

Report from the Center for

PHILOSOPHY & PUBLIC POLICY

Volume 2, Number 3
Summer 1982

University of Maryland • College Park, Maryland 20742 • Telephone: 301-454-4103

Should We Legislate Morality?

To make its research easily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for "questions," *QQ* summarizes and supplements Center books and working papers and features other selected work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

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Throughout the first two years of the Reagan administration, conservative supporters of the president have lobbied to cut taxes, lighten the regulatory burden, wind up loose reels of federal red tape, eliminate or streamline executive departments and agencies—all with the stated aim of reducing the role of the federal government in citizen and corporate affairs. Yet critics have pointed out that this same administration has voiced support for legislation limiting access to contraception, for constitutional amendments banning abortion or permitting school prayer, and for a variety of measures designed to strengthen traditional family life. In the view of some critics, this comes down to getting the government off people's backs and into their bedrooms. At the least, it seems to many inconsistent that the sphere of governmental influence should be simultaneously expanded and contracted, so that funding to encourage teenage chastity is proposed at the same time that funding for sex education is curtailed—and the latter on the grounds that the government should not intrude itself into matters that are properly the responsibility of the family.

Yet liberal critics of the administration must themselves answer to charges of a perhaps analogous inconsistency. For the same critics who are appalled at proposed "family support" bills requiring textbooks to portray a certain percentage of women in traditional female roles were the proponents of earlier legislation requiring portrayal in textbooks of a certain percentage of women in non-traditional roles (where an illustration didn't count toward the quota if the female character was wearing pink). And ardent defenders of the right to define one's own alternative life-style and private vision

of the good are equally ardent in taxing others to subsidize the arts or public television in the name of their own vision of what constitutes a good life. Each side can with some justice accuse the other of trying to legislate morality, in the broadest sense: of trying to press its own vision of the good life and the good society into law. Each can as well charge the other with a fundamental inconsistency in so doing.

Is government action permissible to advance one set of values (the right set), but not another (the wrong set)? Right and wrong on whose view? Or is federal intervention of any but the most carefully restricted sort prohibited across the board? Can the government legitimately address itself to the questions of how its citizens should live their lives and what kind of society they should create together? Is it the business of government to forge a common life for its citizens, to participate in the debate over what the shape of that life should be?

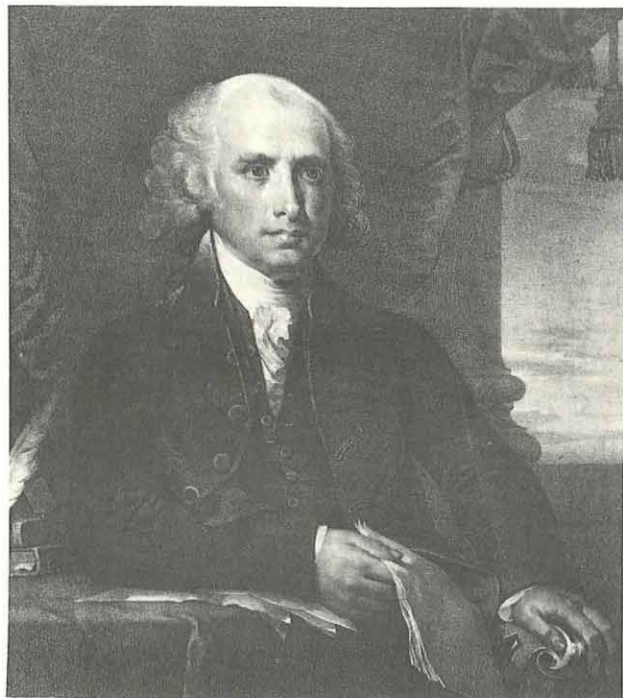
The Blessings of Liberty

This country was founded, according to the Preamble to the Constitution, "in order to secure the blessings of liberty." By liberty, explains Walter Berns, Resident Scholar at the American Enterprise Institute, the founding fathers meant "liberty to pursue private ends; . . . liberty understood as privacy: the private economy, the private association, the private family, the private friendship, the private church or no-church, and all this with a view to happiness privately defined."

This primary insistence on the liberty to define one's own private happiness, on Berns's interpretation, dictates limits to the responsibility and authority of government. The chief task of government will be a narrow,

but crucial, one: to respect and uphold the right of property. Property rights play, on this view, both a direct and indirect role in securing the blessings of liberty. Some measure of private property is an essential precondition of the liberty to live one's life according to one's own lights. Less directly, citizens intent on acquiring property—argues Berns, following Madison—will be less likely to turn their energies toward imposing zealous moral or religious enthusiasms on others. The widespread preoccupation with economic gain guarantees a peaceful polity in which potentially divisive passions are tempered by respect for the governing conditions under which citizens can compete together in safety. If economic interests assume primacy, "The animosity of factions will be replaced by the competition of interests; . . . The result will be a . . . society in which men can live private lives. The Framers took the property right seriously because they took the right of privacy seriously."

The private pursuit of happiness is better protected, on Berns's account, by representative than by direct democracy, for representative democracy dilutes the zeal of intolerant majorities. "Representative government will negate or minimize the influence of those opinions that cannot be safely represented," where these include *moral* opinions, judgments of which values the government should pursue or embody. Under a representative system, citizens do not engage in direct dispute over the ends of government. Berns deplors both populist referenda, in which citizens place pet political passions directly on the ballot, and the proliferation of moral claims in our courts. Moral claims are "not safely represented in the legislature; they are no more safely represented in the judiciary." The business



Courtesy National Portrait Gallery, Smithsonian Institution, Washington, D.C.

James Madison and the Federalists argued that the rights of all citizens could be secured only if no warring factions were permitted to impose their ends on the general public. But the Moral Majority claims that religious and moral ends have a proper place in government.



Courtesy the Moral Majority

of government is not to arbitrate rivalries among warring moral crusaders, but to guard the boundaries of some private arena in which citizens can live their lives according to their own accounts of how those lives should be led.

If many contemporary conservatives defend a reduced role for the federal government as a way of harking back to the intentions of the founders, as a way of clearly marking out the field of properly private concern, then it would seem that Moral Majoritarians make for such conservatives strange bedfellows indeed. If the point and purpose of government is to carve out and defend the sphere of the private, then the government itself has no business trespassing into that sphere. Social, cultural, religious, and moral issues no more belong on the public agenda than economic issues do. If conservatives are going to defend a reduced federal role in policing economic markets, while at the same time urging legislation regulating private sexual morality, they are going to have to do so on grounds other than those of a right to privacy.

On this view of the scope and limits of government, however, we are left with only a very impoverished notion of democracy and what it can accomplish. Citizens are not to be overly involved in the democratic process, and insofar as they involve themselves, they are to keep their moral views, their views about what we should strive for as a society, strictly to themselves. Moral claims enter into government only with danger, and on this view the dangers in legislating our values are greater than any loss from leaving them out of government altogether. We may ask whether such a view describes the sort of government under which we would want to be governed.

Neutrality and Equality

It is possible, however, to take Berns's same starting point and arrive at quite different conclusions about the proper role of government. In Ronald Dworkin's classic essay "Liberalism," he attributes to contemporary liberals a first principle very like Berns's: the principle that "government must be neutral on what might be called the question of the good life; . . . Political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life. Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials feel that one is intrinsically superior, or because one is held by the more numerous or more powerful group."

From this starting point, however, Dworkin argues for a far more active role for government than does Berns. Dworkin, like Berns, sees this neutrality best protected through the institutions of representative democracy, constrained by a system of minority rights, and economic markets, since these allow citizens with differing visions of the good to pursue their own ends, unlike, for example, socialist systems that rely more heavily on centralized government planning to secure

ends sought on a socially determined vision of the good society and the good life within it. But Dworkin goes further, to argue for much of the apparatus of the contemporary welfare state. Active government intervention is needed to correct and reform markets, so that unacceptable inequalities will not be produced by morally irrelevant differences in talents and abilities, or in individuals' socioeconomic starting points. On the liberal view, as presented by Dworkin, those inequalities are permissible that result from individuals' freely choosing to allocate their resources—both time and money—according to their own priorities. But inequalities resulting from skill or luck or special needs must be mitigated by a scheme of redistributive welfare rights, if government is to treat its citizens neutrally, with equal respect and concern.

Thus, government is permitted to intervene in markets in the name of equality and fairness. Its economic role goes beyond protecting private competition to insisting that the conditions under which citizens compete with one another are fair. But while equality and fairness justify a broader government role, clear limits remain. The government may intervene only to ensure that citizens are equally able to pursue their own differ-

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Is Neutrality Possible?

It can be charged, however, that liberalism still leaves us with an impoverished view of what democratic government is able to accomplish. Dworkin himself is clear that the liberal will have difficulties justifying legislation that goes beyond setting background conditions within which individuals pursue their own private visions of the good. The liberal is barred from imposing the content of his own vision on others.

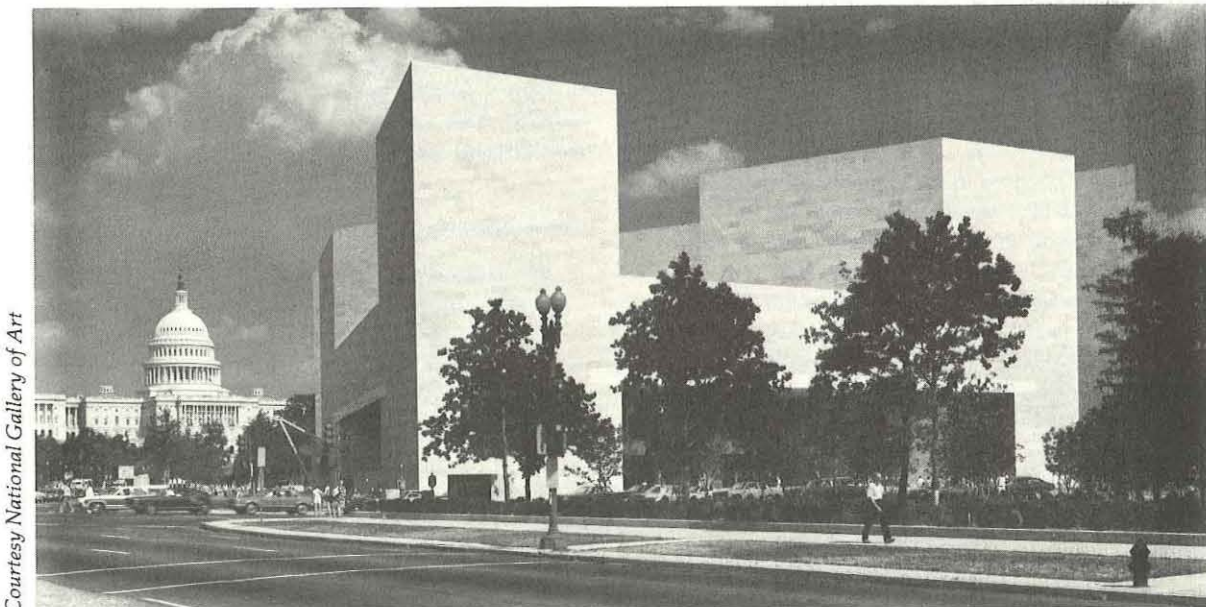
This means that the liberal environmentalist, who believes that "a simpler way of life is better, in itself, than the life of consumption most Americans have recently preferred," cannot sponsor environmental legislation by appealing to claims that environmentalists "have a superior conception of what a truly worthwhile life is." The liberal can defend environmental programs only by appealing in some way to his principle of funda-

mental governmental neutrality, only, as Dworkin suggests, on such grounds as that "self-fueling and irreversible" processes of unbridled consumerism will ultimately make the preferred simpler way of life unknown, "so that the process is not neutral amongst competing ideas of the good life, but in fact is destructive of the very possibility of these. The liberal [now] has reasons for a program of conservation that are not only consistent with his constitutive morality, but in fact are sponsored by it."

Even this amended environmentalist argument, however, fails to retain liberal neutrality among competing ideas of the good, as Mark Sagoff, Research Associate at the Center for Philosophy and Public Policy, contends. For why should we preserve the natural environment, and so ensure that a simpler way of life will re-

and what shall we let fade into the past? Who shall answer this question? The conceptions of public virtue liberals toss out the front door reenter by the back."

Government cannot remain neutral, then, by refusing to address questions of "public virtue," for there may be no neutral standpoint on many of the choices that concern us most. To preserve one way of life is to eliminate another. Our public and private choices today to a large extent determine the range of options from which we will be able to choose tomorrow. Sagoff asks: Rather than invoking equality and fairness to justify the choices that we make—that we are bound to make—why not admit what we are really doing—indeed, what we ought to be doing—is frankly appealing to the broad range of cultural, social, and moral values which matter to us in our public and private lives?



Courtesy National Gallery of Art

"Science, culture, schooling, travel, natural beauty: all this is the public business."

main an open option for future generations, when this course of action will itself eliminate other possibilities which future generations might have chosen to enjoy or appreciate instead?

"Everything, or almost everything, has or may have a meaning," Sagoff writes. "Almost any environment or any product may be favored or protected for the sake of the way of life it symbolizes or for the values it may later reinspire. Consider, for example, the great gas-guzzling behemoth automobiles, whose production has been officially discouraged. Perhaps we should insist on their production instead. After all, a life of profligacy, wastefulness, and conspicuous consumption which has been desired and found satisfying in the past may otherwise become unavailable to future generations; . . . We have preserved the Staten Island Ferry; what about the pony express? What shall we save for our children, to give them opportunities to form values,

Liberal neutrality, according to historian Christopher Lasch, is, indeed, a self-deception. Liberals may claim that "the important issues are economic, not cultural," that liberal governments are free to undertake redistributive economic measures and to enforce civil rights, leaving broader cultural questions alone. But, Lasch points out, "The trouble with this program is that economic and cultural issues are intertwined, now as in the past."

Grievances against the liberal state from the right arise in part from the belief that its redistributive and civil rights programs have had important cultural repercussions. Lasch writes: "The same people who resent the erosion of their standard of living by the deadly combination of inflation and economic contraction also resent liberal attacks on their values. They want more than a decent livelihood; they want some acknowledgment of the legitimacy of their commitment to

marriage, their patriotism, their religion, and their belief that the differences between men and women cannot be reduced to cultural 'conditioning' and economic oppression." Economic and political programs have social, cultural, and moral consequences, however neutral their designers intend them to be, which can be only unwisely—and dishonestly—ignored.

Is Neutrality Desirable?

Why is it that persons unite into a political community? The answer we give to this question goes a long way toward determining what limits we should set on the role of government. On Berns's account, drawn from Hobbes and Locke, men seek society in order to preserve their own liberty. But others have suggested a broader set of motivations. People also form political communities for the sake of participating in a communal life, because they care about a whole cluster of benefits that cannot be achieved by individuals acting alone, but only by all of us acting together. If a political community exists merely to protect privacy, its government should remain as neutral as possible regarding how private lives should be led. But if a political community exists "to provide what its citizens take to be the crucial elements of their well-being," in Michael Walzer's words, then its government should take action to seek and secure these other aims, even if this means taking a stand on what those aims should be.

Walzer, writing in the *New Republic*, offers an homage to the "welfare state" in its fullest sense: "The word 'welfare' means 'the state or condition of well-being,' and well-being is a moral as well as a material condition. Communal provision is required for the whole range of social goods that make up what we think of as our way of life. Not my way of life or yours,

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but ours, the life we couldn't have if we didn't plan for it and pay for it together. Not subsistence only, but science, culture, schooling, communication, travel, natural beauty: all this is the public business."

On Walzer's view, genuine political community requires that citizens raise together the question, "How shall we live?" The question is an inescapably moral one. The answer must be a moral one, too.

Legislating Values

If the question "How shall we live?" lies within the province of government, on what grounds shall we evaluate possible answers? Once we bring moral questions, questions of values and ends, into the legislative process, how do we make sure that the *right* values are publicly affirmed and the *wrong* values are publicly condemned?

Sagoff suggests that there may be no way other than "debate in *foro publico* about the ethical, social, cultural, and historical values we are to stand for as a nation." Within a basic framework of civil and economic rights that any legislation is constitutionally bound to respect, we debate, we discuss, we produce reasons and arguments for public scrutiny and examination. In a word, we engage in politics.

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Of course, our own values may be defeated by majorities defending different accounts of how our public life should proceed. But this we accept before entering the debate, secure in the knowledge that legal safeguards protect minority rights from the worst tyrannies of majoritarian decision-making. Still, the possibility is left open that the values defeated were indeed the right values, and those who argued otherwise simply made a mistake. Sagoff asks how we are to know whether the governmental interventions we favor are "benign rather than intrusive, socially uniting and not divisive?"

His answer, of course, is that we cannot know, and thus our actions must be moderated by caution and self-suspicion, by a constant awareness of our own fallibility. The political process is put under strain by the zealous pursuit of passionately perceived ends. But if politics is possible at all, it must be able to accommodate a calm, measured, rational assessment of the values that we as a nation think important and enduring.

*The views of Walter Berns, Mark Sagoff, and Christopher Lasch are drawn from papers presented at a conference on "Liberalism: Does It Mean Anything Today?" sponsored by the Center for Philosophy and Public Policy, held at the University of Maryland, April 1-3. Ronald Dworkin's views are drawn from his essay, "Liberalism," in *Public & Private Morality*, edited by Stuart Hampshire. Selected essays from the conference will appear with Dworkin's essay in a new collection, *Liberalism Reconsidered*, edited by Douglas MacLean and Claudia Mills, *Maryland Studies in Public Philosophy*, forthcoming.*