light. America has been strongly supportive of the Promethean view of technology for most of its history. Indeed, America was the society of change; it was Europe, still struggling out of the Dark Ages, that had suppressed beliefs, endorsed orthodoxies, and forced Galileo to recant.

But America has moved decisively away from the Promethean paradigm. Many now act as if they believe that the risks of change are massive, that the risks of stagnation are minimal. America seems to have adopted the once-orphaned Dr. Frankenstein view, that scientists are dangerous and technology is destructive.

If the world is to become safer, the

Promethean myth must again gain prominence and supplant that of Dr. Frankenstein. We must remove the restraints from those who can and will, if allowed to do so, make the world safer. In short, we must object vociferously to government's regulation of risk, and make it known that there are also risks of regulation.

The myth of Prometheus had a happy ending. Prometheus suffers for eons at the hands of the vengeful regulatory vulture until mankind, now fully aware of his great contribution, petitions Zeus to free him. Their petition is granted and Hercules, as mankind's agent, slays the regulatory vulture and unbinds Prometheus.

The Promethean myth is paradigmatic. If our challenge is to restore science to its proper role, to find ways to once again legitimize private regulation of technology, our vision is Prometheus unbound.

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Foreign Policy: A World of Voluntary Transactions

by Bettina Bien Greaves

Resolved: That U.S. military interference in the internal affairs of other countries is justified.

Almost everybody wants peace and prosperity. Certainly government officials profess a desire to promote peaceful cooperation among peoples and they devote much time and energy to “international relations.” Yet almost daily the press, radio, and TV report international tensions – in southeast Asia, southern Africa, the Middle East, Latin America, or the Orient. As human beings are not perfect, possibilities will always exist for mistakes, misunderstandings, disagreements, and disputes that could grow into widespread conflicts. So the task of those concerned with foreign policy is twofold – (1) to contain local quarrels and (2) to minimize the possibility of such conflicts in the future.

It is natural for people to trade with one another. No doubt men came to understand the advantages of voluntary transactions long before the dawn of written history. Persuading others to part voluntarily with some good or service, by offering them something in exchange, was usually easier than doing battle for it. Certainly it was far less dangerous. Barring force, fraud or human error, both parties to any transaction expect to gain something they value more than what they are giving in exchange. Otherwise they would not trade. This is equally true of trades among friends or strangers, fellow countrymen or foreigners, small enterprises or large – whether located next door to one another or separated by many miles or national borders. Trades may be complex, if intermediate transactions or different national currencies are involved, but the principle remains the same. Both parties expect to gain from a voluntary transaction. So people who trade with one another have

both good reason to remain friendly and have just cause to resent interferences that hamper or prohibit their trading.

Most consumers care more about the availability, quality, and price of what they buy than they do about who makes it or where it comes from. If a particular gasoline works well in their cars, they don’t care whether the oil came from Arabia, Alaska, Venezuela, or Algeria. Consumers will buy Taiwanese shirts, Hong Kong sweaters, Brazilian shoes, German cars, Japanese radios, or any other foreign good, if price and quality suit them. And satisfied customers promote good will.

Economic nationalism

It is governments, not consumers, that make national boundaries important. It is governments, not consumers, that create national distinctions and promote economic nationalism, often without intending to do so. A tax on U.S. citizens, not required for protecting lives and property or defending the country, increases production costs unnecessarily. Regulations and controls to “protect” consumers, workers, manufacturers, farmers, miners, truckers, the environment, or any other special interest also raise domestic production costs. Benefits to special groups – the unemployed, elderly, handicapped, minority enterprises, or those awarded lucrative government contracts – must be paid for by others, in taxes or through increases in the quantity of money which in time hurt everyone. All these programs increase costs and make voluntary transactions more difficult and expensive.

As production costs increase, some producers

find their sales dropping so they must curtail production and reduce their work force. Many persons then believe it even more important to enact special legislation, erect trade barriers, or grant government subsidies, to support the injured firms and protect them and their workers from foreign competition. But such programs only increase domestic production costs still more. This further hampers the ability of would-be traders to carry out voluntary transactions.

The goal of economic nationalism is to protect domestic producers from foreign competition. Its proponents want to preserve a specific pattern of production. They do not understand the mutuality of trade. They do not realize that both parties gain from a successful voluntary transaction. Nor do they recognize the inevitability of change.

Nothing in this world stands still. People move. The wishes of consumers change. Their knowledge is continually shifting. Changes also take place in stocks of available resources and the most economical places in which to produce particular items. Producers, investors, and workers should be free to move about and adjust to these many changes as best they can.

Any attempt to maintain, for political reasons, some rigid pattern of production is bound to fail. Insofar as production is guided by political, rather than economic, motives, it becomes more expensive and wasteful. When government seeks to reduce dependence on imports and increase national self-sufficiency, consumers must get along with fewer goods and services of lower quality; and their standards of living will decline.

Foreign policy repercussions

Restricting imports by government flat reduces exports also. How can foreigners continue to buy as much from us, if our government restricts their opportunities to earn dollars by selling goods in this country? The mutual gains that come from trading turn traders into friends. But when trading is hindered, ill will has a chance to develop. Frustrated would-be traders look for someone or something to blame. Officials of foreign governments become antagonistic to the U. S. government, for they realize their

producers' sales to this country are hampered by our government's interference.

However, few U.S. citizens blame their government for imposing trade restrictions. Many even consider the federal government a benefactor. For when imports and exports decline the federal government often tries to make up for lost trading opportunities by offering those who are hurt direct or indirect assistance – subsidies, relief, new protective regulations, and so on. But such government programs can never compensate would-be traders fully for opportunities forgone, reduced production, and the loss of individual self-respect.

The advocates of free trade pointed out more than a century ago that “if goods do not cross borders, soldiers will.” As fewer exchanges take place across national borders, individuals have fewer opportunities to know and respect one another. Antagonism, animosity, and enmity among nationals may arise. We have seen this happen in recent years – in India and Pakistan, Southeast Asia, the Middle East, southern Africa, and elsewhere. Obstacles to the path of trade made transactions across national boundaries more and more difficult, expensive, and infrequent. The common bond which could have turned their international traders into friends was weakened. Those who could have helped each other through voluntary transactions had no cause to come together. They remained strangers and, in time, were even led to consider one another enemies.

Government intervention, which begins by distinguishing between domestic and foreign goods and producers, leads in time to a policy of economic nationalism which actively discriminates in favor of domestic products to the disadvantages of imported goods. This hurts not only foreign producers, whose goods are excluded from the domestic market. It also harms domestic consumers and producers. Production costs rise so that fewer goods can be produced and sold. With fewer goods and services available for everyone, living standards decline.

Localizing conflicts

The sure way to turn local disputes to widespread conflicts is for outsiders to interfere. The first step in that direction often springs from a

sincere sympathy on the part of the strong for the weak, the rich for the poor, the haves for the have nots. Officials of one nation offer to help defend a weaker country against the threats of stronger neighboring states. But by taking sides in this way, neutrality is abandoned. No matter how well-intentioned, such government-to-government economic aid and mutual defense agreements show favoritism which can lead in time to military actions and wars. Through U.S. commitments such as NATO, SEATO, and SALT, as well as various treaties, pacts, and executive agreements - relating to the Middle East, China, Russia, Panama, Japan, various African nations, and more - we could well become embroiled in local violence or border disputes, at almost any instant, almost anywhere in the world.

U.S. involvement in the Middle East undoubtedly began with a sincere sympathy for Jewish refugees who wanted to establish a homeland in Israel. Our involvement in Vietnam has been traced by some to a desire to help relieve France, when she was economically and financially strained by military operations in her colonial Indochinese territories, so as to persuade her to join NATO. "We do not plan our wars; we blunder into them" as history professor

Henry Steele Commager has pointed out.

George Washington's advice in his Farewell Address (September 17, 1796) is still sound: "...nothing is more essential than that permanent inveterate antipathies against nations, and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated...The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little *political* connection as possible." And similarly, Thomas Jefferson urged "peace, commerce, and honest friendship with all nations, entangling alliances with none" (First Inaugural Address, March 4, 1801).

U.S. involvement in this century in two World Wars as well as Korea and Vietnam is due to the fact that U.S. foreign policy has been guided by precisely the opposite ideas from those Washington and Jefferson advocated. To contain local violence, a nation should avoid taking the first

step toward abandoning neutrality and playing favorites. Thus, we should refuse to add to the many international commitments our country is now duty bound to honor. Then we should move toward the foreign policy recommended by our third President - "peace, commerce, and honest friendship with all nations, entangling alliances with none. "

Minimizing future conflicts through free trade

To minimize conflicts in the future we should aim to create a world in which people are free to buy what they want, live and work where they choose, and invest and produce where conditions seem most propitious. There should be unlimited freedom for individuals to trade within and across national borders, widespread international division of labor, and worldwide economic interdependence. Would-be traders should encounter no restrictions or barriers to trade, enacted out of a misguided belief in economic nationalism and the supposed advantages of economic self-sufficiency. Friendships among individuals living in different parts of the world would then be reinforced daily through the benefits they reap from buying and selling with one another. Thus a sound basis for peaceful international relations would be encouraged.

Individuals should have the right of national self-determination and even to shift national political boundaries, if they so voted in a plebiscite. For practical and economic reasons, a single administrative unit would be sovereign within the political borders so established. But this administrative unit would have to be responsive to the wishes of the people or face being ousted in the next election. It would have to do its best to protect equally the private property of every inhabitant and to respect the rights of all individuals within its borders, irrespective of race, religion, or language. In such a world, members of racial, religious, or linguistic minorities need have no fear of political oppression for being different. Any nation which adopted these policies at home and in its relations with other nations would help to reduce international tensions and so contribute to minimizing future conflicts. But once it began to play favorites again - to grant privileges to some to the disadvantage of others, to introduce restrictive controls and

regulations – it would be re-embarking on the path that leads to friction and conflicts among individuals, groups, and nations.

World peace

To maintain peace throughout the world, the grounds for conflict should be reduced as much as possible. The first step in this direction must be to respect and protect private property throughout the world. The ideal would also include complete freedom of trade and freedom of movement. Political boundaries would no longer be determined under threat of military conquest or aggressive economic nationalism, but rather by legal plebiscite, i.e., by vote of the individuals concerned. In such a world, the national sovereignty under which one lived and worked would be relatively immaterial. Daily news reports certainly indicate that we are a long, long way from approaching this ideal. Programs intended to promote world peace often lead in the opposite direction. The various intergovernmental institutions – the United Nations and the several regional political and economic communities – do little or nothing to reject economic nationalism. The debates and proposals of their representatives reveal little understanding of the mutual advantages private traders gain from voluntary transactions. They do not even appear to consider the possibility of leaving trade to private individuals and enterprises to arrange as they see fit. Rather they continue to delegate important powers to various governmental authorities to regulate and control quantities and qualities of imports and/or exports, sometimes even to set minimum or maximum prices at which certain commodities may be traded. In their desire to protect various fields of production within their newly erected borders, they foster economic nationalism over geographical

areas larger than a single nation. Thus, although the spokesmen for these multinational organizations sometimes talk of “freer trade,” their actions lead to less free trade.

The foreign policy that would minimize future conflicts would promote an economic climate in which voluntary trades among private individuals would flourish because private property was protected worldwide. To create such a climate calls for widespread economic understanding. To maintain it would require eternal vigilance.

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Knocking out the childness

The Visible hand

by Gregory F. Rehmke

The following essays discuss and review the history of the “national service” debate, and the earlier, related debate over conscription (the draft). The authors have, however, found little to say in support of “national service.” With Bill Clinton leading in the polls as this goes to press, and the Democratic Leadership Council strongly supporting national service, this topic is particularly timely for students.

The heart of economics is the voluntary marketplace where people pursue their own interests and are led, economists claim, “as if by an invisible hand” to serve the interests of others. People who don’t believe in invisible hands are more likely to believe in visible hands, that is, are likely to believe that people ought to be pushed to help others directly.

Notice, too, that to even talk about “national service” or “serving the United States” is to treat an abstraction as if it were a concrete thing – as if the “nation” were a thinking, breathing being separate from the millions of people who live here.

Since nations can’t talk, only individuals and groups can define the “national goals” they believe in and the “national service” programs they want to launch. Their goals may be worthy, but it is not clear what just claim they could have on other Americans’ money (via taxes), or labor (via conscription).

In a free society, authentic national service is the inadvertent consequence of individuals pursuing their own dreams as entrepreneurs, inventors, designers, engineers, programmers, writers, philanthropists, or any of a thousand

other occupations. Some people support themselves through theft or fraud, but anyone whose labor is paid for voluntarily is, consciously or not, pulling for the *national good* (italics because no one really knows what the national good is).

People naturally coalesce into communities, companies, clubs, and associations and pursue shared goals through these and other voluntary institutions. But these “classical liberal” conceptions of how a good society works often seem pale in contrast to the grand visions and programs of national service advocates.

When I was in high school there were no state lotteries, but all of us played the federal lottery. The “winners” got to go to college or get jobs, but the “losers” went to Vietnam. Though we no longer have the draft, the idea of conscription for wartime and peacetime service to the state is still with us. David Dawson’s essay “Posse comitatus,” written while the draft was still in force, discusses the medieval and ancient sources of conscription.

It is often argued that forcing young people to work in national service programs would build character (this argument might sound familiar to young people since it is often advanced by their own parents). National service proponent William James put it more bluntly. Forced national service, he said, would “get the childness knocked out of” young people.

Perhaps debating national service will provide an alternate way for getting the childness knocked out of debaters. Such debates will certainly be relevant since today’s high school students are themselves the target of pending national service legislation.

The moral equivalent of war

by David Boaz

National service is back, this time under the auspices of the Democratic Leadership Council, headed by Sen. Sam Nunn (D-Ga.). The DLC proposes that young people enlist in either military service or social programs for a term of one or two years, after which each participant would receive a voucher that could be used for college expenses, job training, or a down payment on a home. The current federal student aid programs would supposedly be phased out; student aid would then be available only to national service enlistees, making it “politically unassailable.”

The DLC believes that the proposal would entail “sacrifice” and “self-denial” and that it would revive “the American tradition of civic obligation.” Its booklet on the proposal does not mention the American tradition of individual rights. The proposal is also intended to “broaden the political base of support for new public initiatives that otherwise would not be possible in the current era of budgetary restraint.” In other words, it would be a way for government to hand out benefits by enlisting cheap labor – and just offstage, one can hear the murmur “conscript labor.”

The last chapter of the booklet, inevitably, is titled “The Moral Equivalent of War,” a phrase harking back to the famous 1910 essay in which William James proposed that young Americans be conscripted into “an army enlisted against Nature” that would cause them to “get the childishness knocked out of them, and to come back into society with healthier sympathies and soberer ideas.”

The fascination of collectivists with war and

its “moral equivalent” is undying. In our time President Carter revived the Jamesian phrase to describe his energy policy, with its emphasis on government direction and reduced living standards. It was to be his peacetime substitute for the sacrifice and despotism of war.

In 1982 British Labour party leader Michael Foot was asked to cite an instance of socialism in practice that could “serve as a model of the Britain you envision,” and he replied, “The best example that I’ve seen of democratic socialism operating in this country was during the second world war. Then we ran Britain highly efficiently, got everybody a job The conscription of labor was only a very small element of it. It was a democratic society with a common aim.”

More recently the American socialist Michael Harrington wrote, “World War I showed that, despite the claims of free-enterprise ideologues, government could organize the economy effectively.” He hailed World War II as having “justified a truly massive mobilization of otherwise wasted human and material resources” and complained that the War Production Board was “a success the United States was determined to forget as quickly as possible.” He went on, “During World War II, there was probably more of an increase in social justice than at any [other] time in American history. Wage and price controls were used to try to cut the differentials between the social classes There was also a powerful moral incentive to spur workers on: patriotism.”

Collectivists such as Foot and Harrington don’t relish the killing involved in war, but they love war’s domestic effects: centralization and

the growth of government power. They know, as did the libertarian writer Randolph Bourne, that “war is the health of the state” – hence the endless search for a moral equivalent of war.

As Don Lavoie demonstrated in his book *National Economic Planning: What is Left?*, modern concepts of economic planning – including “industrial policy” and other euphemisms – stem from the experiences of Germany, Great Britain, and the United States in planning their economies during World War I. The power of the central governments grew dramatically during that war and during World War II, and collectivists have pined for the glory days of the War Industries Board and the War Production Board ever since.

Walter Lippmann was an early critic of the collectivists’ fascination with war planning. He wrote, “A close analysis of its theory and direct observation of its practice will disclose that all collectivism . . . is military in method, in purpose, in spirit, and can be nothing else.” Lippmann went on to explain why war – or a moral equiva-

lent – is so congenial to collectivism: Under the system of centralized control without constitutional checks and balances, the war spirit identifies dissent with treason, the pursuit of private happiness with slackerism and sabotage, and, on the other side, obedience with discipline, conformity with patriotism. Thus at one stroke war extinguishes the difficulties of planning, cutting out from under the individual any moral ground as well as any lawful ground on which he might resist the execution of the official plan.

National service, national industrial policy, national energy policy – all have the same essence, collectivism, and the same model, war. War, though sometimes necessary, involves mass murder. Why would anyone want its moral equivalent?

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National service: sharing the dirty work

by Martin Anderson

Resolved: That all United States citizens ought to perform a period of national service.

Today an understanding of what national service is all about is obscured by an imprecise use of language. The term, national service, is often used indiscriminately to describe proposed public programs that differ vastly in their content and in what their effect would be.

There are two radically different kinds of public service programs that are today described as “national service.” They differ from one another in one fundamental way, and in one way only. One kind of public service is *voluntary*, free of any coercion or compulsion, a form of public service in which citizens choose freely to give of their time and effort and money, a form of pure benevolence. The other kind of public service is *compulsory*, where the good deeds are done out of fear – the fear of going to jail (straight compulsion) or the fear of devastating financial loss (economic coercion).

One reason why the idea of national service is such a controversial divisive issue is that these two very different forms of public service keep getting mixed up. Properly understood there is almost no controversy, at least not among the vast, overwhelming majority of Americans today. Americans very much like the idea of voluntary public service. Americans also believe the idea of compulsory service is morally repulsive.

So why is there continuing controversy, as there has been for most of this century? We have hundreds and hundreds of public service programs – in the towns and cities, in the states, and at the federal level. We have the Peace Corps and the Job Corps and VISTA. There are opportunities for just about anyone who would like to spend time and energy serving others. In 1989 President

Bush proposed an expansion of the federal effort, Youth in Service to America (YES), that promises to fill any existing gaps in the vast network of public and private opportunities to serve. No real controversy there.

And there is no real controversy about the kind of national service programs that call for the widespread conscription of America’s youth. They are emphatically rejected by all but a handful. Politically speaking they are nonstarters, with about as much appeal as concentration camps.

The main reason why there is controversy about national service is that programs are proposed that are not exactly what their proponents claim. The programs that still stir controversy are those that claim to be voluntary, but which contain core elements of coercion or compulsion, or the intent to one day become compulsory and universal. The argument is not about whether we like voluntary or compulsory programs. That argument is settled, and is likely to remain settled for at least our lifetimes. No, the argument today is whether a proposed national service program is voluntary or compulsory, one which young people freely choose, or one into which they are coerced.

The hidden agenda of compulsion

The issue of compulsion is central for all those who favor a large-scale, universal program of service to the state, especially if they believe, which they do, that *all* young people should somehow be made to participate. For they know that only official laws compelling the young to serve, backed by the threat of real punishment,

including jail, will ensure that everyone serves. “Any effective national service program will necessarily require coercion to insure that all segments of the American class structure will serve,” wrote Charles Moskos, one of the most persistent and effective advocates of large-scale national service, in 1971.¹

“Only if it were mandatory and universal could national service impose a roughly equal burden on all citizens,” concluded the report of the Democratic Leadership Council in 1988.²

Michael Walzer, the philosophical guru of modern national service, was even more explicit in 1983 when he wrote that an effective national service program “would require an extraordinary degree of state control over everyone’s life, and it would interfere radically with other kinds of work.”³

But few advocates of national service openly propose universal compulsion of the young. Why? For simple political expediency. They know that they cannot achieve what they want if they tell the truth. So they do the next best thing. They set aside their true goal, and propose programs they hope will advance their goals without alarming the general public. For example, the 1988 report of the Democratic Leadership Council candidly admits they doubt “that the American people would accept such a coercive and intrusive – not to mention costly program.”⁴

Professor Moskos now admits (in 1988) finding himself “in the awkward situation of rebutting my own former position,”⁵ one that he took in 1971. But not awkward enough to renounce the delights of compulsion. When it came to the military draft, a part of any compulsory national service program, Moskos was one of those rare individuals who saw the draft as something good in and of itself, unlike most people who, even if they supported the draft, saw it as a necessary evil. In 1980 Moskos stated flatly, “I am one of those former draftees who look upon conscription as a moral good.”⁶

Over the years Moskos’ lust for compulsion never dimmed. “If I could have a magic wand, I would be for a compulsory system,” Moskos told *Time* magazine, when asked about national service in 1987. ⁷ Then he bragged to a columnist for the *Chicago Tribune*, that his latest effort, the

legislation introduced by Senator Sam Nunn of Georgia in 1989 was “just this side of compulsion, but we don’t cross the line.”⁸

Professor Moskos is only the latest of many who have tried to persuade Americans to adopt compulsory national service. The accepted granddaddy of national service, quoted reverently by all believers who followed him, is William James, the philosopher who was the father of Pragmatism. In a speech given in 1906, *The Moral Equivalent of War*, James stated unashamedly that everyone should be compelled to serve the state for a “certain number of years.”

“If now – and this is my idea – there were, instead of military conscription a conscription of the whole youthful population . . . the injustices would tend to be evened out, and numerous other goods to the commonwealth would follow. “James pointedly called this kind of national service a “blood-tax.”⁹

James’ blood-tax was but a pale copy of the plan fictionalized twenty-two years earlier by the famous novelist, Edward Bellamy. Bellamy’s book, *Looking Backward*, proposed to turn the United States into a military- industrial dictatorship, where government, military and business merged into one giant fascist whole. Universal compulsory military service would be required of all the young men and women of the nation. All would be compelled to work for the state at whatever jobs they were assigned. Applying compulsion in some ways more rigorously than a modern Communist state, Bellamy sketched out a blueprint of what might be called the ultimate totalitarian state.

In the latter part of the 19th century, *Looking Backward*, arguably the most evil book ever written by an American, became a runaway bestseller and, even today, is referred to with some reverence by the proponents of compulsory national service. Moskos, for example, calls Bellamy’s novel part of “socialist utopian thought,” acknowledges that compulsory youth service “was the cornerstone of his new social order,” and then gives Bellamy credit for first introducing the “concept of civilian service by youth.” and presenting a “military analogy to describe the organization of civilian service, a trademark of subsequent national-service

thought ."¹⁰

Another early proponent of compulsory national service in the United States was Randolph Bourne, a young radical opposed to World War I, who, in a 1915 article for *The New Republic*, called specifically for an "army of youth." Bourne envisioned two years of compulsory state service for all young men and all young women between the ages of sixteen and twenty-one. He tried to lull peoples fears of compulsion by asserting that it would be compulsory only in the sense that everyone from sixteen to twenty-one "*shall* [emphasis added] spend two years in national service." The details of his 74-year-old plan are remarkably similar to today's proposals for national service. Most of the men and women who fought for compulsory national service over the years are now dead. their specific plans and arguments interred with them. But the echoes of what they longed for still resonate, their dream carried on by others. The most sophisticated and dogged disciple is Donald J. Eberly, who has literally devoted most of his life to the concept of national service and truly can be said to be the father of the current proposals on the national scene. While Eberly supports and advocates large-scale national service programs, he has always been very careful to downplay the issue of compulsion. His program proposals are voluntary national service programs, deftly sidestepping the question of whether or not they would inevitably lead to a compulsory program. The last time Eberly addressed the issue of compulsion directly was over twenty years ago, in 1968. First, he put forth his arguments for compulsion:

A compulsory program would guarantee the involvement of millions of youth each year attacking poverty, ignorance, and disease.

It would prevent it from becoming an elitist program like the Peace Corps or a poverty program like the Job Corps.

It would remove the inequities of a system in which some serve and others do not.¹¹

Against that powerful array of pro compulsion arguments, he then meekly presented the case for individual freedom - "the traditional case of the civil libertarian that any form of compulsion is an infringement on the freedom of the individual" - and promptly undercut even

that weak argument in his next sentence: "My problem with that argument is largely personal: I was compelled to enter the Army but I came out with the feeling of greater freedom than when I entered."¹²

Eberly then argued that his "major problem" with compulsory service is that it "would tend to lessen the quality of service performed and the value of the service experience to the individual."

His final argument against proposing a compulsory program was that it would be "superfluous." He asserts that a properly run volunteer program will "attract millions of young men and women," and thus it will "not be necessary to create the elaborate machinery needed for a compulsion program."¹³

Eberly's strategy seems crystal clear. He understood earlier and better than most that the kind of compulsion necessary, to make a large-scale national service program work was repulsive to the American people. He has artfully presented a one-sided argument for compulsion, giving only the weakest of arguments in defense of personal freedom, and then slipping into the false conclusion that compulsion is not really necessary anyway. This allows him to advocate a voluntary program for the benefit of those who detest compulsion, yet leaves him a clear opening to move swiftly back to a compulsory program if it should become "necessary;" Eberly's goals are the same as those of Moskos and Bourne. and Bellamy and James. If one has any doubts about the real sentiments of Eberly they can be easily resolved by reading the first paragraph of the dedication of his 1988 book whose subtitle is *A Promise to Keep*. The dedication, written to his grandchildren, is signed, "Grandpa."

You may some day read these words in a history textbook: "Following a 1906 speech by William James in which he advocated a moral equivalent of war, the debate on national service waned for nearly a century before it was finally adopted by the United States."¹⁴

If Eberly, and others who profess to favor voluntary national service, are sincere, then let them denounce compulsion and state flatly that they support no national service program which embraces it. Until that time. prudent people will assume that compulsory national service is their

secret, cherished goal.

All those who favor large-scale national service programs, like Mr. Eberly and Professor Moskos, confront one big, unsolvable dilemma. If the program is truly voluntary and non-coercive, you will not get millions and millions of young men and women to sign up. On the other hand, if you propose a compulsory program, one that will work in the sense of forced labor for millions of American youth, you will not get any program. You are damned if you do, and damned if you don't. One won't work, the other you can't get.

The dirty work philosophy

The agenda of coercion and/or compulsion that is embedded deeply in nearly every national service program proposal leads to a puzzling question. Why do these people want to coerce and compel the young so badly? What has, over the years, powered this ancient urge to control young men and women, to make them do things they do not want to do?

Like all great public policies, compulsory, national service is driven by a moral engine, by a set of specific moral beliefs which guide, with sureness and precision, those who believe them. To discover the moral beliefs that allow adults to push for the compulsion of the young with no compunction whatsoever, we must go to the writings and teachings of the philosophers of national service. It is these philosophers who have set down the moral foundations for the political activists who now push for universal national service programs. There are three important ones.

The first is Edward Bellamy. A lawyer by trade, he drifted into journalism and wrote editorials for the *New York Evening Post*, but found his true calling as one of the most successful novelists in American history. His book, *Looking Backward*, a hymn to a totalitarian state, sold over a million copies in the latter part of the 19th century – and to this day sells among the intelligentsia. Written when he was only 38 years old and sporting a black, bushy, handlebar mustache, Bellamy's novel contained the philosophical inspiration for the professional philosophers who followed.

The second, and by far the most influential, is William James, the brother of the novelist Henry James. William was the leader of the philosophical

movement of Pragmatism, a school of thought that was dominant in the United States during the first quarter of the 20th century and then fell from favor.

The third and last philosopher who has had an impact on the national service movement is Michael Walzer, currently a fellow at the Institute for Advanced Study in Princeton, New Jersey. Walzer's 1983 book, *Spheres of Justice* is, for example, cited by Moskos as best exemplifying the "contemporary shift towards a reemphasis of citizen duties."¹⁵

The chain of action in the making of the current proposals for national service policy goes something like this. The current legislation introduced by politicians like Senator Nunn and Congressman McCurdy was heavily influenced by the writings of the prime movers of large-scale national service programs, such as Donald Eberly and Charles Moskos. And the philosophic foundations of the writings of Eberly and Moskos draw, in turn, heavily on the earlier writings and speeches of Edward Bellamy, William James, and Michael Walzer.

But why only these philosophers? Why do we find, over the years, the advocates of national service referring again and again to the writings of these men? What did they say that distinguished them from other philosophers and writers? These three men wrote a great deal in their lifetimes and it is difficult to conclude with certainty that we know exactly what gave them their special status as the three philosophers of national service. But there are some strong clues, indications that clearly point to two major ideas that separate them from the other thousands of philosophers who lived and wrote when they did.

The first idea that set them apart from their philosophical colleagues was a peculiar view on the morality of doing dirty, distasteful and dangerous work in a society. The basic thrust of their fringe philosophical view is that all the dirty, distasteful and dangerous work in any society *should be shared equally* by all the people who live in the society. No exceptions, woman or man, rich or poor, skillful or not, every single soul must do his or her share of taking out the garbage, preparing the dead for burial, cleaning toilets, guarding violent prisoners and taking care

of those sick and dying from deadly, contagious diseases. For them it is a moral imperative.

And because the idea of parcelling out the dirty work of a society to all citizens equally is considered by them to be a fundamental moral issue, something as ethically compelling as one of the ten commandments, they see no problem with using compulsion to secure that end. No more than others see nothing wrong with using compulsion to apprehend people who kill and steal. To achieve justice, the philosophy of national service implies, it may be necessary at times to compel people to act against their personal will.

The second idea that makes them the philosophers of choice for national service is the notion that youth should do the work. There isn't enough dirty, dangerous work to go around for all, so the essential thought is to make people do it for a year or two while they are young. That way, everyone will be forced to experience things that are dirty, humiliating or dangerous for a period of time in their lives.

For most people the principle of an equal distribution of dirty work is such a peculiar, bizarre notion that it is difficult to believe that intelligent men and women seriously advocate it. Shouldn't trained nurses and doctors take care of people with deadly, infectious diseases? Shouldn't professional trained guards, preferably large, strong ones, guard violent prisoners? Do we all really need to take turns hauling the city's garbage to the dump? Yes, this is exactly what they mean. "Is it not an appropriate goal for social policy, however, that all the *dirty work* [emphasis added] that needs to be done should be shared among all the citizens," wrote Walzer in *Spheres of Justice* in one of his clearest expositions of this view.¹⁶ As he explained it,

the question, in a society of equals, who will do the dirty work? has a special force. . . the necessary answer is that, at least in some partial and symbolic sense, *we will all have to do it*. . . this is what Gandhi was getting at when he required his followers - himself, too - to clean the latrines. . . people should clean up their own dirt.¹⁷ [emphasis added]

Professor Walzer did not leave the national policy implications of this philosophical view

open to speculation, for he argued that "work of this sort might be done as part of a national service program."

"Indeed," he continued, "war and waste seem the ideal subjects of national service: the first, because of the special risks involved; the second, because of the dishonor. Perhaps the work should be done by the young, not because they will enjoy it, but because it isn't without educational value." Well, there it is in a nutshell, the philosophical essence of compulsory national service. The dirty work of a society must be shared equally. It should be part of national service (and here Walzer adds a perverted twist) *because of the dishonor*. And the young should do the work. Preceding Walzer by some 77 years was William James. In his now famous speech, "The Moral Equivalent of War," delivered on the campus of Stanford University in 1906, Dr. James spelled out a plan to draft young men to do civilian work. This was 1906, so young women were not considered or even mentioned. As Donald Eberly approvingly describes James' plan in his book, *National Service*, the so-called moral equivalent of war would come about by "conscripting young people to do the work of society that was risky, tough, and unpleasant." James spelled out the moral underpinnings of his idea of a just society, his utopia. Curiously, that part of his speech, which is critical to understanding why he proposed what he did, is never quoted by his followers and admirers. Here is what Professor James told the students at Stanford on that balmy, damp day - February 25 - in California:

There is nothing to make one indignant in the mere fact that life is hard, that men should toil and suffer pain But that so many men, by mere accidents of birth and opportunity, should have a life of *nothing else* but toil and pain and hardness and inferiority imposed upon them, should have *no* vacation, while others natively no more deserving never get any taste of this campaigning life at *all* - *this* is capable of arousing indignation in reflective minds. It may end by seeming shameful to all of us that some of us have nothing but campaigning, and others nothing but unmanly ease.¹⁸

In James' extreme egalitarian philosophy it is

clearly implied there should be an equal sharing of “toil and pain and hardness,” the “campaigning” as he called it, the dirty work of society. James had a specific program for achieving his utopia. He proposed that a young man in his teens be forced to serve the state for a “certain number of years.” These young conscript laborers would be sent:

To coal and iron mines, to freight trains, to fishing fleets in December, to dish-washing, clothes-washing, and window-washing, to road-building and tunnel-making, to foundries and stoke-holes, and to the frames of skyscrapers, would our gilded youth be drafted off, according to their choice, *to get the childness knocked out of them*, and to come back into society with healthier sympathies and soberer ideas. *They would have paid their blood-tax.*¹⁹ [emphasis added]

The transparent hostility of James toward young men, for whatever the reason, is obvious. There is a streak of cruelty here (fishing fleets in December?), of a barely concealed, seething lust to control the young, to hurt them, to crush the innocent enthusiasms for which the old so often envy the young. James’ program of conscripting the young is often referred to with respect and reverence by the advocates of national service, but the dark side of his plan is never criticized – no criticism of knocking the childness out of children, no criticism of a blood-tax for youth. In Edward Bellamy’s fictional totalitarian society, created over 100 years ago, the dirty work was reserved for the young. Indicting all previous societies, especially free ones, Bellamy argued that the “reward of any service depended not upon its difficulty, danger, or hardship, for throughout the world it seems that the most perilous, severe, and repulsive labor was done by the worst paid classes.”²⁰ In Bellamy’s society, “all needs of this sort can be met by details from the class of unskilled or common laborers.” And that army of unskilled conscript labor was where “all new recruits belong for the first three years of service. .three years of stringent discipline,” a “severe school.” The term of service in Bellamy’s industrial army began when the young person finished school, at age 21. For three years they

served as common laborers doing whatever tasks the rulers decreed. Then they were “free” to apply for better work, serving as conscripts until the age of 45.

In both the fantasy of Bellamy and the real life proposals of James and Walzer there is a common theme. Dirty work – that which is dangerous, degrading or difficult – must be shared equally. All citizens must, for a period of time, perform conscript labor. The period of time chosen out of one’s life is always just as they reach the threshold of adulthood. In effect, all adolescents become slaves for several years, doing the dirty work of society.

Of course, there are many who favor national service not because it entails the sharing of society’s dirty work, but because it may help them achieve other goals they desire – bringing back the military draft or helping the poor, aged and disabled, for example. But those who favor compulsory, large-scale national service generally have a different goal. They have a moral imperative, one that is aimed at the server rather than the servee. It is the experience of the person who serves that is of paramount importance, not the services provided. It is this peculiar moral dimension that sets apart the prime movers of national service from the policy hitchhikers.

Professor Moskos makes this moral sentiment quite clear in one of his earlier articles urging a compulsory national service program:

If America’s privileged youth would really like to demonstrate the *moral concern* for our country’s underclasses, they must be willing to put up with an “extended period of indignity” on par with those very same underclasses.²¹ [emphasis added]

It is this moral imperative, the idea that to be moral one has to suffer indignities, that in a moral society dirty work is required of all, that inevitably leads those who so believe to embrace compulsion or coercion as the key means to achieving that kind of national service. It does, because there is no other way to achieve it.

Summary

The peculiar philosophy of sharing the dirty work of society with young men and women lies

at the heart of all compulsory national service proposals. If you believe that it is morally just for everyone to be required to do a share of society's dirty work, if you believe this is something which is right to do, then a universal national service program which coerces or forces young men and women to carry out that work will logically follow. The ultimate philosophical goal of that program will not be to provide service for others. That is only a secondary result. The first and primary goal is participation of all in the dirty work, for that is the mark of morality, of justice, in that kind of society.

On the other hand, if you believe sharing the dirty work is a bizarre philosophy, or a morally repulsive one, then you will most likely come down on the side of a voluntary service program, only large enough to accommodate the desires of those who wish to participate.

Those who are opposed to large-scale national service programs generally suspect they are all stalking horses for universal, compulsory national service. For those who favor large-scale programs, but avow they should be voluntary, it would help a great deal to allay the fears of the rest of us if they would assure us of two things: (1) they do not believe in sharing the dirty works of society equally, and (2) they oppose forcing or coercing people to serve.

Until then, I for one shall remain suspicious.

Notes

1. Charles C. Moskos, *A Call to Civic Service: National Service for Country and Community* (New York: The Free Press, 1988), p. 179.

2 "Citizenship and National Service: A Blueprint for Civic Enterprise." Democratic Leadership Council, May, 1988, p. 50.

3. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (NY: Basic Books, 1983), p. 175.

4. *Ibid.*, 51.

5. *Ibid.*, 179.

6. Moskos. "How to Save the All-Volunteer Force," *The Public Interest*, Fall 1980, p. 84.

7. "Enlisting with[Uncle Sam]," *Time*, February 23, 1987, p. 30.

8. Richard Dennis, "National Service Offers An Idea Whose Time Has Gone," *Chicago Tribune*, August 9, 1989, p. 17.

9. William James, "The Moral Equivalent of War," Documents of the American Association for International Conciliation," New York, 1910, p. 17.

10. Moskos, *Call to Service*, 30.

11. Donald J. Eberly, *National Service: A Promise to Keep*, (Rochester, New York, John Alden Books, 1988), 93.

12. *Ibid.*, p. 16.

13. *Ibid.*, p. 94.

14. *Ibid.*, p. 1.

15. Moskos, *Call to Service*, p. 6.

16. Walzer, *Spheres of Justice*, p. 175.

17. *Ibid.*, p. 174-5.

18. James, "Moral Equivalent," p. 16-17.

19. *Ibid.*, 17.

20. Edward Bellamy, *Looking Backward: 2000-1887* (New York: Modern Library, 1951 edition, originally published in 1887), p. 71.

21. Moskos, "The Equivalent of Military Service: *Teachers College Record*, Vol. 73, No. 1, September, 1971, p. 12.

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Posse comitatus

By David Dawson

There was a time in Europe when most individuals were, in effect, classed with fruit trees and grapevines and vegetables – they were in law attached to the land. What amounted to ownership of them went with the land, should it be conquered, or sold, or given away, or inherited. The most important fact about the serf was the land in which he was rooted. In case of war with a neighboring baron a few miles away, or a Moham-medan Sultan a thousand miles away, his person could be (and was) required to attend his liege lord, to carry a spear, to care for armor, to pre-prepare supplies, or to do whatever was necessary to make war according to the fashion of the time. Always he suffered, often he died, and it was not recognized that he was anything more than a walking, talking, rather useful plant.

Were you to ask any liege lord, “Is this fair?” most would not even have understood the ques-tion. An especially thoughtful one of them might well have said that nothing is totally fair, but society must be served or it will not survive. Of course he would mean his society, that best of all possible worlds, feudal Europe.

One thing we must note – feudalism was consistent. Liege lords never made grand state-ments about the rights of man as they dragged off human battle fodder. If you’re owned, then you are there to be used and disposed of.

Naturally all this has long passed. The rights of man are now recognized beyond argument – as part of this republic’s basic legal assumptions. Man no longer exists for the land; rather, the land is there for man. Man is no longer considered a vegetable to be harvested for the purposes of his liege lord.

One thing has been established. Man is more than a plant. Or has it?

We live today with a contradiction whose seeds were laid down long ago, one might say, in prehistory. But the direct lineage of this contra-diction, codified in the Selective Service Act, goes back to the last days of the Roman Empire and the institutions called *patrocinium* and *precarium*, and to a related idea held by the Germanic barbarians, that of *posse comitatus*. Rome ruled by law, even though the concept of rights had not yet been developed. The establish-ment of universal peace (the *Pax Romana*), coupled with a great deal of freedom of action, resulted in an empire of prosperity, of protection of citizens, and of commercial activity. Rome did not die in a day – it ceased to be an effective governing force, first in one district, then in another, sometimes to reassert itself and then collapse again. Local lawfulness and justice disintegrated; individual citizens were subjected to more and more robbery and extortion; districts were pillaged by bandits or ravaged by quasi-legal local governments that came and went like shifts in the direction of the wind. In the end, no one had anyone but himself to look to for the protec-tion of his person and property.

And so an old Roman relationship, that of patron and client, (*patrocinium*), expanded and gained new meaning. Lacking protection from his government, the powerless individual escaped the consequences of anarchy by putting himself under the protection of a local strong man, a patron. It was, at first a contractual relationship. Protection was granted for military, agricultural, clerical, domestic, or other services rendered.

As conditions worsened, the institution of *precarium* came on the scene. Here the small landowner, unable to protect himself, would swear over, not services, but ownership of his land to a nearby patron. In return he received protection and the use of the land that once was his, but only for his lifetime. His children were landless, and if they wished to use the land and to gain protection, they had to swear to provide services and produce for the patron.

When the tribal barbarians finally and permanently occupied the lands of previous Roman dominion in Western Europe, the foundations of what was to become feudalism were there in the institutions of *patrocinium* and *precarium*. Through these already existing institutions (and through the conditions that gave them sway), the fear-ridden, landless, de-individualized population was prepared to be absorbed into the collectivist traditions of the barbarians. In fact, these institutions fitted neatly into a concept of the barbarians signified in Latin by the phrase *posse comitatus*, meaning literally “the power of the community.” This tradition was grounded in ceremonies of fealty which through vows and ceremonies subordinated the individual to the tribe. The key tenet was the obligation of each member of the tribe to make himself part of the tribe’s power; specifically, each member was at all times to answer his chieftain’s call to arms.

In a few generations, man the citizen and landowner and free artisan became man the tribalized vegetable, part of that structure of fealties, privileges, and powers that froze Europe into near immobility for centuries.

Some apologists for feudalism praise the era by saying that it was one of order, where each man “knew his place.” I agree. But it was an order like that of the prison, each man in his cell, a cell his son and his son’s sons would have to occupy into eternity, bound to the land, bound also to the performance of certain inescapable duties. Feudal Europe at its most orderly was not totally changeless. There were many shifting traditions, many exceptions; and eventually the inherent necessity for change that is in the nature of a social system led to its end. But one duty ran as a binding chain through all the variations of feudalism, the obligation of each vassal to serve on the

battlefield. You owed your patron (now a feudal noble) that, or else you were not protected, nor could you have a living from your patrons’ lands, nor could you leave the land. Should you refuse, most likely you would die, perhaps hoisted in a cage near the castle entrance to starve in the sight of your fellow serfs. *Patrocinium* and *precarium*, blended into the guiding spirit of *posse comitatus*, had made you but a plant growing for tribes within tribes: the immediate manor, the barony, the duchy, the principedom, and, over all, Christendom.

Eventually the tradition of *posse comitatus*, codified and verbalized, became part of post-feudal English law. In 1626 it was translated from the Latin as “the force of the county. . . the body of men above the age of fifteen in a county (exclusive of peers, clergymen, and infirm persons) whom the sheriff may summon or raise to repress a riot or for other purposes” (*The Oxford Universal Dictionary*, third edition, revised, 1955).

Thus do we have the long antecedents to that characteristic remark of the American Western, “Let’s get a posse together and go after him.”

It was from this same tradition that Great Britain derived impressment, a system of draft applied primarily in the 1700’s and early 1800s to fill out the crews of naval vessels. (It was abandoned in the mid-nineteenth century in favor of long-term volunteer enlistments and the development of naval service as a career.)

When Britain’s North American colonies rebelled against the crown, after a long and fruitless attempt by colonial leaders to gain redress of grievances through petition and other legal means, they issued a document in which they explained themselves. In it they said that “all men are. . .endowed. . .with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness:’

There was no hue and cry of tyranny, of ‘abuses and usurpations,” when in 1777 Massachusetts and Virginia instituted compulsory military service to pursue the values laid out in the document.

Posse comitatus was so assumed to entail the obligation of the citizen to the state (even to one which had come into being through rebellion) that George Washington in 1778 wrote to the

President of the Continental Congress, "I believe our greatest and only aid will be derived from drafting, which I trust may be done by the United States."

I do not doubt Washington's sincere support of the political ideals in the Declaration of Independence. In the face of a tradition going back at least to the last days of the Roman Empire, he simply could not see an inconsistency between those ideals and a draft. Nor did his fellow revolutionaries. The idea of a political system based on rights which *all* men had from birth was a very new one. So Congress did recommend a draft to all the colonies. Supposedly only the fortuitous aid of the French made it unnecessary.

What the feudal tradition set was the precedent. In principle, this precedent went largely unchallenged by the thinkers of the Enlightenment. Worse, it was sanctioned by some of the most brilliant activists of that movement. A few men, off in what was then an obscure corner of the world, pledged "our Lives, our Fortunes, and our sacred Honor" to secure the rights of man - and saw no contradiction in forcing men to fight for the tribe, as long as the tribe fought tyranny.

But feudal levies, impressment, colonial drafts are little things beside the all-encompassing grasp of modern conscription.

It was in a cataclysm that modern conscription came into being. And it was born in the name of *liberte, fraternite, and egalite*.

In 1789 the *Ancien Regime* of France crumbled. An old-fashioned absolutism was succeeded by one in a newer fashion, one that used mass ideology, mass arrests, mass murders, and mass armies.

The first experiment in conscription ended in disastrous failure. In 1789 the concept of *egalite* was held to mean equality in one's obligation to serve in the military with every able-bodied man liable." The enforcement of such universality was impossible. By 1792 "able-bodied" men by the tens of thousands had deserted their homes. The district of Vendee rose in revolt almost to a man.

Clearly, the design had not yet been perfected. The first refinement was one of utmost simplicity: in effect, a majority ganged up on a minority. The law was changed. Liability for service was restricted to young men only, men

between the ages of eighteen and twenty-five. This group simply was not strong enough politically to prevent coercion. Only one other refinement was needed to produce a workable design. It was noted that the nation suffered when too many skilled artisans were taken. So the institutions of deferment and exemption were incorporated. (The English had excused London fishing masters and others from impressment many years earlier, on the grounds that they were of too great a service to the nation.)

The military instrument of modern dictatorship now ready, there arose the first modern dictator: the first to apply the modern principle derived from *posse comitatus*. He was, of course, Napoleon Bonaparte. It was he who said to Metternich that all he needed was 25,000 men a month. He got them. Eventually his total draftees numbered well over two million men. With them, he first conquered and then lost Europe, leaving the bodies of conscripts strewn across the continent from Madrid to Moscow.

Under Napoleon, France became a human breeding farm which turned out a crop of up to 116,000 young men a month: the youth which made the campaigns of Napoleon possible.

He ended at Waterloo, but mass conscription did not. Prussia used it, as she welded the hodgepodge of German-speaking principalities of mid-Europe into an empire.

Napoleonic conscription came to the United States in World War I (when some even wanted to broaden it to include the conscription of workers for industry and agriculture). Essentially, this system was the law of the United States until today.

And its purpose is the same as it was for Napoleon and for Bismark - the pursuit of state-chosen ends, ends which are held to be higher than those chosen by individuals for themselves.

Mass conscription did not embody a contradiction in states which had accepted the idea of a dictator emperor, whether set up by plebiscite (France) or openly affirmed by privileged nobility and military caste (Prussia).

But in the United States the contradiction is so open it is like a grand purloined letter on the table of history: open and apparent and obvious, and yet few have chosen to declare it so. This is

the republic whose basic law and legal tradition emphasize the inviolability of rights: of life, liberty, and property. Nowhere in the Constitution is the explicit power given the government to conscript coercively. It takes an act of imagination to read this power as being implied by the power given Congress to raise armies. Further, it takes a mind-boggling act of reverse-think to see the right to bear arms as really the duty to be an arms bearer. No, quite clearly there is no objective, unequivocal foundation for the draft in the Constitution.

And yet in the American Revolution itself, in the Civil War (on both sides), and then massively and with Napoleonic scope in the wars of the twentieth century, this nation's government has violated rights in order to raise armies.

Suppose we put the principle behind American draft laws into words. In words, here it is in all its deceptive simplicity; here is our legacy from *patrocinium* and *precarium* and *posse comitatus*: TO BE PERMANENTLY FREE, WE MUST TEMPORARILY ENSLAVE.

Is "enslave" too strong a word for a system that takes a man for a few years only, pays him at least something, and upon discharge gives him scholarships and guaranteed loans and special privileges? It is not, if we take the term literally. To enslave is to seize the person of someone and put his person and services under the control of another as owner or master (*Webster's New International Dictionary*, second edition, Springfield, 1937). It is in the nature of soldiering that, once inducted, the use and disposal of the soldier's person by his commanding officers is practically unlimited. The volunteer has agreed to this. The conscript has been ordered to agree. In the final analysis, when he goes to war he could not choose any other action. If he refuses to go, his liberty and property are indeed precarious. It is strange to think that a tradition with its roots in the dissolution of an empire and in the tribal traditions of the hordes which supplanted it still operates among us, whether acknowledged in so many words or not. It is the spirit behind *posse*

comitatus that rules the destinies of our young men, calling them to serve our tribe just as the chieftains did over a millennium ago in the black forests and foggy plains of the barbarian lands outside the Roman Empire. Here it is, almost in so many words, in a quote from the Secretary of War of the United States in 1917:

The bill makes certain the raising and maintenance of the required forces with the utmost expedition. It establishes the principle that all arms-bearing citizens owe the nation the duty of defending it. It selects only those who by reason of their age and physical capacity are best fitted to receive the training and withstand the actual hardships of campaigns and who, happily, can be taken with least disturbance of normal economic and industrial conditions.

So the principle of *posse comitatus*, which should have gone the way of serfdom and special privilege and levies, lives on, dressed in its more modern clothes. Conscription is but another form and application of tribal collectivism, but another application of the moral position that service to the values of the group is fundamentally prior to service to the values of oneself.

"Posse Comitatus," by David Dawson. Reprinted with permission from The Military Draft, Selected Readings on Conscription, edited by Martin Anderson with Barbara Honegger (Hoover Institution Press, Stanford University, Stanford, California, 1982), pp. 3-12.

David J. Dawson (1925-1979) was a Canadian-born editor, playwright, and sculptor who became a US. citizen after volunteering at age seventeen to serve in the US. Navy during World War II. He actively opposed military conscription on American college campuses and on radio and television from 1964 to 1968, during which time he was president of the Metropolitan Young Republican Club of New York City, chairman of its Committee for the Abolition of the Draft, and publisher of the early libertarian magazine Persuasion.

Can LD debate teach ethics without virtue?

by Christina Hoff Sommers

LD debate topics parallel college ethics courses, with most topics involving complex social dilemmas and often explosive social issues--like the morality of nuclear bombs. But what do students learn from debating such social morality topics? Professor Sommers suggests that unless balanced by a discussion of private morality, social value debates may do as much harm than good.

Not very long ago, I published an article called "Ethics without Virtue" in which I criticized the way ethics is being taught in American colleges. I pointed out that there is an overemphasis on social policy questions, with little or no attention being paid to private morality. I noted that students taking college ethics are debating abortion, euthanasia, capital punishment, DNA research, and the ethics of transplant surgery while they learn almost nothing about private decency, honesty, personal responsibility, or honor. Topics such as hypocrisy, self-deception, cruelty or selfishness rarely came up. I argued that the current style of ethics teaching which concentrated so much on social policy was giving students the wrong ideas about ethics. Social morality is only half of the moral life; the other half is private morality. I urged that we attend to both.

A colleague of mine did not like what I said. She told me that in her classroom she would continue to focus on issues of social injustice. She taught about women's oppression, corruption in big business, multinational corporations and their transgressions in the Third World--that sort of thing. She said to me, "You are not going to have moral people until you have moral institutions. You will not have moral citizens until you have a moral government." She made it clear that I was wasting time and even doing harm by pro-

moting bourgeois morality and the bourgeois virtues instead of awakening the social conscience of my students.

At the end of the semester, she came into my office carrying a stack of exams and looking very upset.

"What's wrong?" I asked.

"They cheated on their social justice take home finals. They plagiarized!" More than half of the students in her ethics class had copied long passages from the secondary literature. "What are you going to do?" I asked her. She gave me a self-mocking smile and said, "I'd like to borrow a copy of that article you wrote on ethics without virtue."

A Hole in the Moral Ozone

There have been major cheating scandals at many of our best universities. A recent survey reported in the *Boston Globe* says that 75 percent of all high school students admit to cheating; for college students the figure is 50 percent. A *U.S. News and World Report* survey asked college-age students if they would steal from an employer. Thirty-four percent said they would. Of people forty-five and over, six percent responded in the affirmative.

Part of the problem is that so many students come to college dogmatically committed to a moral relativism that offers them no grounds to think that cheating is just wrong. I sometimes play a macabre game with first year students, trying to find some act they will condemn as morally wrong: Torturing a child. Starving someone to death. Humiliating an invalid in a nursing home. The reply is often: "Torture, starvation and humiliation may be bad for you or me, but who are we to say they are bad for someone else?"

Not all students are dogmatic relativists; nor are they all cheaters and liars. Even so, it is impossible to deny that there is a great deal of moral drift. The students' ability to arrive at reasonable moral judgments is severely, even bizarrely, affected. A Harvard University professor annually offers a large history class on the Second World War and the rise of the Nazis. Some years back, he was stunned to learn from his teaching assistant that the majority of students in the class did not believe that anyone was really to blame for the Holocaust. The graduate assistant asserted that if these Harvard students were sitting in judgment at Nuremberg they would have let everyone off. No one was to blame. In the students' minds the Holocaust was like a natural cataclysm: it was inevitable and unavoidable. The professor refers to his students' attitude about the past as "no-fault history."

One philosopher, Alasdair MacIntyre, has said that we may be raising a generation of "moral stutterers." Others call it moral illiteracy. Education consultant Michael Josephson says "there is a hole in the moral ozone." Well, what should the schools be doing to make children morally literate, to put fault back into no-fault history, to mend the hole in the moral ozone?

How Ethics Courses Have Changed

First, a bit of history. Let me remind you of how ethics was once taught in American colleges. In the nineteenth century, the ethics course was a high point of college life. It was taken in the senior year, and was usually taught by the president of the college who would uninhibitedly urge the students to become morally better and stronger. The senior ethics course was in fact the culmination of the students' college experience. But as the social sciences began to flourish in the early twentieth century, ethics courses gradually lost prominence until they became just one of several electives offered by philosophy departments. By the mid-1960s, enrollment in courses on moral philosophy reached an all-time low and, as one historian of higher education put it, "college ethics was in deep trouble."

At the end of the '60s, there was a rapid turnaround. To the surprise of many a department chair, applied ethics courses suddenly proved to be very popular. Philosophy departments began

to attract unprecedented numbers of students to courses in medical ethics, business ethics, ethics for everyday life, ethics for lawyers, for social workers, for nurses, for journalists. More recently, the dubious behavior of some politicians and financiers has added to public concern over ethical standards which in turn has contributed to the feeling that college ethics is needed. Today American colleges and universities are offering thousands of well attended courses in applied ethics.

I too have been teaching applied ethics courses for several years, but my enthusiasm for them tapered off when I saw how the students reacted. I was especially disturbed by comments students made again and again on the course evaluation forms: "I learned there was no such thing as right or wrong, just good or bad arguments." Or: "I learned there is no such thing as morality." I asked myself what it was about these classes that was fostering this sort of moral agnosticism and skepticism. Perhaps the students themselves were part of the problem. Perhaps it was their high school experience that led them to become moral agnostics. Even so, I felt that my classes were doing nothing to change them.

The course I had been giving was altogether typical. At the beginning of the semester we studied a bit of moral theory, going over the strengths and weaknesses of Kantianism, utilitarianism, social contract theory and relativism. We then took up topical moral issues such as abortion, censorship, capital punishment, world hunger, and affirmative action. Naturally, I felt it my job to present careful and well-argued positions on all sides of these popular issues. But this atmosphere of argument and counter-argument was reinforcing the idea that *all* moral questions have at least two sides, i.e., that all of ethics is controversial.

Perhaps this reaction is to be expected in any ethics course primarily devoted to issues on which it is natural to have a wide range of disagreement. In a course specifically devoted to dilemmas and hard cases, it is almost impossible *not* to give the student the impression that ethics itself has no solid foundation.

The "Plain Moral Facts"

The relevant distinction here is between "ba-

sic” ethics and “dilemma” ethics. It is basic ethics that G. J. Warnock has in mind when he warns his fellow moral philosophers not to be bullied out of holding fast to the “plain moral facts.” Because the typical course in applied ethics concentrates on problems and dilemmas, the students may easily lose sight of the fact that some things are clearly right and some are clearly wrong, that some ethical truths are not subject to serious debate.

I recently said something to this effect during a television interview in Boston, and the skeptical interviewer immediately asked me to name some uncontroversial ethical truths. After stammering for a moment, I found myself rattling off several that I hold to be uncontroversial:

It is wrong to mistreat a child, to humiliate someone, to torment an animal. To think only of yourself, to steal, to lie, to break promises. And on the positive side: it is right to be considerate and respectful of others, to be charitable and generous.

Reflecting again on that extemporaneous response, I am aware that not everyone will agree that all of these are plain moral facts.

But teachers of ethics are free to give their own list or to pare down mine. In teaching ethics, one thing should be made central and prominent: right and wrong do exist. This should be laid down as uncontroversial lest one leaves an altogether false impression that *everything* is up for grabs.

It will, I think, be granted that the average student today does not come to college steeped in a religious or ethical tradition in which he or she has uncritical confidence. In the atmosphere of a course dealing with hard and controversial cases, the contemporary student may easily find the very idea of a stable moral tradition to be an archaic illusion. I am suggesting that we may have some responsibility here for providing the student with what the philosopher Henry Sidgwick called “moral common sense.” (Sometimes he spoke of “established morality” as it is commonly understood and accepted.) More generally, I am suggesting that we should assess some of the courses we teach for their *edificatory* effect. Our responsibility as teachers goes beyond purveying information about the leading ethical

theories and in developing dialectical skill in moral casuistry. I have come to see that dilemma ethics is especially lacking in edificatory force, and indeed that it may even be a significant factor in encouraging a superficial moral relativism or agnosticism.

I shall not really argue the case for seeing the responsibility of the teacher of ethics in traditional terms. It would seem to me that the burden of argument is on those who would maintain that modern teachers of ethics should abjure the teacher’s traditional concern with edification. Moreover, it seems to me that the hands-off posture is not really as neutral as it professes to be. (Author Samuel Blumenfeld is even firmer on this point. He says, “You have to be dead to be value neutral.”) One could also make a case that the new attitude of disowning responsibility probably contributes to the student’s belief in the false and debilitating doctrine that there are no “plain moral facts” after all. In tacitly or explicitly promoting that doctrine, the teacher contributes to the student’s lack of confidence in a moral life that could be grounded in something more than personal disposition or political fashion. I am convinced that we could be doing a far better job of moral education.

The Philosophy of Virtue

If one accepts the idea that moral edification is not an improper desideratum in the teaching of ethics, then the question arises: What sort of course in ethics is effective? What ethical teachings are naturally edificatory? My own experience leads me to recommend a course on the philosophy of virtue. Here, Aristotle is the best place to begin. Philosophers as diverse as Plato, Augustine, Kant and even Mill wrote about vice and virtue. And there is an impressive contemporary literature on the subject. But the *locus classicus* is Aristotle.

Students find a great deal of plausibility in Aristotle’s theory of moral education, as well as personal relevance in what he says about courage, generosity, temperance and other virtues. I have found that an exposure to Aristotle makes an immediate inroad on dogmatic relativism; indeed the tendency to dismiss morality as relative to taste or social fashion rapidly diminishes and may vanish altogether. Most students find the

idea of developing virtuous character traits naturally appealing.

Once the student becomes engaged with the problem of what kind of person to be, and how to *become* that kind of person, the problems of ethics become concrete and practical and, for many a student, morality itself is thereafter looked on as a natural and even inescapable personal undertaking. I have not come across students who have taken a course in the philosophy of virtue saying that they have learned there is no such thing as morality. The writings of Aristotle and of other philosophers of virtue are full of argument and controversy, but students who read them with care are not tempted to say they learned "there is no right or wrong, only good or bad arguments."

Values Clarification: No Right or Wrong

One favored method of moral education that has been popular for the past twenty years is called "Values Clarification," which maintains the principle that the teacher should never directly tell students about right and wrong; instead the students must be left to discover "values" on their own. One favored values clarification technique is to ask children about their likes and dislikes: to help them become acquainted with their personal preferences. The teacher asks the students, "How do you feel about homemade birthday presents? Do you like wall-to-wall carpeting? What is your favorite color? Which flavor of ice cream do you prefer? How do you feel about hit-and-run drivers? What are your feelings on the abortion question?" The reaction to these questions—from wall-to-wall carpeting and to hit-and-run drivers—is elicited from the student in the same tone of voice—as if one's personal preferences in both instances are all that matters.

One of my favorite anecdotes concerns a teacher in Newton, Massachusetts who had attended numerous values clarification workshops and was assiduously applying its techniques in her class. The day came when her class of sixth graders announced that they valued cheating and wanted to be free to do it on their tests. The teacher was very uncomfortable. Her solution? She told the children that since it was *her* class, and since she was opposed to cheating, they were not free to cheat. "In my class you must be hon-

est, for I value honesty. In other areas of your life you may be free to cheat."

Now this fine and sincere young woman was doing her best not to indoctrinate her students. But what she was telling them is that cheating is not wrong if you can get away with it. Good values are "what one values." She valued the norm of not cheating. That made this value binding on her, and gave her the moral authority to enforce it in her classroom; others, including the students, were free to choose other values "elsewhere." The teacher thought she had no right to intrude by giving the students moral direction. Of course, the price for her failure to do her job of inculcating moral principles is going to be paid by her bewildered students. They are being denied a structured way to develop values. Their teacher is not about to give it to them lest she interfere with their freedom to work out their own value systems.

Preferences over Principles

This Massachusetts teacher values honesty, but her educational theory does not allow her the freedom to take a strong stand on honesty as a moral principle. Her training has led her to treat her "preference" for honesty as she treats her preference for vanilla over chocolate flavored ice cream. It is not hard to see how this doctrine is an egotistic variant of ethical relativism. For most ethical relativists, public opinion is the final court of ethical appeal; for the proponent of values clarification, the locus of moral authority is to be found in the individual's private tastes and preferences.

Is there moral knowledge?

How can we hope to equip the students to face the challenge of moral responsibility in their lives if we studiously avoid telling them what is right and what is wrong?

Many school systems have given up entirely the task of character education. Children are left to fend for themselves. To my mind, leaving children alone to discover their own values is a little like putting them in a chemistry lab and saying, "Discover your own compounds, kids." If they blow themselves up, at least they have engaged in an authentic search for the self.

Ah, you may say, we do not let children fend for themselves in chemistry laboratories because

we have *knowledge* about the chemicals. But is there really such thing as *moral* knowledge? The reply to that is an emphatic “Yes.” Have we not learned a thing or two over the past several thousand years of civilization? To pretend we know nothing about basic decency, about human rights, about vice and virtue, is fatuous or disingenuous. Of course we know that gratuitous cruelty and political repression are wrong, that kindness and political freedom are right and good. Why should we be the first society in history that finds itself hamstrung in the vital task of passing along its moral tradition to the next generation?

Some opponents of directive moral education argue that it could be a form of brainwashing. That is a pernicious confusion. To brainwash is to diminish someone’s capacity for reasoned judgment. It is perversely misleading to say that helping children to develop habits of truth telling or fair play threatens their ability to make reasoned choices. Quite the contrary: good moral habits enhance one’s capacity for rational judgments.

The paralyzing fear of indoctrinating children is even greater in high schools than it is in elementary schools. One favored teaching technique, allegedly avoiding indoctrination, is dilemma ethics. Children are presented with abstract moral dilemmas: Seven people are in a lifeboat with provisions for four—what should they do? Or Lawrence Kohlberg’s famous case of Heinz and the stolen drug. Should the indigent Heinz, whose dying wife needs medicine, steal it? When high school students study ethics at all it is usually in the form of pondering such dilemmas or in the form of debates on social issues: abortion, euthanasia, capital punishment and the like. Directive moral education is out of favor. Story telling is out of fashion.

Let’s consider for a moment just how the current fashion in dilemmas differs from the older approach to moral education which often used moral tales and parables to instill moral principles in students in the primary grades. Saul Bellow asserts that the survival of Jewish culture would be inconceivable without the stories that gave point and meaning to the Jewish moral tradition. One such story, included in a collection of traditional Jewish tales that Bellow edited, is called “If Not Higher.” I sketch it here to contrast

the story-approach with the dilemma-approach in primary and secondary education, but the moral of the contrast also applies to the teaching of ethics at the college level as well:

There was once a rabbi in a small Jewish village in Russia who vanished every Friday morning for several hours. The devoted villagers boasted that during these hours their rabbi ascended to Heaven to talk with God. A skeptical newcomer arrived in town, determined to discover where the rabbi really was.

One Friday morning the newcomer hid near the rabbi’s house, watched him rise, say his prayers and put on the clothes of a peasant. He saw him take an ax and go into the forest, chop down a tree and gather a large bundle of wood. Next the rabbi proceeded to a shack in the poorest section of the village in which lived an old woman and her sick son. He left them the wood which was enough for the week. The rabbi then quietly returned to his own house.

The story concludes that the newcomer stayed on in the village and became a disciple of the rabbi. And whenever he hears one of his fellow villagers say, “On Friday morning our rabbi ascends all the way to Heaven,” the newcomer quietly adds, “If not higher.”

In a moral dilemma such as Kohlberg’s Heinz stealing the drug, or the lifeboat case, there are no obvious heroes or villains. Not only do the characters lack moral personality, but they exist in a vacuum outside of traditions and social arrangements that shape their conduct in the problematic situations confronting them. In a dilemma there is no obvious right and wrong, no clear vice and virtue. The dilemma may engage the students’ minds; it only marginally engages their emotions, their moral sensibilities. The issues are finely balanced, listeners are on their own and they individually decide for themselves. As one critic of dilemma ethics has observed, one cannot imagine parents passing down to their children the tale of Heinz and the stolen drug. By contrast, in the story of the rabbi and the skeptical outsider, it is not up to the listener to decide whether or not the rabbi did the right thing. The moral message is clear: “Here is a good man—merciful, compassionate and actively helping someone weak and vulnerable. Be like that per-

son." The message is contagious. Even the skeptic gets the point.

Stories and parables are not always appropriate for high school or college ethics courses, but the literary classics certainly are. To understand *King Lear*, *Oliver Twist*, *Huckleberry Finn* or *Middlemarch* requires that the reader have some understanding of (and sympathy with) what the author is saying about the moralities that bind the characters and that hold in place the social fabric in which they play their roles. Take something like filial obligation. One moral of *King Lear* is that society cannot survive when filial contempt becomes the norm. Literary figures can thus provide students with the moral paradigms that Aristotle thought were essential to moral education.

I am not suggesting that moral puzzles and dilemmas have no place in the ethics curriculum. To teach something about the logic of moral discourse and the practice of moral reasoning in re-

solving conflicts of principles is clearly important. But casuistry is not the place to *start*, and, taken by itself, dilemma ethics provides little or no moral sustenance. Moreover, an exclusive diet of dilemma ethics tends to give the student the impression that ethical thinking is a lawyer's game.

I am suggesting that teachers must help young people become acquainted with their moral heritage in literature, in religion and in philosophy. I am suggesting that virtue can be taught, and that effective moral education appeals to the emotions as well as to the mind. The best moral teaching inspires students by making them keenly aware that their own character is at stake.

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Guns, Knives, & Nukes

by Gregory Rehmke

The March-April Lincoln-Douglas debate topic is “Resolved: The possession of nuclear weapons is immoral.” What on earth, one might ask, could justify possessing a nuclear weapon? George Smith, in January’s *Econ Update*, focused his discussion on the appropriate use of force in self-defense. When someone throws a punch at you, it is generally inappropriate to counter with a bullet. But when shot at, is it inappropriate to respond with a bazooka?

A bazooka in a gunfight might offend our sense of fair play, but if someone shoots at us first, we ought to be able to reach for the most effective weapon possible. When deadly force is used against us, is there any upper limit to the kind of deadly force we are morally justified in using to defend ourselves? (Probably so, see below...)

Self-defense is the key. In Vernor Vinge’s excellent short story, “The Ungoverned,” Kansas farmers of the not too distant future have a choice of various free-market forms of protecting their property. Just as we purchase health insurance and car insurance, Kansans of the early twenty-first century purchased a kind of defense insurance. Companies like Midwest Jurisprudence, the Missouri State Police and Al’s Protection Racket, would, for a fee, promise to defend clients from aggression. There was no government per se in Vernor Vinge’s Kansas of the future. But strong communities were built around a mutual interest in freedom, peace and security. Taxes did not exist, since taxes involve coercion, and no person or organization had the legal authority to resort to coercion. In writing “The Ungoverned” Vinge says he was influenced by economist David Friedman’s book *The Machinery of Freedom*.

It is not clear if such completely voluntaristic societies are workable or likely to last. Lebanon in recent years has lacked a strong central government, and the result has been bloodshed and

chaos as bands of thugs compete for political power. Without powerful Nation States to guarantee law and order, most believe that thugs and ruffians would have a field-day, appropriating private property and extorting “protection” payments from citizens.

Powerful Nation States have police and army forces to prevent random rampages, theft, and extortion. But in building a Nation State strong enough to protect, citizens face the dilemma often seen in old westerns. The townsfolk hire gunslingers to clean up the town and run off the bad guys. But after the bad guys are run off, the gunslingers settle in and make themselves comfortable—they take the place of the bad guys and extort goods and services from the timid townsfolk (who begin secretly searching for Clint Eastwood).

Nation States can protect their citizens from outside invasion and from petty criminals, but who can protect citizens from their own Nation State? Even our easygoing everyday western governments seem to be settling in like gunslingers of the old west. How much, for example, should our friendly gun-slinging congressmen be able to tax away from citizens?

So in “The Ungoverned” most Midwesterners chose not to grant a monopoly of the use of force to any single agency or organization. Enforcement agencies competed for customers, and disputes were handled by other agencies that specialized in dispute resolution. Roads were built by road building companies, garbage collected by garbage collecting companies, letters delivered by letter delivery companies, philanthropy by philanthropic organizations, and police protection by police companies.

All the police and security companies agreed, however, that the possession of nuclear weapons was immoral. “The Ungoverned” takes place in a rebuilding period after much of the human race has been killed by nuclear and biological wars.

The Midwest is still sparsely populated after the wars, and in the southwest the Republic of New Mexico is gradually expanding its government services over wider areas of the former United States of America. The Republic of New Mexico government deplores the “anarchy” of the Midwestern “ungoverned” lands. And one day, following a minor dispute of some sort, the Republic of New Mexico’s army launches an invasion of Kansas. The New Mexican government insists it is just expanding its protection and enforcement of human rights over a population that was not currently protected by any other government.

But, again, most Kansans, though “ungoverned,” weren’t particularly keen to be governed. Their society was prospering, and their property rights were adequately secured by the private protection agencies they contracted with for protection. Some Kansas farmers, however, rather than buying property insurance and protection services, chose to protect themselves. These self-protection fanatics were called “armadillos.” And at least one of these fringe farmers had secretly acquired a nuclear weapon. This armadillo believed, apparently, that nukes offered the most reliable protection against invasion.

As long as he was left undisturbed, his nuclear bomb would be left undisturbed. But as the Republic of New Mexico’s tanks rolled across the property of this well-armed armadillo, the explosion of his nuclear bomb stopped the invasion in its tracks.

The nuclear bomb exploded in “The Ungoverned” was used, in the eyes of the armadillo, to protect his life, liberty and property from a foreign military force. From the view of the Republic of New Mexico, the nuclear weapon killed thousands of troops, and stopped the natural progress of establishing a constitutional government over an ungoverned land. Who was right?

Clearly, those who defend nuclear weapons will want to do so on self-defense grounds. The slogan might go, “If possessing nuclear weapons were criminal, only criminals would have nuclear weapons.” Immoral government leaders will try to develop and deploy nuclear weapons in order to expand their empires. So other governments

might choose to possess nuclear bombs in order to deter immoral governments from using nuclear threats against them.

An additional difficulty here follows from even the defensive use of nuclear weapons. Why were nuclear bombs not used in the war against Iraq when they were used in the war against Japan. Neither Japan nor Iraq turned out to have nuclear weapons to defend themselves. If nukes were okay in one place, would they have been wrong in the other? One response is that Japan in World War II was a major military power and the U.S. military felt an invasion would cost too many American lives. But if the U.S. has superiority in conventional forces today, why do we need to possess nuclear weapons. Again, the reason is (or should be) defensive—to defend ourselves against foreign governments who might someday choose to attack with their own nuclear weapons.

For private citizens, though, would the possession of nuclear weapons ever be moral? It seems unlikely (at least until the average citizen can afford antinuclear defense systems). Even if deployed in immediate self-defense, a nuclear bomb would likely kill lots of innocent people. These people have rights not to be endangered by their neighbors, even if their neighbor’s nuclear weaponry is purely defensive. Something like a preemptive tort law would allow citizens to take action (i.e. use force) against a neighbor suspected of building a nuclear weapon (they would, of course, be liable for damages if their suspicions proved incorrect, and their wrongly accused neighbors pressed charges).

In the sparsely populated Kansas of “The Ungoverned” an armadillo could secretly deploy small a nuclear bomb in such a way as to allow enable to stop aggression without doing too much damage to their neighbors’ property. In the more densely populated America of today, it is hard to imagine how defensive nuclear weapons could be deployed without significantly endangering neighbors’ lives and property .

So, in conclusion, unless you have incredibly tolerant or distant neighbors, it is immoral to possess a nuclear weapon. A more interesting resolution to debate might be: “Resolved: That the income tax is immoral.” This too would be an explosive topic.

The rise of state-centered justice

by Daniel W. Van Ness

Two men met at the river where each had come to fish. Each had a grievance with the other, a feud that had been simmering for weeks. Perhaps that is why, when their lines tangled, and words were exchanged. Words changed to blows. And then one stooped down, picked up a rock and clubbed the other one on the head.

The injured man did not die, but he required extensive medical care and a long recuperation. Eventually he was able to move around, supported by a cane.

This was not a case of self-defense. The offender had not been in fear of losing his life; he had been angry. What should we do with him?

In most states he would be charged with serious felonies: assault with a deadly weapon and probably attempted murder. If convicted he would serve a substantial prison sentence. Let us assume that this had happened four thousand years ago, in Old Testament times. How would the offender be punished?

If men quarrel and one hits the other with a stone or with his fist and he does not die but is confined to bed, the one who struck the blow will not be held responsible [i.e. be executed for murder] if the other gets up and walks around outside with his staff; however, he must pay the injured man for the loss of his time and see that he is completely healed. (Ex 21: 18-19)

In other words, the offender would not be executed or go to jail. But he would be obligated to pay for the medical treatment and lost wages of the victim.

The focus of ancient law: the victim

It is surprising to most people that early legal systems which form the foundation of Western law emphasized the need for offenders and their families to settle with victims and their families. The offense was considered principally a violation against the victim and the victims family. While the common welfare had been breached, and the community therefore had an interest and responsibility in seeing that the wrong was addressed and the offender punished, the offense was not considered primarily a crime

against the state as it is today.

- △ Old Testament law emphasized that the victim be repaid through restitution.
- △ The Code of Hammurabi (around 1700 B.C.), a collection of Babylonian laws, provided for restitution in cases of property crimes.
- △ The Code of Ur-Nammu, a Sumerian king (around 2050 B.C.), included provisions for restitution even in the case of violent offenses.
- △ The Code of Lipit-Ishtar (around 1875 B.C.), the king of Isin required restitution when a householder neglected to maintain his property and as a result someone was able to break into the house of a neighbor. He was required to compensate the neighbor for his losses.
- △ The Code of Eshnunna (around 1700 B.C.), a Mesopotamian kingdom, provided for specific compensation when the victim lost his nose, his eye, his ear, or a tooth.
- △ In the ninth book of *The Iliad*, Homer (around the ninth century B.C.) refers to the practice of victim restitution. Ajax challenges Achilles for not accepting compensation offered by Agamemnon, noting that even the murderer of a brother may, by paying compensation, remain free among his own family.
- △ Roman law also required compensation of the victim. According to the Law of the Twelve Tables (449 B.C.), convicted thieves had to pay double the value of the stolen goods. If the property was discovered hidden in the thieves house, he had to pay three times its value. If he had resisted the house search, or if he had stolen the object using force, he had to pay four times its value.
- △ The Roman historian Tacitus (roughly A.D. 55 to A.D. 117) wrote that among ancient Germanic tribes even murder was punished by paying a fine of cattle and sheep, and that this satisfied the family of the murder victim, since ongoing feuds were destructive of the community.
- △ The earliest surviving collection of Germanic tribal laws is the *Lex Salica*, promulgated by King Clovis soon' after his conversion to Christianity in A.D. 496. It includes restitutionary sanctions for

offenses ranging from homicides to assaults to thefts.

△ Anglo-Saxon law developed elaborate systems of compensation. Around A.D. 600, Ethelbert, ruler of Kent, issued the laws of Ethelbert. They contain remarkably detailed restitution schedules, differentiating, for example, the value of the four front teeth from those next to them, and those teeth from all the rest. Each finger (and its fingernail) had a specified value.

In each of these diverse cultures the response to what we now call “crime” was to hold offenders and their families accountable to victims and their families. Crime was understood to be an event involving the parties, as well as their kin, in the context of the community. This reflected a basic understanding that a relationship existed between victims and offenders, and that this relationship needed to be addressed in responding to the wrong. Victims were a key part of the process for pragmatic reasons (they and their families insisted on this), but also for reasons of simple justice — no adequate response to the crime could exclude the victim.

The focus changes

The Norman Conquest of Europe marked the beginning of the end of this approach. When William the Conqueror became king of England, he took title to all land. He then portioned it out to his supporters and to the church. He and his descendants asserted increasing control over the process by which crimes and other judicial matters were disposed of.

But where earlier developments were designed to keep family feuds from tearing apart the community, King William and his descendants were struggling for control of the legal process for the sake of political power. They were replacing local systems of dispute resolution (established by the barons) and were competing with the growing influence of the church over secular matters. The church had issued the Canon Law, which comprehensively regulated every dimension of life. The secular authorities responded to this by creating similar law codes. A mechanism which the English kings successfully used in this struggle for control was the “king’s peace.” King Henry I, the son of William the Conqueror, issued the *Leges Henrici* in 1116. These laws established thirty judicial districts throughout the country and gave them jurisdiction over “certain offenses against the king’s peace, arson, robbery,

murder, false coinage, and crimes of violence.”

Anything which jeopardized this peace became a subject of the king’s jurisdiction. This gave the king control over criminal cases as breaches of that peace. Criminal punishments were no longer viewed primarily as ways of restoring the victims of crime, but instead as means of redressing the “injury” to the king.

The king not only gained power, he also enriched his treasury. Because of the existing emphasis on compensating victims, the early codes required restitution but confiscated some of the payments for the king’s treasury. Over time, the amount confiscated from the victim increased, and eventually restitution was seldom ordered — the defendant was simply fined.

Furthermore, feudal custom held that when a vassal “broke faith” with his ruler, his possessions reverted to the lord — this was called *escheat*. The Norman word for such a breach of faith was “felony.” In England after the Norman Conquest the most serious crimes came to be called felonies because they were considered to be breaches of the fealty owed by all people to the king as guardian of the realm. (The felon’s land escheated to his lord, however, and only his chattels to the crown.)

As a result, *the victim had no remedy*. The criminal proceeding generated fines for the king. In felony cases, conviction meant that *all* the offenders’ property reverted to his lord and to the king. The victim would have no way to recover through civil action against the impoverished offender.

The punishment of the crime had become the province of the state. Recovery by the victim was a private matter to be settled in the civil courts. The state’s interest in criminal cases was in fixing the responsibility of the offenders and punishing them, not restoring the victims. The role of victims was only to help establish that a wrong had been done.

In “golden age of the victim”- the period when the system of justice emphasized compensation to the victim - had ended. It was replaced with what could be called the “golden age of the state,” which continues today. Now the *criminal* justice system emphasizes controlling the injury to the state through various forms of punishment designed to deter, incapacitate or reform criminals. If victims want to recover their losses, they must sue in civil courts.

From Crime and its Victims, by Daniel W. Van Ness, Interscience Press, 1986.

The libertarian prison: Principles of laissez-faire incarceration

by J. Roger Lee and Laurin A. Wollan, Jr.

The growing interest in libertarian principles within the field of corrections -private construction and operation of prisons being only the most recent and stunning development — suggests that it might be interesting (and perhaps important) to take a look at the concept of a libertarian prison. By that we mean not a prison built and run by a business corporation, but one which is itself based, in its workings, on such principles as freedom from coercion, maximization of autonomy, and individual enterprise. In other words, what would happen if a prison somewhere were shifted to the same operating premises that should, and to an extent do, obtain elsewhere in the free or “outside” world?

Thus, our proposal: inmates are free to do as they please, to come and to go as they please inside the prison, to enter into relationships on a basis of voluntary exchange, all of this subject only to the rules of the criminal code and other legal constraints applicable to citizens on the outside—plus the distinctive restrictions of imprisonment, which we suggest should be limited to intensive surveillance and the inability to move beyond the prison walls. Our much more mobile population of inmates, it must be remembered, is made up of hardened, many of them violent, criminals who have been imprisoned to segregate them from society and to keep them from committing more crimes either against the outside world or against each other.

We fully expect that a prison operated on the basis of permission rather than prohibition would rather early and fully develop into a flourishing economy. This is in part what we expect from what we know of human nature under such circumstances. But it is also an

expectation based on what is found in prison anyway: an informal, virtually covert, economy based for the most part on voluntary exchanges, using tokens or barter if currency is unavailable, so that a remarkable variety of goods and services are provided. This occurs even in prisoner-of-war camps where conditions are much more oppressive than they are in civilian prisons. Thus, the foundation of our vision of a laissez-faire prison is only partly based on principle; it is partly based on practice, the seemingly inevitable realization of market economies operating under and in spite of (and even defiance of) the most handicapping conditions (Gleason, 1978. and Kalinich. 1980).

The principles of punishment

At the outset, it is necessary to say something about the concept and purposes of punishment. Punishment, all agree, must be painful. But, we argue, the “pains of imprisonment” (in Gresham Sykes’ phrase) need not include all or even much of the deprivation which he identifies (1958). In addition to deprivation of liberty, to which we would add the compromise of privacy, both of which we endorse, he includes the deprivations of goods and services, heterosexual relationships, security, and autonomy, none of which deprivations we endorse.

There is no reason why, as we approach the 21st century with sensibilities far more humane than 200 years ago, we cannot be content primarily with the one pain that was sufficient in the penology of the classical or Beccarian school: prison institutions which limit the pain of imprisonment to deprivation of liberty. That would seem to be a sufficient punishment for ordinary crimes, even violent ones, without loading onto it

the variety of pains experienced even now in the typical maximum security institution (Lee, 1982 and 1973). The pain of lost liberty, especially in a free society, should never be underestimated.

The principles of liberty

Surely it is one of the crimes of our penal system that we forbid prisoners to do what is natural, even necessary, for adult human beings, that is to engage in activity—sometimes playful, more often workful, and in any case active, as active as the inmate wishes to be.

We argue that one of the most important features of a prison might become the freedom to engage in activity, productive or otherwise, according to one's lights, as long as it does not violate the rights of others. This is fundamental to the realization of any substantial degree of one's humanity. And the humanity of the inmate is the one quality we insist must not be damaged, let alone destroyed, by degradations piled upon deprivations. Inmates whose lives are closely monitored in a prison, and who are deprived of the liberty to come and go beyond the walls, are deprived sufficiently for punitive purposes. They need be deprived no further of the autonomy that goes with the dignity of human life.

The freedom of the individual in the libertarian prison would be extensive enough to enable that individual to choose whether or not to work at all and for whom to work, if work is chosen. The principal difference between prison industries of the past and industries of the libertarian prison is the freedom of the inmate to be an entrepreneur that is to say, to be the boss, one's own boss, and the boss of willing others. Further, to the extent that the inmate accumulates capital to invest in the means of production, that inmate would be free to produce and sell products to consumers either inside or outside the prison, employing other inmates in many cases, thus making jobs in the libertarian prison through private industry, not public works (Lee, 1984).

Another related principle of the libertarian prison is its abandonment of the notion that central planning of anything is necessary. Instead, a spirit of *laissez-faire* would permeate the prison. Everyone within the prison, from warden down to the lowest "fish" who has just entered

prison, must understand that there is no direction of anyone's activities except by the requirements of observation, the criminal law, and other regulations to which outsiders are similarly subjected.

Of what utility is such a prison?

We insist that the libertarian principle needs no utilitarian defense: It is intrinsically right for men and women, even behind bars for crimes committed against the liberty, property, or security of others, to have their right to liberty diminished only to the extent we have described. They would be deprived of their physical liberty to leave the premises of the prison. Within those confines, liberty should be maximized for its own sake; even convicts deserve no less.

Having declared that principle, however, we hasten to note that there are abundant payoffs to freedom which make it worthwhile. First it would work as free economies work, to meet the demands of consumers of goods and services as variously and efficiently as possible. Only in a free economy are those wants and needs even revealed, let alone met; in a controlled economy, they are dimly discerned. Many of these needs are unmet in the typical prison today; certainly wants are unsatisfied, often for no good reason. Most of them, both needs and wants, are legitimate, deserving of satisfaction, and no threat to control or any other purpose or requirement of the institution, including the overriding punitive character of the experience.

Freedom permits the inmate to realize his or her potential for human excellence, whatever it may be, in whatever direction the inmate chooses for its development. No institution, not even a prison, should be allowed to stifle that. No inmate need languish on a cot or while away the hours watching television or playing cards or doing or planning mischief. Inmates who are free to choose activity of suitable kinds will be better for it, more fulfilled by it, more content with their lot, and more agreeable if not more tractable from a managerial point of view.

Freedom coupled as it must be with elimination of interaction based on force by anyone except in the administration of the law -will put a premium on wit and creativity and on a spirit of co* operation, rather than on force and cunning

and undesirable alliances. Inmates are now vulnerable to the brutes in prison; their only protection, unless they are extraordinarily shrewd or lucky, is a relationship with a stronger inmate, whose protection is usually purchased for a price, frequently forced sex. This occurs in male social groups which equate forced sexual submission with emasculation.

A flourishing economy would enable the enterprising inmates to earn, save, and invest their income in bodyguards, if necessary. We would expect, however, that an economy such as we envision would require less and less of that, as it shifted the tone of the prison society from one of forcefulness and intimidation to one of businesslike arrangements. The brutes would come to be controlled informally by the businessmen within the prison.

Private security forces and productive purpose keep most firms in the outside world relatively peaceful places, with the police called on to intervene only in unusual cases. Private security, but chiefly social pressures, keep much of the peace. In our entrepreneurial prison, the social forces and the privatization of some security functions, observed by the prison police, would combine to make the normal operation of the prison more peaceful than now. The occasional violence which would persist inside the prison should be punished by increased time to be served and by increased reparations to victims because such violence violates the criminal law. We discuss the rationale for reparations below. The ability to compound reparations, in a prison in which production and possession of wealth is important, should have a progressively chilling effect on violence.

The management and control of the institution would be markedly less difficult. More prisoners for more of their time would be constructively engaged and they themselves, as noted, would have a lower level of tolerance than now for the brutal style. The prison bureaucracy would thus be able to attend to details it now lacks time and energy to deal with. And some of its imperfectly performed functions will have been privatized as an immediate result of our envisioned reform and operated by inmate firms themselves. Some rehabilitative services would be

performed by the firms in job training programs. Other rehabilitative services will be offered by educators and psychologists who find themselves to be inmates.

Engagement in such activities, even if no fundamental change occurred in the character and personality of the inmate, would better prepare the inmate for successful engagement of life on the outside. These activities inside the prison would be more like those of the conventional, noncriminal world outside. Thus, there would be a better prospect for success, or at least for avoidance of further criminal activities. The importance of walls

Deprivation of liberty as the sole punishment for crime puts an especially heavy emphasis on the walls of the prison. They are not only functional, but symbolic. Permeability of the outer perimeter of the prison can now be made almost impossible, thanks to new technologies. The libertarian prison requires impermeability in only one direction and of one sort; by the inmate physically and toward the outside. That permits others to come through from the outside and the inmate to communicate with the outside world by mail, telegram, telephone, radio, carrier pigeon, or any other means imaginable — for all of which, however, the inmate must pay as part of the cost of doing business (or pleasure) from within the prison, precisely as outsiders must bear the costs of their communications.

But who would come into the prison? Few would, but those closest to the inmate would - and do —and might under appropriate circumstances come in on a more or less permanent basis. There is nothing in principle objectionable from a libertarian point of view to conjugal visits of an extended, even residential sort. Indeed, there are prisons in the world in which entire families reside with inmates (American Correctional Association. 1981). This would be something the inmate and his or her family could work to earn, inasmuch as they would have to pay the rent for the facilities in which they would live. (We discuss rental arrangements in Part II.)

In principle, there is no reason why an inmate should not be permitted to set up housekeeping within the prison with family, friends, or lover. If as a society we have come to tolerate “live-in”

arrangements as generously as we have when it comes to our friends and children, there is little reason to be intolerant when it comes to an inmate. And the mere fact that the inmate has committed a crime is no justification for denying the spouses, children, or lovers of that inmate the contact they desire, as long as they are willing to travel to the prison to secure it. At one time, we made the mistake of confiscating the worldly goods of the families of convicts. That was wrong, because the family has not been proven to have done wrong. We still make the mistake of punishing them by denying them access to the imprisoned loved-one.

The permeability of the prison perimeter by communication of various kinds short of the inmate's departure from the premises would make possible the prisoner's engagement of the outside world in a virtually unlimited variety of ways, commercial and otherwise, but mainly commercial, enabling the inmate to perform services for businesses on the outside with skills brought into or developed in prison. Inmate firms would compete, under certain handicaps of special costs of doing business (see below) as well as handicaps of limited mobility and space, but the incentive to produce income to better one's circumstances would seem to be sufficient to induce the inmate to engage as energetically as possible in such activities. These firms would also have the beneficial effect of enabling the inmate to gain experience in certain styles and manners of verbal (oral as well as written) communication, which are valued in the outside world. Moreover, if the inmate would have to do business under the handicap of limited physical meetings, due to reasons of inaccessibility and security, it would cause further development of those skills in other modes of communication which are no less important in the outside world.

A note on privacy

There is one other pain the inmate would have to endure that would go beyond the pain experienced in some typical prisons: surveillance, because inmates enjoying greater freedom to move about would need to be watched more closely. In addition, surveillance would extend to communication with the outside world.

The business enterprise especially, in the

libertarian prison, would be subjected to intensive surveillance by electronic and other means. This would include the monitoring of communication between members of the firm within the prison and those outside of the prison with whom it would deal. The costs of this supervision would be borne by the prison enterprise itself as one of the additional costs of doing business. ::
Income & investment

What would the inmates earn in a laissez-faire prison economy? Precisely what the laws of supply and demand yield in any free economy: either a "going wage" or a return to capital. Thus, a wage might be a dime an hour for what one inmate might do, a dollar an hour for another, and ten dollars an hour for yet another. And these wages would fluctuate on the market. Clearly, the wages would not be set by fiat, as in a central economy of a thoroughly socialized sort, which is the practice now in the payment of wages to inmates.

One of the virtues of an economy which yields for its workers a wage considerably higher than what was provided by the "totalitarian" economy's "slave labor" system is the likelihood that some inmates, those with intelligence or self-discipline and with foresight and ambition, will save money. Those savings amount to the accumulation of capital, and with the accumulation of capital comes the capacity for investment, and with investment comes more and larger enterprise. We would anticipate the proliferation of businesses within the prison economy as entrepreneurs begin to save and invest, with capacity heightened by their capital accumulations and investments. What would develop is what does develop in the outside economy: firms growing in size, complexity, and capacity to "deliver the goods" (or services), far beyond what the sole entrepreneur can do, working out of pocket with tools carried personally. Such businesses have a prospect of employing larger numbers of workers and engaging larger numbers of customers. For such businesses, it becomes desirable to contemplate an outreach into the wider economy of the outside world.

A special problem exists regardless of whether the firms employing inmates are owned by inmates or are branches of outside firms. One

source of resistance to inmate industry, on the part of both business and labor, has historically been the competitive advantage enjoyed by prison industries which paid their labor force a mere token wage, enjoyed state-supplied capital in some cases, and were free of overhead expenses for site or worker housing. This is one of our motivations for application of prevailing minimum wage in prison. The other is the desire to have laws which are applicable outside applicable inside as well. Further, we would require that the capital either come from the inmates or from outside firms which lease a prison site. Last, we would require that inmate entrepreneurs and laborers pay the expenses of their own upkeep - room and board and surveillance costs. These features of our plan insure that prison industries do not compete at an unfair advantage with firms on the outside.

Unions

Another "real-world" characteristic of the prison economy would be its availability, so to speak, to organize labor. There

is no reason we can think of to exempt the prison economy from union activities under whatever laws operate in the outside society. Most prison firms probably will not reach such size in terms of work force that they would be attractive to union organizers. But it is possible that some would. And if a prison firm should become target for organization, it would not be so much regrettable as an occasion for marveling, even rejoicing, that an inmate business had come of age. Coercion

One final note relating to inmate labor. The prison economy we envision is a free economy, without coercion except in the administration of the law itself, as is the case in the outside world. It follows that inmates not be required to work, however high the wages might be. An inmate has a certain amount of time to serve, and has discretion how to serve it within the limits of the law. Involuntary labor, "hard" or otherwise, may not be required of any inmate. Prison jobs, in the bureaucracy of the prison administration, may be held out to inmates, but they may forgo the

opportunity if they please; there is no reward for the inmate who accepts such employment, other than the activity and whatever its remuneration. One of the by-products of the prison economy would be the growth of an alternative set of employment opportunities to those offered by the prison itself; in other words, the institution in its own needs must be competitive with its own autonomous economy. This would be altogether to the good.

There will be considerable economic pressures on some inmates to work. This follows from the fact, discussed [in Part II], that within the libertarian prison, inmates must pay for their room, board, and security supervision as well as make restitution to their victims. Most of us, if we found ourselves in prison, would have to work to sustain ourselves. That is the economic pressure of which we speak. And it is no more than what is experienced by most of us on the outside.

Some, however, will not feel this pressure, those of independent wealth, and they will not be *required* to work. No one is required to work. Still other inmates may have their financial needs met by private charity. Further, so long as the outside world has public welfare laws, their scope must reach inside the prison, as all laws do. Some inmates might well qualify for welfare provisions. Then, absent workfare, they will have diminished economic pressures to work. If it is found that the subsistence level within a prison is lower than in the outside world, it would make sense to lower the level of assistance to inmates, accordingly.

Finally, we do not think that forced labor is even a good form of discipline. We would hope that fines, confiscation of property, loss of "good time," and added time and reparation payments for serious offenses in the prison would be sufficient for further punishment for breaking the law. Because the law and security regulations are the sole rules in the libertarian prison, that is all we envision as requirements for discipline. Further, we believe that with available jobs and business opportunities, discipline would result from the nature of the spontaneous order which arises out of voluntary exchange.

A free-market prison: How would it work?

by J. Roger Lee and Laurin A. Wollan, Jr.

The following is Part II and continues the previous article on the principles of laissez-faire incarceration.

Money & circulation

Money is a minor problem in the scheme of things. Years ago, it was not uncommon for currency to be altogether forbidden in prisons, which meant that tokens such as cigarettes and other items had to be substituted for coins and paper money. This was an impediment, though not a serious barrier to the operation of an economy. Prisoner-of-war camps in wartime and prisons generally have developed economies without any conventional form of money. Prisons today normally permit a small amount of cash to be possessed personally by the inmate. Transactions of an approved type quite often involve drawing on an account in a canteen, for instance, rather than actual transfer of cash. We suggest that there be no limitations on the amount of cash which might be possessed by the inmate.

This would permit more fluidity in the economy and a more accurate and realistic reflection of what is most valued in the economy. The obvious problem of theft would doubtless be met by the development of some sort of bank, operated either by the prison or by inmate bankers, with or without the assistance of outside commercial banking institutions.

There is a special problem, felt by some, of the independently wealthy inmate or the inmate who is supplied by family or friends with abundant amounts of cash. This is mildly offensive, much as it is on a college campus where some students are wealthy and most are not. But it has the virtue of reflecting within the prison community a condition of the outside world with which the inmate must deal on his return to that world. Further, the presence of such affluent inmates

permits them to infuse capital into the prison economy more directly, though also indirectly through such inmates' banking institutions as reserves against loans to prison industries.

Restitution, rent, & taxation

Whenever there is more" in evidence, there is a strong temptation in most of us (with that little bit of larceny in the heart that characterizes all but the very best of us) to lay hands on it, and this is true of the state and of the prison itself. Some legitimate purposes come to mind for which the inmate might be separated from his money by the prison.

The conditions of punishment should involve the obligation of the inmate to make restitution to specific victims or to the community in general (Barnett and Hagel, 1977: 64-65). This condition will vary according to the extent of the loss and will be greater for some inmates and less for others. The inmate, like the private citizen who through negligence creates injury, is saddled with an obligation. This is an obligation which can be fitted to the systematic provision of opportunity of inmates to earn wages from which they may provide for their own incrementally better food, clothing, and shelter. The importance of compensation to victims, through the activities of inmates, is too great to be offset by an alternative system in which all the inmate's earnings would go to the inmate. It is the perpetrator of crime who must bear its costs, not the victim of the crime.

Nevertheless, the virtues of the libertarian prison, spurred in large part by the inmate's ambitions to self-betterment through earnings are too great to be jeopardized by the disincen-

tives of restitution. Hence, the problem of balance between two goods, the victim's compensation and the inmate's betterment. But it is not insoluble. Civil courts manage it all the time. It would, however, take time to learn where to strike the right balance in the prison setting so that both goods will be served.

Another characteristic of the libertarian prison would be the obligation of the inmate to pay for food, clothing, shelter, and security. We argue that inmates should be obliged to work to pay rent for the space they occupy and purchase the clothes they wear and food they need. But we also hold that the public welfare provisions of law (and absent that in some reformed legal system, private charity) should insure that the inmate, deprived of liberty, be maintained in minimal circumstances of food, clothing and shelter, which would be only very slightly above what decency requires, like a safety net. In the libertarian prison, however, the flourishing economy allows inmates to earn money to meet all these needs and a surplus to allocate among various goods and services the inmate prefers.

This would enable the inmate to rent or purchase additional space, more comfortable clothing, or more tasty food than that provided through the prison welfare system. For instance, one wing of the prison might be devoted to the multiple ceiling of inmates at the minimal level of accommodation. Another wing might provide for single ceiling of inmates willing to rent more commodious accommodations for a fee set on the rent market. The inmate could, therefore, step up in lodging from the multiple cell, to a single cell, to a room that would be like a college dormitory room, and then perhaps to a suite or even to a cottage-like facility on the grounds of the prison.

The inmate of exceptionally violent personality, of course, would have to be subject to more intense surveillance. But that inmates too could rent or buy more comfortable quarters so long as they are consistent with the need for security. The incentive of improving one's circumstances would seem to be powerful enough, once the opportunity is present, to induce all but the most intractable of such inmates to "play the game" of engaging in the spirit of the economy, the free-

market economy, of the laissez-faire prison. The same analysis can be easily made of food and clothing and other needs and wants.

As soon as there is revenue, from wages or from any other source, there is the prospect of taxation. No libertarian society can consider taxes legitimate. But on our commitment that whatever laws obtain in the outside world must apply inside the prison as well, surely the incomes of inmates would be subject to the forms of taxation to which such incomes would be subjected on the outside — a sales tax, an excise tax, an income tax, and even property taxes.

Because the prison economy would involve certain additional costs, some of which cannot except with great difficulty be assigned to the participants, in the nature of user's fees (surveillance of the inmate to insure that he or she does not engage in crime against others, for instance), it might be appropriate for the prison itself to impose general fees on inmates on the model of an income tax.

How would it work?

What would inmates do in a libertarian prison as entrepreneurs and employees? They would do some of what they do now in a typical prison. But the extent of their activities, in a laissez-faire prison economy which encouraged rather than discouraged them to do what they please, would yield a veritable yellow-pages directory of activities, each the germ of a small business. The inmate is different from the rest of us only in certain particulars; in the main, the inmate is exactly like the rest of us. Hence, we would expect the libertarian prison economy to resemble very much the larger economy of the outside world.

There is no reason in principle why a prison could not allow, even welcome, the development of enterprise by prisoners on a small scale. Such enterprise could be no more ambitious than, say, nacho-flavored chip deliveries or a hot dog push cart operation. Of course, any such enterprise, even that one, could grow — could become a pizza operation, then a full-scale fast food operation, a restaurant, even a chain with outlets in several prisons.

There is a precedent for this beyond the covert, underground prison economy. The au-

thors are aware of a prison in Venezuela in which small but ambitious enterprise has developed. Specifically, the enterprise is a body shop in which an inmate trains and employs several other inmates and makes a modest profit. The difference between that prison and the laissez-faire prison described here is simply that in the latter, the prison officials would officially encourage rather than officially discourage but overlook such activities.

In this section we have discussed only firms whose markets are within the prison. But many firms would market to the outside world while employing inmates and making profits for their inmate owners.

Concluding observations

We have no illusions that such a prison as we envision could come to its maturity overnight; surely not so quickly as that. We would say instead (waggishly, if we may) that it would take but several days. Realistically, of course, it would take years, for it would be a cognitively difficult transition, especially for prison officials, and would no doubt call for a transition involving

phasing in, stepwise, the various kinds and degrees of freedom, each building upon the previous one. Now is the time for the thinking and dreaming to begin if the virtues in this vision are one day to be realized.

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Restitution: a new paradigm of criminal justice

by Randy E. Barnett

This article will discuss the breakdown of our system of criminal justice in terms of what Thomas Kuhn would describe as a crisis of an old paradigm — punishment. I propose that this thesis could be solved by the adoption of a new paradigm of criminal justice — restitution. A fundamental contention will be that many, if not most, of our system's ills stem from errors in the underlying paradigm.

In the criminal justice system we are witnessing the death throes of an old and cumbersome paradigm, one that has dominated Western thought for more than 900 years. While this paper presents what is hoped to be a viable, though radical alternative, much would be accomplished by simply prompting the reader to reexamine the assumptions underlying the present system.

The crisis in the paradigm of punishment

The problems which the paradigm of punishment is supposed to solve are many and varied. A whole literature on the philosophy of punishment has arisen in an effort to justify or reject the institution of punishment. For our purposes the following definition from the *Encyclopedia of Philosophy* should suffice: "Characteristically punishment is unpleasant. It is inflicted on an offender because of an offense he has committed; it is deliberately imposed, not just the natural consequence of a person's action (like a hangover), and the unpleasantness is *essential* to it, not an accompaniment to some other treatment (like the pain of the dentist's drill.)"

Two types of arguments are commonly made in defense of punishment. The first is that punishment is an appropriate means to some justifiable end such as, for example, deterrence of

crime. The second type of argument is that punishment is justified as an end in itself. On this view, whatever ill effects it might engender, punishment for its own sake is good.

The first type of argument might be called the *political justification* of punishment, for the end which justifies its use is one which a political order is presumably dedicated to serve: the maintenance of peaceful interactions between individuals and groups in a society.

Punishment failed to reform the criminal, and this led observers to inquire how the situation might be improved. Some felt that the sole end of the penal system was rehabilitation, so attention was turned to modifying the criminal's behavior (an obviously manipulative end). Emphasis was placed on education, job training, and discipline.

Unfortunately, the paradigm of punishment and the political realities of penal administration have all but won out. There is simply no incentive for prison authorities to educate and train. Their job is essentially political. They are judged by their ability to keep the prisoners within the walls and to keep incidents of violence within the prison to a minimum; as a result, discipline is the main concern. Furthermore, since he is sentenced to a fixed number of years (less time off for good behavior - so-called good time), there is no institutional incentive for the prisoner to improve himself apart from sheer boredom. Productive labor in prison is virtually nonexistent, with only obsolete equipment, if any, available. Except perhaps for license plates and other state needs, the prisoners make no profit and the workers are paid, if at all, far below market wages. They are unable to support themselves or their families. The state, meaning the innocent taxpayer, supports the prisoner, and frequently the

families as well via welfare.

Rehabilitation has been a longtime goal of the penal system, but the political nature of government-run prisons and the dominance of the paradigm of punishment has inevitably prevented its achievement. Prisons remain detention centers, all too temporarily preventing crime by physically confining the criminals.

The paradigm of restitution

The idea of restitution is actually quite simple. It views crime as an offense by one individual against the rights of another. The victim has suffered a loss. Justice consists of the culpable offender making good the loss he has caused. It calls for a complete refocusing of our image of crime. Kuhn would call it a “shift of world-view Where we once saw an offense against society, we now see an offense against an individual victim. In a way, it is a common sense view of crime. *The armed robber did not rob society; he robbed the victim.* His debt, therefore, is not to society; it is to the victim.

When a crime occurred and a suspect was apprehended, a trial court would attempt to determine his guilt or innocence. If found guilty, the criminal would be sentenced to make restitution to the victim. If a criminal is able to make restitution immediately, he may do so. This would discharge his liability. If he were unable to make restitution, but were found by the court to be trustworthy, he would be permitted to remain at his job (or find a new one) while paying restitution out of his future wages. This would entail a legal claim against future wages. Failure to pay could result in garnishment or a new type of confinement.

If it is found that the criminal is not trustworthy, or that he is unable to gain employment, he would be confined to an employment project. This would be an industrial enterprise, preferably run by a private concern, which would produce actual goods or services. The level of security at each employment project would vary according to the behavior of the offenders. Since the costs would be lower, inmates at a lower security project would receive higher wages. There is no reason why many workers could not be permitted to live with their families inside or outside the facility, depending, again, on the trustworthiness of the offender. Room and board would be

deducted from the wages first, then a certain amount for restitution.

Anything over that amount the worker could keep or apply toward further restitution, thus hastening his release. If a worker refused to work, he would be unable to pay for his maintenance, and therefore would not in principle be entitled to it. If he did not make restitution he could not be released. The exact agreement which would best provide for high productivity, minimal security, and maximum incentive to work and repay the victim cannot be determined in advance. Experience is bound to yield some plans superior to others. In fact, the experimentation has already begun.

Restitution & rights

Restitution recognizes rights in the victim, and this is a principle source of its strength. The nature and limit of the victim’s right to restitution at the same time defines the nature and limit of the criminal liability. In this way, the aggressive action of the criminal creates a *debt* to the victim. The recognition of rights and obligations make possible many innovative arrangements. Subrogation, arbitration, and suretyship are three examples. They are possible because this right to compensation is considered the property of the victim and can therefore be delegated, assigned, inherited, or bestowed. One would determine in advance who would acquire the right to any restitution which he himself might be unable to collect.

The natural owner of an unenforced death claim would be an insurance company that had insured the deceased. The suggestion has been made that a person might thus increase his personal safety by insuring with a company well known for tracking down those who injure its policy holders. In fact, the partial purpose of some insurance schemes might be to provide the funds with which to track down the malefactor. The insurance company, having paid the beneficiaries would “stand in their shoes: It would remain possible, of course, to simply assign or devise the right directly to the beneficiaries, but this would put the burden of enforcement on persons likely to be unsuited to the task.

Advantages of a restitutional system

1. The first and most obvious advantage is the assistance provided to victims of crime. They

may have suffered, an emotional, physical, or financial loss. Restitution would not change the fact that a possible traumatic crime has occurred (just as the award of damages does not undo tortious conduct). Restitution, however, would make the resulting loss easier to bear for both victims and their families. At the same time, restitution would avoid a major pitfall of victim compensation/welfare plans: Since it is the criminal who must pay, the possibility of collusion between victim and criminal to collect "damages" from the state would be all but eliminated.

2. The possibility of receiving compensation would encourage victims to report crimes and to appear at trial. This is particularly true if there were a crime insurance scheme which contractually committed the policyholder to testify as a condition for payment, thus rendering unnecessary, oppressive and potentially tyrannical subpoenas and contempt citations. Even the actual reporting of the crime to police is likely to be a prerequisite for compensation. Such a requirement in auto theft insurance policies has made car thefts the most fully reported crime in the United States. Furthermore, insurance companies which paid the claim would have a strong incentive to see that the criminal was apprehended and convicted. Their pressure and assistance would make the proper functioning of law enforcement officials all the more likely.

3. Psychologist Albert Eglash has long argued that restitution would aid in the rehabilitation of criminals. "Restitution is something an inmate does, not something done for or to him.... Being reparative, restitution can alleviate guilt and anxiety, which can otherwise precipitate further offenses." Restitution, says Eglash, is an active effortful role on the part of the offender. It is socially constructive, thereby contributing to the offender's self esteem. It is related to the offense and may thereby redirect the thoughts which motivated the offense. It is reparative, restorative, and may actually leave the situation better than it was before the crime, both for the criminal and the victim.

4. This is a genuinely "self-determinative" sentence. The worker would know that the length of his confinement was in his own hands. The harder he worked, the faster he would make

restitution. He would be the master of his fate and would have to face that responsibility. This would encourage useful, productive activity and instill a conception of reward for good behavior and hard work. Compare this with the current probationary system and "indeterminate sentencing" where the decision for release is made by the prison bureaucracy, based only (if fairly administered) on "good behavior"; that is, passive acquiescence to prison discipline. Also, the fact that the worker would be acquiring *marketable* skills rather than more skillful methods of crime should help to reduce the shocking rate of recidivism.

5. The savings to the taxpayers would be enormous. No longer would the innocent taxpayer pay for the apprehension and internment of the guilty. The cost of arrest, trial, and internment would be borne by the criminal himself. In addition, since now-idle inmates would become productive workers (able, perhaps, to support their families), the entire economy would benefit from the increase in overall production.

6. Crime would no longer pay. Criminals, particularly shrewd white-collar criminals, would know that they could not dispose of the proceeds of their crime and, if caught, simply serve time. They would have to make full restitution plus enforcement and legal costs, thereby greatly increasing the incentive to prosecute. While this would not eliminate such crime it would make it rougher on certain types of criminals, like bank and corporation officials, who harm many by their acts with a virtual assurance of lenient legal sanctions. It might also encourage such criminals to keep the money around for a while so that, if caught, they could repay more easily. This would make a full recovery more likely.

A restitutional system of justice would benefit the victim, the criminal, and the taxpayer. The humanitarian grounds of proportionate punishment, rehabilitation, and victim compensation are dealt with on a *fundamental* level making their achievement more likely. In short, the paradigm of restitution would benefit all but the entrenched penal bureaucracy and enhance justice at the same time.

(Condensed from *Ethics*, July, 1977, p. 279. For fuller discussion, footnotes and objections to restitution, see full article.)