

Report from the Center for

PHILOSOPHY & PUBLIC POLICY

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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?

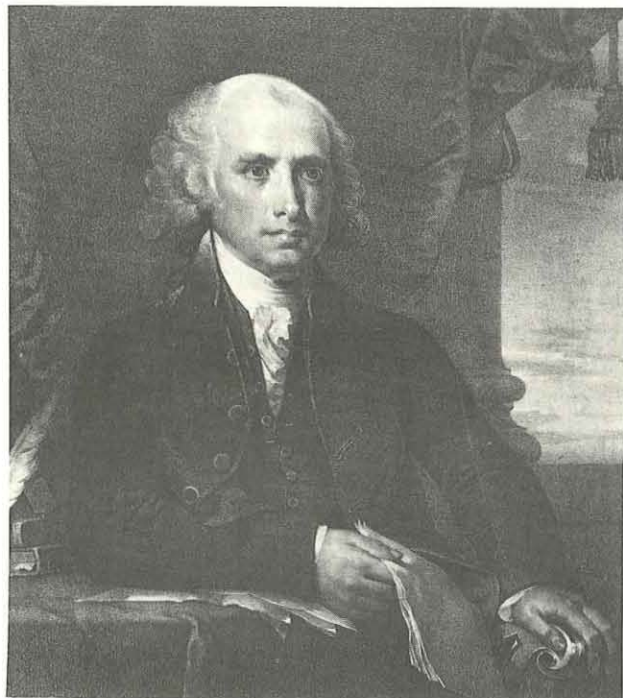
The Blessings of Liberty

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.

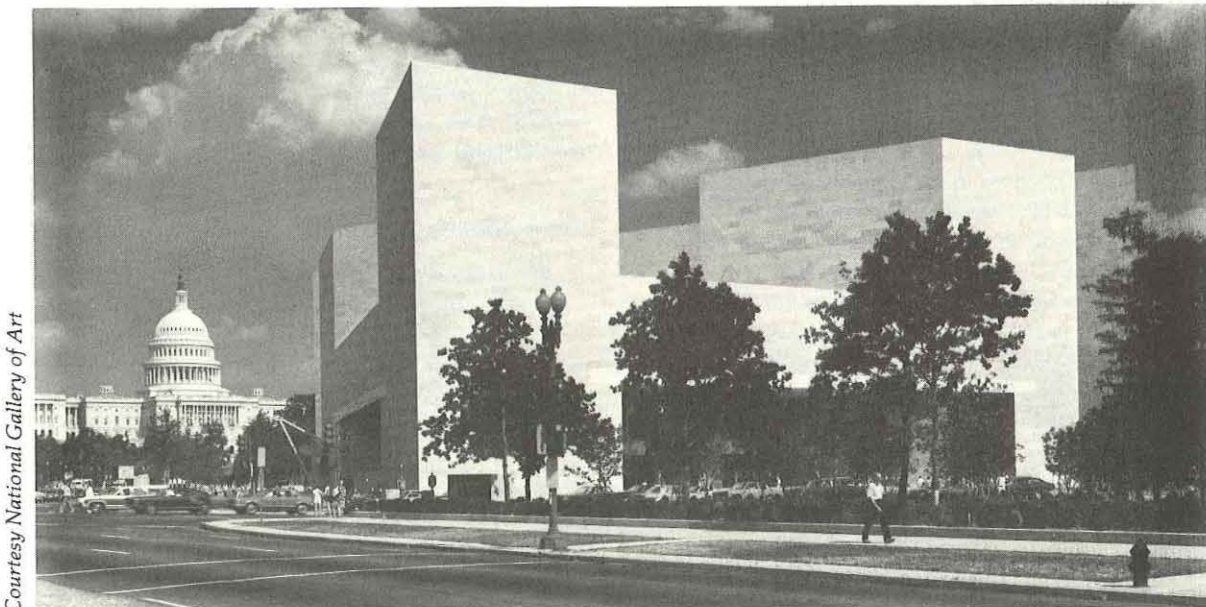
This means that the liberal environmentalist, who believes that "a simpler way of life is better, in itself, than the life of consumption most Americans have recently preferred," cannot sponsor environmental legislation by appealing to claims that environmentalists "have a superior conception of what 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.

"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, but ours, the life we couldn't have if we didn't plan for it and pay for it together."

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.*

A Proposal for National Health Care

Debate about the health care system—particularly debate about what the government should do—is an odd mixture of humanitarian sentiment, talk of rights and justice, and worry about money. From this debate emerge these desiderata for any national health care plan: it should promote fairness to suffering individuals of all incomes, recognize differences in individual preferences and needs, and reduce escalating medical costs. Here one leading proposal to meet these desiderata is defended.

Fairness in Health Care

All nations permit some inequality in the distribution of goods. But inequality in health care is commonly regarded as a particularly severe inequality for those at the short end of it. Thus, every advanced Western nation has taken measures in the direction of equalizing access to health care among its citizens.

It is easy to understand why this should be so. With regard to economic inequality in general, persons may disagree about what real poverty is and how bad is really bad. One can adjust, one might say, to a given level of income, and learn to want nothing more. By contrast, it is less plausible to talk about adjusting to pain, disability, or imminent death. These are objective misfortunes, misfortunes for everyone. For these reasons, a modicum of health care has come to be regarded as part of the decent minimum that society must provide for its members.

Then, too, equality in health care seems to follow from the notion of equality of opportunity. That notion requires that everyone have an equal chance to attain a better place in society on the basis of merit. Effective health care maintains, restores, and improves basic physical and mental abilities. It is therefore a form of opportunity: it is an external condition that can influence favorably what an individual attains in life. Consequently, the ideal of equality of opportunity provides a reason for promoting equality in health care, just as it does for providing equality in education.

Finally, lifting the financial burden of health care from individuals allows them to preserve the rewards

that effort and personal productivity have won them, instead of leaving these rewards to the mercy of illness and injury, which are so often a matter of chance. Health disasters can reduce to penury persons who have been hard-working and productive all their lives. This makes a mockery of reward for production and for effort.

The considerations just outlined—(1) providing a decent minimum, (2) establishing equality of opportunity, and (3) protecting rewards earned through effort and production from the ravages of chance misfortunes—can be grouped under the label of fairness. (1) and (2) have probably underlain what our society has done for some of the poor through Medicaid and for all of the elderly through Medicare. But (3) seems to argue for taking health care out of the private reward system altogether. Since chance plays such an important role in illness and injury, does not fairness to individuals require making sure that their financial status is not substantially altered through the cost of health care? In other words, does not fairness require us to pool health care expenses via some form of national health insurance to relieve individuals of the financial burden of their illness?

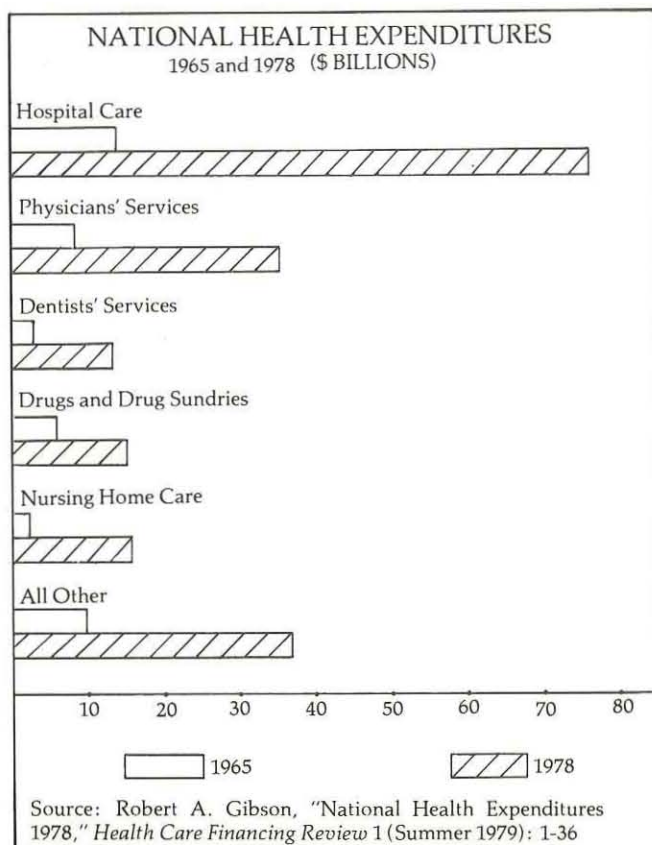
Enter Money

The headlong pursuit of fairness cannot, however, alone decide our national health care policy. What fairness seems to require is that every person be “adequately” insured against health expenses at all times. We fall short of that at present. Approximately 12 percent of Americans have no health insurance at all. As one would expect—since employers are the usual source of health insurance—many of the uninsured are unemployed. Those who are insured differ widely in the extent and depth of their coverage: working people with low incomes often have the worst coverage.

The simple remedy for this situation—seeing to it through government action that everyone is insured for a comprehensive list of services—will certainly drive up the nation’s health bill, perhaps in ways that are morally unjustifiable. To understand this, let us glance briefly at the steadily rising costs of our present health system and their explanation.

In the period between 1965 and 1978, whose beginning coincides with the establishment of Medicare and Medicaid, per capita spending on health care doubled in constant dollars. This steep rise can be explained in part by an aging and, consequently, increasingly infirm

This article is condensed and adapted from “Ethics, Health Care, and the Enthoven Proposal,” by Lawrence Stern, Louis F. Rossiter, and Gadil R. Wilensky, researchers at the National Center for Health Services Research. The views expressed are those of the authors. No official endorsement by the National Center for Health Services Research is intended or should be inferred.



population and by the introduction of new costly medical treatments and technologies. But it can also be explained by the spread of health insurance. If we take into account both government programs—Medicare, Medicaid, the Veterans' Administration, etc.—and private health insurance, a massive change has occurred. In 1977, 94 percent of American families were covered by some form of health insurance, up from 63 percent in 1953.

Insurance increases the utilization of medical care, and no doubt much of the increase corresponds to indisputable medical needs that would otherwise be neglected. But not all services whose use is stimulated by insurance are indisputably needed. A great deal of medical care is discretionary. In the absence of insurance, both doctors and patients are influenced in their decisions about which services are necessary or desirable by the fact that the patient will have to pay. By contrast, insurance enables doctors and patients to make these decisions in a cost-free Nirvana. In the end, however, the world of everyday life intrudes: insurance premiums go up.

For that matter, insurance premiums do not accurately indicate to consumers what they are paying for health care. Insofar as premiums are paid by employers, the consumer experiences them, not as direct payments, but in the form of higher prices for other goods, since the employer passes on his costs. Employer-paid health insurance is tax-free for employees, moreover, and is not counted in the pay on which the employer's contribution to Social Security is based. These tax exemptions

are presumably made up by other taxes, but, again, consumers do not know what they are really paying for health care.

Under our present system, insurance companies have not effectively policed health care costs. Setting reimbursement standards that effectively monitor and restrain health costs is difficult and expensive for an insurance company. Much medical care is controversial: which is the best or appropriate treatment is often in doubt. Then, too, there is the question of what consumers want. What they have wanted in the United States is to pay little or nothing out of their own pocket for services (as opposed to paying for insurance), yet to have a free choice of doctors or hospitals. The result is insurance plans that pay any doctor's fee that is "usual, customary, and reasonable"; for the same reasons, the plans typically pay hospitals on the basis of the costs of the care they render or on the basis of their charges for that care. Insurance effectively eliminates price competition.

Our present insurance system, then, reduces competition and masks the costs of health care. Health services may conceivably cost most consumers more than they would be willing to pay if they had the money in their own pockets and were consciously choosing between health care and other goods. If this is the case, the system does not serve the best interests of most people—in other words, does not serve social utility. Yet the system still contains inequities. For example, it is estimated that only about a third of persons below the federal poverty line are covered by Medicaid.

The practical problem that confronts us, therefore, is to eliminate the residual unfairness of our health care system without causing too great a utility loss through rising prices. The importance of balancing these considerations is heightened by the expectation of further demographic aging of the population and new costly breakthroughs in medicine. Fairness itself can be imperiled if we do not heed the problem of costs: excessive federal spending on health care can channel funds away from other public needs, such as education, whose satisfaction, as much as health care, is a matter of fairness.

Perfect solutions to the conflict between fairness and cost control are hard to come by. In the economical state-run British system, controls on doctors and patients are more extensive than would be tolerated in the United States. Other Western European countries, such as France and Germany, basically provide insurance for fee-for-service medicine and have cost problems comparable to our own. In the United States, attempts to control costs through regulation have had little impact, and regulations that do succeed in controlling costs are themselves problematic. For is it really a good idea to restrict the services that patients can receive from doctors? Might this not frustrate important patient preferences? Might it not impede medical progress?

What we need is a system that has the flexibility of the private market in responding to consumer needs and

preferences, that stimulates cost-consciousness as the market does, yet guarantees an acceptable level of care for everyone in a way that the market cannot in a society characterized by large differences in income and wealth. How can this be achieved?

Solution Proposed

One promising solution is a system providing universal health insurance through vouchers for the poor and "refundable tax credits" for the non-poor, combined with measures to stimulate private competition among health insurance plans. Such a proposal has been offered by Alain Enthoven.

What we need is a system that has the flexibility of the private market in responding to consumer needs and preferences, that stimulates cost-consciousness as the market does, yet guarantees an acceptable level of care for everyone in a way that the market cannot in a society characterized by large differences in income and wealth. How can this be achieved?

Under the voucher portion of the system, the government pays for the cost of a private insurance policy selected by the poor person, covering certain stipulated essentials of health care (inpatient and outpatient hospital services, emergency health services, catastrophic insurance, and so on). To preserve work incentives, the voucher would vary with income, gradually declining as income rises. Medicare would continue, as a bow to political realities, and those currently covered would be able to retain their fee-for-service insurance. But Medicare insurees would also be allowed to receive average annual Medicare payments in a lump sum to be applied to the purchase of a private insurance policy. This will provide insurees with incentives to seek comprehensive care from prepaid group practices, which in general have proven more economical than the dominant fee-for-service medical sector. Enthoven expects that eventually it will be possible to abolish the fee-for-service element of Medicare and to give all entrants into the Medicare system a lump sum with which to buy the insurance of their choice.

Under the "refundable tax credit" portion of the system, a flat sum is deducted from the taxpayer's tax liability. It is "refundable" in this sense: if your tax liability is lower than the amount of the tax credit, the government will pay you the difference. The tax credit is a claim you have on the government if you buy health insurance (or if an employer buys it for you), and the claim can be settled by a refund. The tax credit would cover 60 percent of the cost of a minimum health insurance policy. Employees would be permitted to negotiate with their employers for part or the whole cost of such a policy, or of a more extensive policy. If the policy is

paid for by the employer, employees would receive their tax credit from the government in the form of cash.

Employer contributions under the Enthoven plan would differ in two important ways from present contributions. First, the employee has an incentive to choose a less expensive policy, since the amount of the employer contribution will be the same, whatever policy is chosen. Today the employer often pays the whole premium for any policy the employer chooses. Second, the employer contribution will no longer be tax-free, as it is now; it will count as taxable income for the employee. Once employer payments for health insurance become taxable employee income, the true cost of health insurance will become more apparent to the employee—who may therefore urge his or her union to negotiate for less health insurance and more wages.

The plan, then, allows for a variety of insurance policies suited to different tastes and permitting different forms of medical practice. Since the system is structured to provide incentives for choosing less expensive programs, the most economical insurance packages will be favored. Enthoven anticipates that the motor of the system will be the prepaid group practice. In such practices, groups of doctors work together at the same location to provide whatever health care is needed by persons voluntarily enrolled with the group. Since the same organization provides both the insurance and all insured services, costs are kept down. But the fee-for-service sector will make a competitive response, looking for new ways of lowering the costs of fee-for-service medicine.

It remains possible that American unions and employers would still prefer to establish comprehensive coverage of the highest-priced fee-for-service health care, even if such a proposal became law. In that case, we would know that Americans like the kind of health care they have when its costs are no longer hidden. It would be worthwhile to find that out. But in fact it is likely that the American health system would respond to the new structure of incentives.

This proposal, then, has the following strengths. It provides everyone with a modicum of health care. Thus it recognizes that some health needs are objective and vital and that health care is an important component in equality of opportunity. It also recognizes that much illness and injury is simply bad luck, which should not be allowed to burden the individual financially like an item of voluntary consumption. On the other hand, it permits some differences in personal investment in health insurance, thus acknowledging that much health care ministers to less urgent needs, perhaps even to tastes rather than to needs; further, that the efficacy of many health services is disputable. It promises to contain costs by restructuring the system of incentives to encourage consumers to economize in purchasing health care. Finally, it works by incentives, not by regulations; thus it can be resisted by the American people if their concrete preferences and values run counter to it.

Altogether, not a bad idea.

Third Thursday Briefing

The crucial issues on the public agenda involve more than the choice between alternative policies. They involve disagreements over the very terms in which problems are formulated. As a stimulus to thoughtful debate on public policy choices, the Center for Philosophy and Public Policy and the School of Public Affairs at the University of Maryland cosponsor a series of monthly Third Thursday Briefings on topics of current concern. These briefings, held on Capitol Hill from February to June, bring together academic theorists and policymakers to discuss the ethical or conceptual foundations as well as the policy implications of central policy decisions. From time to time, QQ will feature highlights from these briefings.

Two Cheers for Quotas—And a Resounding Boo

The February Third Thursday Briefing took as its topic "Two Cheers for Quotas: The Moral Basis of Affirmative Action." Robert K. Fullinwider, Associate Director of the Center for Philosophy and Public Policy, argued against an inviolable right to equal opportunity that would rule out programs of preferential affirmative action. He concluded that affirmative action should be judged primarily in terms of its progress toward furthering urgent social goals. "Quotas and preferences are not invariably ruled out by a principle of equal opportunity: they must stand or fall on their success or failure at producing desirable results at acceptable costs. Quotas can force speedy integration of blacks and women into roles, positions, and occupations from which they have been previously excluded, and they can do this sometimes at acceptable levels of cost. Thus, sometimes they are fully justified."

In what follows, Charles Cooper, Special Assistant to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, delivers his response.

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In *Brown v. Board of Education* the Supreme Court ended the 58-year reign of the shameful "separate but equal" doctrine, acknowledging with eloquent simplicity the primacy of the constitutional right at issue: "At stake," said a unanimous Court, "is the personal interest of the plaintiffs in admission to public schools . . . on a nondiscriminatory basis." *Brown* spurred a judicial and legislative quest to condemn racial discrimination, both public and private, in virtually every aspect of American life. Until recently, courts since *Brown* have consistently denounced distinctions based on race as being, in Chief Justice Stone's words, "by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Congress has likewise made clear its abhorrence of racial discrimination,

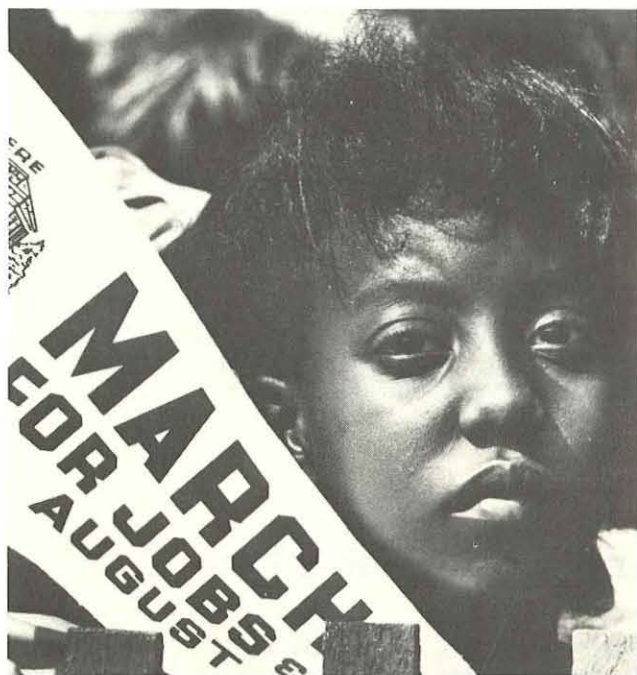
enacting the Civil Rights Acts of 1957, 1960 and 1964, the Voting Rights Act of 1965, and the Civil Rights Act of 1968, to name just a few of the milestones in this area. I submit that these judicial and legislative pronouncements express a national consensus that racial discrimination is wrong—morally repugnant—and ought not to be tolerated in any form.

Professor Fullinwider, however, argues that distinctions based on race—indeed, racial quotas—are not ruled out on moral principle. I think this argument retreats from the high ground staked out, at long last, by the Supreme Court in the *Brown* case. I think that distinctions based on race, including racial quotas, are ruled out on grounds of moral principle and that the contrary argument put here today is flawed in that it fails correctly to identify the moral principle with which racial quotas are irreconcilably inconsistent.

It is true that selection of a less qualified applicant because of race or gender violates a right belonging to the better qualified applicant. The right violated, however, is not, as Professor Fullinwider suggests, the right to be selected on the basis of merit. As he observes, there is no such right. Rather, the right violated by racial preferences is the right not to be rejected on the basis of race.

When I say that there is no right to be selected on the basis of merit, I mean that there is no law—constitutional or statutory—prohibiting an employer from selecting a less qualified candidate over a better qualified candidate. This is not to say, of course, that there is no principle commending merit selection. Clearly there is. An important element of the American ethos is an expectation that hard work will be followed by success and reward—that we can better ourselves by making ourselves better.

Professor Fullinwider argues that the merit selection principle is defeated by veterans' preferences as surely as it is by racial preferences, and that few people find veterans' preferences morally offensive. True. And the



National Archives Photo 306-SS-70-61-32

"I woke up this morning with my mind set on freedom . . ."

merit selection principle is also sometimes thwarted by the idiosyncrasies of the particular employer, or by a simple mistake in assessing the qualifications of individual candidates. When the merit selection principle is defeated, it is unfortunate, wrong, and unfair, but it is not a denial of rights.

There is, however, a personal right not to be rejected or otherwise discriminated against on the basis of race. And this right suggests a strong moral principle: namely, that it is always wrong—indeed, it is odious—to distinguish among persons on the basis of race. That the nondiscrimination principle and the merit selection principle are both defeated by employment and admissions quotas is coincidental. The two principles are not coextensive; the nondiscrimination principle is vastly broader as is demonstrated by the host of constitutional and statutory prohibitions on types of racial discrimination having nothing whatever to do with individual industry and ability.

For example, the Fifteenth Amendment prohibits denying the right to vote on account of race, but not because such a denial would violate the merit selection principle. Unlike the areas of employment and admission to educational opportunities, participation in the democratic process is not regulated through a competition of qualifications. Indeed, as previously noted, the principle at stake, and vindicated, in *Brown* was admission of children to public schools on a racially nondiscriminatory basis. Individual qualifications and merit were wholly beside the point in that case.

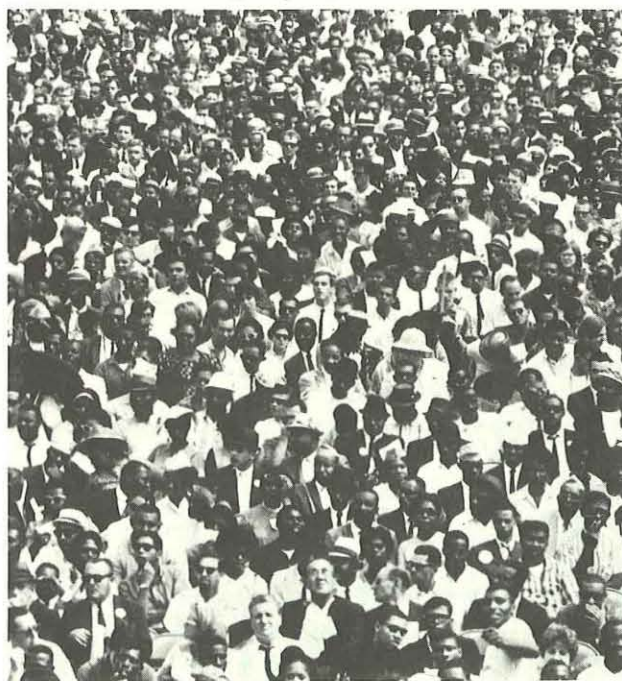
It is true that racial quotas in employment violate the principle of merit selection, and in a nation in which men and women rightfully expect success to flow from

talent and hard work, this is something we should rarely do. But racial quotas also violate a larger principle—the principle of non-discrimination—and in a nation dedicated to racial equality, this is something we should never do. For to do so is to deny the moral imperative underlying our national commitment to racial justice.

Professor Fullinwider's defense of quotas urges us to train our sights not on the trees, but on the forest. He argues that the objectionable aspect of preferences, their unfairness to individuals, is overcome if they serve some societal goal of major national importance. The goal suggested in defense of preference schemes is "speeding up integration," which will in turn dispel stereotypical perceptions and "prime the pump" for further upward and lateral progress by disadvantaged minorities.

Saying that integration is America's goal in the area of race relations is on the order of saying that acquisition of a trophy is the goal of the teams in the Superbowl. It confuses the goal with its reward. Obviously, the goal of the contestants in the Superbowl is to win, and a trophy is their reward. Similarly, our national goal in the matter of race is to make it irrelevant. Almost twenty years ago, Dr. Martin Luther King dreamed aloud of a nation in which his children would "not be judged by the color of their skin, but by the content of their character." This is, I submit, the nation's goal, and integration will reward achievement of that goal. So too will follow the subsidiary rewards such as the explosion of stereotypical perceptions and accelerated upward and lateral progress of minorities. But we must not allow our impatience to reap the rewards of realizing the goal of the non-discrimination principle to lead us to deny and to sacrifice the principle itself.

March on Washington for Jobs and Freedom, 1963



National Archives Photo 306-SS-53-4186

The Gains and Pains of Assimilation: Discussion Review

Hunger for Memory: The Education of Richard Rodriguez. An Autobiography. Boston: David R. Godine, 1982. 195 pp. \$13.95.

"Once upon a time, I was a 'socially disadvantaged' child. An enchantedly happy child. Mine was a childhood of intense family closeness. And extreme public alienation.

"Thirty years later I write this book as a middle-class American man. Assimilated."

Richard Rodriguez's memoir is not just autobiography. It is also an attack on bilingual education and affirmative action, and has already aroused controversy as a result. But Rodriguez's opposition to these programs grows out of deeper and broader concerns: what it means to be an American, the nature of assimilation, the role of language in personal identity, and the distinction between our public and private selves.

Rodriguez is the American-born son of Mexican immigrants. He was educated, strictly and well, by the nuns of the Irish Catholic parochial schools of Sacramento, California. He was by his own account the too-good student: passive, eager to please, uncritically devouring the classics his teachers would mention so that he could check them off his list. College at Stanford, graduate school at Berkeley and Columbia, a dissertation in English Renaissance literature. (Assimilated: not Spanish or Latin American literature, not something more "relevant" to his "situation," like history or sociology.)

In many ways Rodriguez's is the typical child-of-immigrants-makes-good story. His parents remained foreign, essentially Mexican, but worked hard and ambitiously for their children's American success. "Your parents must be very proud of you," people said to him when he began to excel in school. But like many children of immigrants, he was not proud of them; he felt shame at their "alienness," their unease in American society, their lack of education. In time, however (the realization dawning when, lonely in the British Museum, he was writing his dissertation), he came to long for the world that he, now an American, had left behind.

But Rodriguez's longing to be part again of his parents' world is not, he says, the search (recently become familiar) for his exotic ethnic roots. "Aztec ruins hold no special interest for me. I do not search Mexican graveyards for ties to unnamable ancestors." What moves him is, rather, a more universal urge to recapture the intimacy remembered (or so it seems) from childhood. Rodriguez's longing is the more intense because

Spanish, the language of his childhood, so obviously differs from the English of his schooling, his adulthood, and his public self. But the difference, he thinks, is more one of degree than of kind. "Intimacy is not created by a particular language; it is created by intimates . . . It is not possible for a child—any child—ever to use his family's language in school." "Intimacy cannot be held" by refusing to give up one's first language, because finally intimacy has little to do with language—more to do with sound than with sense.

Does Rodriguez think, then, that supporters of bilingual education are vainly in search of lost intimacy? He doesn't quite say so, but this psychoanalytic reduction of their motives is suggested. Surely bilingualists have better reasons than this for their view. Basically there seem to be two. One is that bilingual education eases the transition to a new culture; the other is that it preserves the old, or some part of it. Now, it may be misguided to support bilingualism as a means of adjusting to a new society (the more so the younger the child), but if it is, the mistake is pedagogical, and does not, as Rodriguez claims, constitute "scorn" for the "value and necessity of assimilation."

To the other justification for bilingual education—that it preserves the immigrant's heritage—Rodriguez's charge is at least relevant. But it rests on the premise that in fact assimilation is valuable and necessary. In support of this Rodriguez has some interesting, albeit obscure, things to say. Assimilation, he believes, is essential for the achievement of "full public individuality." In private, separateness from the crowd is a prerequisite for individuality: those who love us think we are unique. But in public, individuality is achieved only by those who are in some sense members of the crowd. "Only when I was able to think of myself as an American, no longer an alien in *gringo* society, could I seek the rights and opportunities necessary for full public individuality." Thus the immigrant must leave his native culture—and part of himself—behind if he is to succeed in the new society. In the attempt to preserve or recapture roots, bilingualists (as well as promoters of Black English) perpetuate the class divisions they ostensibly wish to eradicate. The problem is not, as some radicals claim, that "ghetto schools 'oppress' students by trying to mold them, stifling native characteristics," but rather, says Rodriguez, the opposite: not that these schools change students too much, but that they don't change them enough.

This argument against bilingualism is most effective

when directed to Rodriguez's particular target. That is because for the most part native Spanish-speakers in the United States, like speakers of Black English, belong to a disadvantaged class; their culture and their class are associated in such a way that the latter probably can be overcome only at the price of the former. (It is another question to what extent the connection between the two is extrinsic and accidental, and to what extent features of the culture actually work against mobility or are incompatible with middle class ways.) But this connection need not hold in every case of preserving a culture within a culture. Jews and Chinese in many places, East Indians in Africa have achieved middle-

"Intimacy is not created by a particular language; it is created by intimates . . . It is not possible for a child—any child—ever to use his family's language in school."

class status in alien societies without entirely surrendering their heritage. They have not, of course, achieved completely the standing of members of the dominant culture. But at least in part, this is just to say that they haven't assimilated. Is this bad? Whether we think so depends partly on whether we think their separation is voluntary or is imposed by others. Have they achieved "full public individuality"? Whether they have, and what exactly this means, requires a much fuller investigation than Rodriguez provides.

What value, then, should we place on assimilation? "Assimilate" means to make similar; it means to transform what was into something different. Assimilation by its nature changes who we are, forges a new identity. This has, of course, two sides: something is gained, and something is lost. Rodriguez eloquently records the loss; but the sorrow he expresses comes of awareness of the distance between the old self and the new, and the growth and self-reflection this signifies are goods that, following Socrates, few of us would trade away. So paradoxically we long for something we would not choose if we could.

The tension between assimilation's gains and losses emerges sharply with respect to cultures strongly associated with deprivation or oppression. Insofar as people's lives are defined by deprivation and poverty, by seeking to eradicate these conditions we seem to say their lives—that is, the way they now live their lives—are not worth preserving. Is it possible to advocate fundamental social change while at the same time valuing lives as they are now lived, unchanged? The obvious reply is that people are defined not just by class, ethnicity, and the like; they are more than this. But this answer is not entirely satisfactory, both because so much of what we are is determined by class and its accoutrements that it's hard to know what's left when these are stripped away, and also because much of what we value is connected with these and would probably disappear if class distinctions did. We express these

tensions when simultaneously we lament the blandness of American culture and seek to widen access to it, when we rejoice in the variety and depth of other cultures and endorse measures that tend to destroy them.

Rodriguez's opposition to affirmative action is less persuasive than his rejection of bilingualism. His basic objection is not, as one might have expected, that affirmative action programs are demeaning (especially to people like him who would do well even without them), but that they don't help those who most need it. Affirmative action gave Rodriguez an advantage in the academic job market over white applicants with essentially similar backgrounds; it didn't help truly disadvantaged Hispanics. Of course it didn't; the truly disadvantaged don't often apply to the Yale English department (as Rodriguez did). But this is not a good argument against affirmative action. First of all, a particular black or Hispanic may be privileged compared to other blacks or Hispanics but still suffer disadvantages compared to his WASP competitors. He or she might, e.g., encounter discrimination (perhaps residual and unconscious), and affirmative action programs counteract this. But such programs may be justified in other ways as well; they may speed integration or allow members of disadvantaged groups to become role models. These reasons do not imply that the particular individuals benefited are themselves disadvantaged or deserve special treatment. Finally, affirmative action programs exist not only for elite academic positions but also for less privileged ones, like construction and clerical jobs; in such cases they will benefit those lower down on the economic ladder.

The tension between assimilation's gains and losses emerges sharply with respect to cultures strongly associated with deprivation or oppression. Insofar as people's lives are defined by deprivation and poverty, by seeking to eradicate these conditions we seem to say that their lives—that is, the way they now live their lives—are not worth preserving.

It would be a mistake to conclude from these criticisms that *Hunger for Memory* is not a good book. Its merits, moreover, are not merely literary. Rodriguez is persuasive, though less by argument than by description of his own experience in his own mournful voice. I do not mean this as a criticism. This book is not a substitute for empirical research or sustained argument, but it serves an equally crucial and complementary purpose, by reminding scholars and policymakers of the true subject of their work, the experiences of real people. For this, there is nothing better than getting as close as you can to the pure subjective feel of becoming a middle-class American.

—Judith Lichtenberg

Responses

Counting Clean Air's Costs

I found the article "The Costs of Clean Air: How Much Should They Count?" (QQ, vol. 2, no. 1) to be a good summary of the issues. However, the article could have carried the argument one step further. It assumed that the present rate and pattern of production is a given and therefore the benefits and costs to be assessed are the benefits of clean air and the costs of cleaning up the air. This is one way of viewing the problem.

However, one can also assume that a certain level of clean air is a given and then one would assess the benefits and costs of various economic products with the

fore this would argue for the maintenance of air quality standards that would minimize such damages.

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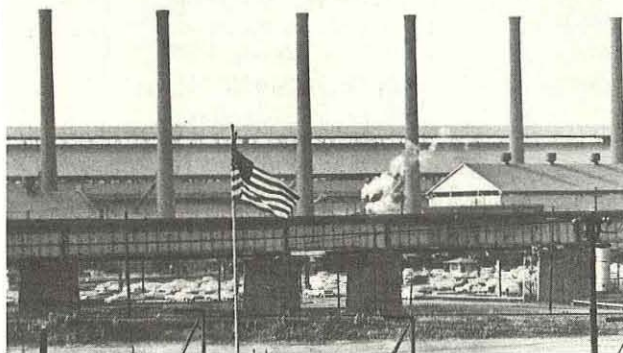
"The Costs of Clean Air: How Much Should They Count?" contains a common misperception concerning the operation of the regulatory process for limiting human exposure to ambient levels of certain substances in the general environment. In discussing the role that cost considerations ought to be permitted to play in setting National Ambient Air Quality Standards (NAAQS), the article characterized the establishment of the NAAQS as a *goal formation* process and, by impli-



U.S. Steel, Birmingham, Al., before

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U.S. Steel, Birmingham, Al., after

costs of maintaining this air quality standard internalized. Therefore the costs to be assessed are not the costs of clean air, but the costs of various technological and industrial production activities. Many things that are technologically feasible are not done because the costs are too high. This might be true of other technologies if all costs were internalized. Such an assessment would encourage those technologies that satisfy human needs at the lowest cost (rather than ignoring certain costs because they are borne by society at large). This would allow the economic system to work most efficiently because it would be evaluating economic products.

If a particular agreed-upon air quality standard damages the health or life quality of some individuals in a society in order to produce economic benefits for others, then simple justice would call for some recompense. Either those benefiting from the technology that deteriorates air quality should pay damages or society as a whole should be willing to pay for those damages. Of course it is often difficult to be certain of the identity of those who have been damaged and sometimes even of those responsible for air quality deterioration. There-

cation, the establishment of specific emissions standards as a *goal implementation* process: "Defenders of the Clean Air Act in its current form argue that we should first form our political ideals, first set our standards for individual and community health and safety, and introduce considerations of cost only at the stage of implementation."

Why is this a misperception? Because it does not accurately reflect the integral role that the NAAQS play in structuring the process for regulating air pollution and in constraining the discretion that may be exercised in all subsequent stages. This is critical, for if the NAAQS were indeed merely "political ideals" or "common goals," then I might have much less objection to structuring the process by which they are established in order to ensure that certain values—such as the cost they will impose upon society—are not given undue weight. (I reject the notion that cost considerations either can or should be totally excluded from setting basic environmental standards such as the NAAQS even if such standards were recast to make them more nearly correspond to "goals.")

In fact, the establishment of an NAAQS for a particular pollutant determines the maximum level of the pollutant that will be permitted within any of the hundreds of air quality regions within the country by a specific date. In establishing specific emissions standards for individual major sources, or in developing state implementation plans which (at least until very recently) specified the precise level of emissions for hundreds or even thousands of individual point sources within a state and the precise techniques for their control, regulators are not free to treat the NAAQS as "goals." They are binding standards that, if not met, can subject the violator (an individual polluter or state) to serious financial penalties. In the "implementation phase," regulators can indeed "consider costs," but only in a very narrow sense. They can determine if the costs of meeting the NAAQS by the particular techniques specified will so incapacitate an industry that its financial viability is threatened. Otherwise, the plans must go forward.

"Costs should not be the determining factor in setting NAAQS. The standards should not be required to meet a rigid cost-benefit test. But costs do deserve to be explicitly considered. It is both impractical and undesirable to do otherwise."

What is missing from this process? Any meaningful ability at any stage within it to set priorities among pollutants or among the various media into which they can be discharged; to debate the value of pollution abatement versus other health-related social goals; or to consider the implications of shifting resources from programs directly affecting human health and welfare to those whose effect is much less direct (income maintenance programs, for example.)

Costs should not be the determining factor in setting NAAQS. The standards should not be required to meet a rigid cost-benefit test. But costs do deserve to be explicitly considered. It is both impractical and undesirable to do otherwise.

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Evolution and Atheism

"The Case Against Creationism" by Professor Allen Stairs (QQ, vol. 2, no. 2) is the first treatment I have seen by an academic that gets anywhere near the real issue. He still doesn't quite reach it, however. Prof. Stairs quotes a creationist, Duane Gish, on the central

point: "Since evolution is a mechanistic, atheistic theory, it is a basic dogma of agnosticism, humanism, and atheism in general." This statement sounds hopelessly confused to Prof. Stairs, so he doesn't address it. Instead, he admits only that science may conflict with certain factual claims or certain "personal moral issues" raised by some (minority) religious groups. The idea that *science itself is atheistic*—that is, Western science as it has been defined since the 18th century—apparently strikes him as too philosophically naive to be taken seriously. Nevertheless this is precisely the issue; and many people—enough to pass legislation in many states—are likely to agree with the Fundamentalists that the attempt to account for all natural phenomena *without God* is obviously atheistic. When this attempt is extended to the study of man himself, the threat to moral values becomes even clearer. If philosophers think these conclusions do not follow, they had better start persuading. . . .

"Secular humanism" is not neutral, but an attempt to show that *religion is unnecessary* for moral behavior, in direct contradiction to the Bible. And Western science . . . is trying to show that nature can be fully explained without appealing to God at any point, even at the beginning. Religion is a matter of individual subjective feeling. It can safely be omitted from the curriculum, and left to the family. It is an "optional extra." If the Bible is a true guide to life, then this attitude is not neutral, but anti-religious. . . .

My own position is that creationism should be taught in the public schools, but in philosophy class rather than biology. The arguments for and against a First Cause, teleology in nature, consciousness or spirit as super-

"My own position is that creationism should be taught in the public schools, but in philosophy class rather than biology."

natural, life after death, and various ethical theories (both religious and secular) should all be discussed as objectively as possible, ignoring the howls of parents. . . . Whether the course is really "objective" and whether it belongs in the public schools should also be discussed in the course. Such a course is long overdue in our high schools, and it should be required for all students.

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