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To Tell or Not to Tell: Conflicts about Confidentiality

To make its research readily 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.

In this issue:

The duty to keep secrets is a cornerstone of many codes of professional ethics and a charge often placed upon workers in private industry and government. How do we balance the duty of confidentiality against the grave harms that can come from keeping secrets that instead ought to be told? p. 1

Animal liberationists and environmentalists are often taken to be allies, each supporting the other's cause. Nothing could be further from the truth. p. 6

Ways to meet the growing need for organ transplants — and why a commercial market for buying and selling human organs should not be one of them. p. 9

Three arguments for why gays should be given the same protections the Civil Rights Act currently affords racial, ethnic, gender, and religious classes. p. 12

An October conference on the foundations of civil rights policy is announced. p. 15

“Three can keep a secret,” Benjamin Franklin once wrote, “if two of them are dead.” The urge to tell secrets is a powerful one, and pervasive practices of confidentiality have accordingly developed to keep it in check. The duty to keep secrets is a principal part of what friends owe one another, a cornerstone of most codes of professional ethics, and a charge placed upon workers and citizens in the name of loyalty to their employer and their country.

Philosopher Bruce Landesman of the University of Utah suggests that our ordinary duties of confidentiality are based in part on respect for the need all of us have at one time or another both to express information to others and to keep control over how that information is subsequently used. We need the reaction and response of another person — and so share a secret — but also need to retain a proprietary hold on the secret — and so swear our audience to confidentiality. Sissela Bok, writing in *Secrets: On the Ethics of Concealment and Revelation*, likewise justifies confidentiality in terms of our respect for individuals as capable of both *having* and *sharing* secrets, respect for both personal autonomy and interpersonal intimacy. Furthermore, once a promise of confidentiality is given, the duty to keep promises provides an additional reason not to tell.

Some secrets ought not to be kept, however. One has a *prima facie* duty to reveal certain sorts of information to the proper authorities: information about crimes committed or contemplated, for example, or concerning impending harm to innocent third parties. The obligation to keep a secret may have to be balanced against the obligation, in certain circumstances, to tell a secret, and Landesman argues that appeals to confidentiality provide no easy way

out of such moral dilemmas. The confidante "remains an autonomous moral being and thus free to deliberate about what to do with the information once it has been received. That it has been revealed in confidence is a powerful reason for keeping it secret, but cannot settle the issue. The hearer cannot remain a moral agent without retaining the right to consider the information in light of other factors that may, all things considered, provide even stronger reasons for revealing it."

This kind of moral conflict is heightened when the ordinary duty of confidentiality is buttressed by additional professionally grounded obligations to keep secrets. Doctors and lawyers, for example, are bound by the canons of their profession not to reveal the confidences of patients and clients. But when these confidences concern threats to third parties or to the public welfare, the professional duty of confidentiality clashes with the ordinary moral duty not to stand by as serious wrongs are committed. Employees are often under a special obligation to guard company secrets. But when these secrets threaten the health and safety of consumers or workers, private enterprise warrants public concern, and employees have to wrestle with the difficult decision of whether — and how loudly — to blow the whistle. Those who work in national defense matters face these dilemmas in their most extreme form. A certain degree of secrecy is essential for national security; but there are some secrets that can be kept only by endangering the democratic values that in the end are all that make national security matter.

What secrets should be kept? What secrets should be told? How do we balance these special duties of confidentiality against the possibly grave harms that a breach of confidentiality might avert?

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Client Confidentiality

Many codes of professional ethics are built around a principle of confidentiality. Doctors, lawyers, psychiatrists, social workers, accountants, priests, all assure those who come to them for assistance that their communications will be kept in confidence. Making good on that assurance is a matter both of professional obligation and professional pride. The confidentiality promised clients is not absolute, however, and there are broader and narrower restrictions on what falls within its scope: lawyers, according to the ABA's new code of ethics, are permitted — though not required — to reveal a client's intention to commit a criminal act resulting in imminent

death; psychiatrists have been required to reveal a serious danger of violence posed by their patients. But even given such restrictions, professionals bound by a duty of confidentiality may be obligated to keep secrets that they would otherwise be obligated to disclose.

What considerations justify a professional obligation of confidentiality and dictate its appropriate scope? Practitioners in many professions argue that success in achieving the underlying goal of their profession depends on how forthcoming the client is with her confidences, which in turn depends on the professional's promise of confiden-

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tiality. In evaluating the case for confidentiality in any profession, then, three questions need to be answered: (1) how important is the purpose to be achieved by that profession? (2) to achieve this purpose is it necessary that the client tell all to the professional? and (3) how strict a promise of confidentiality is needed in order for the client to feel free to tell all?

Psychiatrists claim, for example, that psychic healing takes place when their patients' darkest secrets are brought to the light of conscious rational scrutiny. Confidentiality is promised so that no hidden guilt or trauma will be withheld. But how extensive need such a promise be? Bok points out that "no evidence suggests that therapy will be imperilled if patients know that therapists have the duty to reveal . . . plans of violence." Some patients even hope that their plans will be thwarted.

Nor does the end achieved by psychotherapy seem weighty enough to justify the failure to breach confidentiality where serious harms to third parties are at stake. Thus the California Supreme Court held in *Tarasoff v. The Regents of the University of California* that the psychotherapists whose patient murdered Tatiana Tarasoff breached a duty overriding that of confidentiality in failing to warn the victim of his violent threats against her. The "public interest in effective treatment of mental illness" is outweighed by "the public interest in safety from violent assault," the court concluded. "The protective privilege ends where the public peril begins."

The end sought by the legal profession, however, may seem to be a weightier one: justice for all. If lawyers can make a case that confidentiality is necessary to secure this end, the duty of confidentiality within the legal profession will have a stronger justification. Accordingly, lawyers argue that they cannot represent their clients effectively if any relevant information is withheld from them. And in our highly complex and complicated legal system, justice requires that all parties to a proceeding be represented ef-

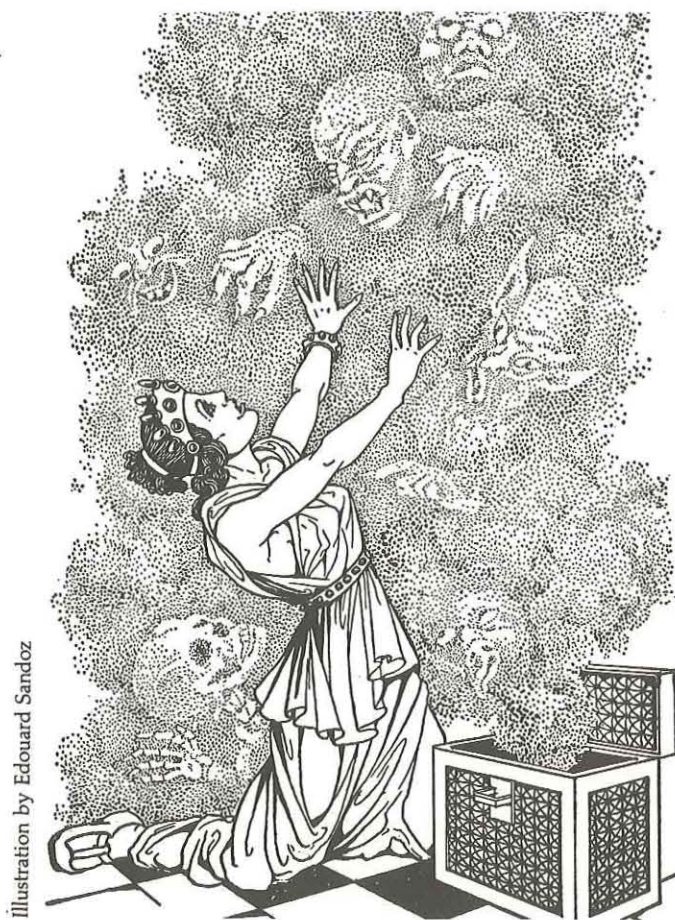


Illustration by Edouard Sandoz

From *Greek Myths*, by Olivia Coolidge, © 1949 by Olivia E. Coolidge

"Pandora's box . . . is one of the many tales of calamities befalling those who uncover what is concealed. . . ." — Bok

fectively by counsel. Confidentiality is, then, a means to justice.

Or is it? Jeremy Bentham objected in 1827 that justice in criminal cases is not in fact served by holding lawyers to a pledge of confidentiality. Justice is done when the innocent are acquitted and the guilty are convicted, and confidentiality assists neither goal. The innocent have no reason to fear that disclosure of their secrets will lead to conviction; the guilty have no right to hope that concealment of their secrets will lead to acquittal.

Bentham's argument faces two challenges. The first questions the assumption that innocent clients will be able to tell all even if no promise of confidentiality is given. Innocent clients may not be legally sophisticated enough to be aware that they are innocent. Monroe Freedman, author of *Lawyers' Ethics in an Adversary System*, gives the example of a battered wife who shoots her husband in self-defense: she may falsely believe herself guilty of murder and so deny the shooting altogether — thus jeopardizing her lawyer's best defense strategy. Such extremely ignorant and timid clients are likely to be rare, however, and it can be argued that confidentiality protects this very special subset of innocent clients at the cost of letting a far greater number of guilty clients go free.

A deeper challenge to Bentham's argument denies that the fundamental goal of providing defendants with legal representation is to maximize the number of correct verdicts rendered. More important even than justice is respect for individual rights and human dignity. Freedman writes, "Before we will permit the state to deprive anyone of life, liberty, or property . . . we require that certain processes be duly followed which ensure regard for the dignity of the individual, irrespective of the impact of those processes upon the determination of truth." No defendant, innocent or guilty, is required to stand alone against a hostile world without a legal advocate as his champion.

But the question now arises: how much confidentiality must be promised in order to ensure respect for every client's human dignity? Freedman argues that a client who cannot trust his lawyer to keep confidences can enjoy his right to effective counsel only at the cost of jeopardizing his right against self-incrimination. For if he tells all, he risks incriminating himself through his own lawyer's testimony against him. But Alan Donagan, professor of philosophy at the California Institute of Technology, objects that respect for human dignity cannot license a sweeping duty of silence. It is true that a society that respects human dignity will recognize a legal right against self-incrimination. "But a legal right, even one that society is morally obliged to grant, is not necessarily a moral right. A murderer has no moral right whatever to escape incrimination by concealing the victim's body, although it would be wrong to compel him to reveal where it is." And what the defendant has no moral right to do, he has no moral right to enlist professional help in doing — and no one has a moral right to provide that help.

Proposals to weaken the scope of confidentiality have been forcefully resisted by the legal profession, however. Take away the right of confidentiality in the name of social utility, caution many lawyers, and you open the way to totalitarianism. (Under Nazism, lawyers were authorized to reveal client confidences on behalf of goals supported by "healthy folk feeling.") As a society we have so far been willing to err on the side of respecting the con-



Illustration by Gordon Kibbee

From *Once There Was and Twice There Wasn't* © 1968 by Barbara K. Walker

In a Turkish fairy tale, the hero loses his magic donkey by forgetting the genie's warning: "Part with your head, but not your secret."

fidences of the accused individual, and to pay the costs of providing that respect.

Individuals vs. Groups

The arguments we have been considering so far concern obligations of confidentiality owed to individuals — both simply as persons and as clients, patients, and so on. Sissela Bok takes as one of our bedrock assumptions that individuals should have a certain amount of control over

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how private to keep their own private lives. "Without a premise supporting a measure of individual control over [the degree of secrecy and openness about] personal matters, it would be impossible to preserve the indispensable respect for identity, plans, action, and belongings that all of us need and should legitimately be able to claim." This presumption of the legitimacy of individual control underlies our ordinary moral duties of confidentiality and lends additional plausibility to professional duties of confidentiality owed to vulnerable human beings in need of assistance. It is an argument based on human dignity.

But when confidentiality is instead owed to a group that wields any considerable amount of power over individual lives, Bok believes that the presumption shifts. "When those who exercise power of [this kind] claim control over secrecy and openness, it is up to them to show why giving them such control is necessary and what kinds of safeguards they propose."

What reasons support practices of collective secrecy and place upon individuals an obligation to keep group secrets? In general, it would be difficult for most groups to function cohesively if members felt no bonds of loyalty to one another to keep group secrets. Within specific group contexts, additional rationales for secrecy apply, which generate corresponding obligations of confidentiality.

Corporations often ask their employees to promise not to reveal trade formulas to competitors — without some such protection, it is argued, businesses would have no incentive to invest their resources in technological innovation. Some measure of secrecy is justified in the administrative and bureaucratic context as well. "If administrators had to do everything in the open," Bok notes, "they might be forced to express only safe and uncontroversial views, and thus to bypass creative or still tentative ideas." It is neither fair nor fruitful to expose early stages of planning to the glare of publicity. The case for military secrecy is particularly powerful, since every state requires considerable secrecy in order to defend itself against enemy forces, and so to ensure its very survival.

There is thus a battery of reasons supporting some ex-

tent of collective, as well as individual, confidentiality. But collective confidentiality can derive no support from most of the arguments that proved persuasive at the individual level. David Luban, Research Associate at the Center for Philosophy and Public Policy, argues, for example, that lawyers who represent corporate clients cannot justify keeping shady secrets by appeal to the human dignity argument. "A corporation does not have human dignity, because it is not human. It is an abstract entity which is considered a person only in a technical sense. Corporate personality is a legal fiction." Nor will it work to argue that while the corporation itself is not human, the particular employees who manage its affairs *are*. Such maneuvers, Luban charges, "attempt to blur the distinction between corporate entities and the people who work for them; to transfer the human individuality of the latter to the former. . . . We are rightly skeptical when Madison Avenue describes a mammoth multinational as 'People building widgets to help people.'"

Bok provides a particularly egregious example of the fallacious transposition of the confidentiality rightly owed to individuals to the collective level. "Consider . . . the prolonged collaboration between asbestos manufacturers and company physicians to conceal the risks from exposure to asbestos dust. These risks were kept secret . . . even from those workers found in medical checkups to be in the early stages of asbestos-induced disease. When a reporter approached a physician associated with the concealment as consultant for a large manufacturer, the physician turned down his request for an interview on grounds of confidentiality owed as a matter of 'the patient's rights,' and explained, when the astonished reporter inquired who the 'patient' was, that it was the *company*."

Employees entrusted with knowledge of corporate practices that endanger workers' or consumers' health or pollute the environment may find themselves obligated to betray that trust and become whistleblowers.

Where appeals to human dignity, or patient and client rights, are inappropriate, as they are here, it is more difficult to justify keeping secrets that pose serious harms to innocent third parties. The arguments for collective secrecy and confidentiality may be persuasive enough to warrant a good amount of individual inconvenience, or even hardship, in their service. But they will not by and large be able to outweigh counter-balancing moral considerations. Employees entrusted with knowledge of corporate practices that endanger workers' or consumers' health or pollute the environment may find themselves obligated to betray that trust and become whistleblowers.

Bok cautions, however, that whistleblowing, with its destructive repercussions, is not a first resort solution to group malfeasance, nor a course to be taken lightly.

"Potential whistleblowers must first try to specify the degree to which there is genuine impropriety and consider how imminent and how serious the threat is which they perceive. [They must] consider whether the existing avenues for change within the organization have been sufficiently explored. It is disloyal to colleagues and employers, as well as a waste of time, to sound the loudest alarm first." Further, "openly accepted responsibility for blowing the whistle should . . . be preferred to the secret denunciation or the leaked rumor" to provide those accused a fair opportunity to defend themselves. But when these conditions are met, Luban concludes that employees must follow Lauren Bacall's instructions: "You know how to whistle, don't you? Just put your lips together and blow."

Military secrecy is obviously more strongly justified

norance about what should be the public's business above all else."

One striking breach of confidentiality regarding military matters in recent years was the decision of Daniel Ellsberg and Anthony Russo to give the classified Pentagon Papers to *The New York Times*, thereby exposing the record of ineptitude, deceit, and concealment that told the story of U.S. involvement in Vietnam. Bok applauds their very difficult decision: "The information about the origins and conduct of the war in Vietnam should never have been kept secret in the first place. This information was owed to the people, at home and abroad, who were bearing the costs and the suffering of the war; keeping them in the dark about the reasons for fighting the war was an abuse of secrecy. The extent of the secrecy could be justified neither on military nor administrative grounds. It



U.S. Air Force Photo

With excessive military secrecy, "citizens lose ordinary democratic checks on precisely those matters that can affect them most strongly."

than corporate or administrative secrecy. When it comes to national security, the values at stake in guarding secrecy may seem weightier than anything that can be put in the balance against them. If disclosing military secrets jeopardizes national security — or even national survival — then there is a powerful case against disclosure, even to avert some grave harm.

Too seldom noticed, however, is that secrecy can also endanger national security. Bok observes that the failure of the 1980 hostage rescue mission in Iran has been blamed on overly restrictive secrecy measures that prevented participants from coordinating plans and cooperatively reassessing those plans when conditions deteriorated.

We must also ask what all our defense efforts are supposed to be defending — presumably our system of democracy, whose highest ideal is active citizen participation in all vital issues. With excessive military secrecy, Bok holds, "citizens lose ordinary democratic checks on precisely those matters that can affect them most strongly." She doubts that "democratic processes can persist in the face of current amounts of secrecy, of public ig-

demonstrated, rather, the extraordinary danger to society that endemic secrecy represents."

Conclusion

Each of us owes respect to the secrets others confide in us, because we all recognize in ourselves the need to confide secrets in others. But obligations of confidentiality are weaker as the secrets concealed belong to large collectivities rather than lone individuals, and as concealment threatens danger to others. Here, as elsewhere in ethics, individuals may face hard choices, which no law, code, or promise can settle for them.

The views of Bruce Landesman and Alan Donagan are taken from their chapters in The Good Lawyer: Lawyers' Roles and Lawyers' Ethics, edited by David Luban, Maryland Studies in Public Philosophy (Totowa, N.J.: Rowman and Allanheld, 1984); Sissela Bok's views are quoted from Secrets: On the Ethics of Concealment and Revelation (New York: Pantheon Books, 1982); Monroe Freedman is quoted from Lawyers' Ethics in an Adversary System (Indianapolis: Bobbs-Merrill, 1975) and "Wrong? Silence Is Right," The New York Times, February 14, 1983; David Luban's views will appear in his forthcoming book A Nation of Lawyers.

Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce

"The land ethic," Aldo Leopold wrote in *A Sand County Almanac*, "simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively, the land." What kind of community does Leopold refer to? He might mean a *moral* community, a group of individuals who respect each other's right to treatment as equals or who regard one another's interests with equal respect and concern. Leopold may also mean an *ecological* community, a community tied together by biological relationships in interdependent webs of life.

Let us suppose, for a moment, that Leopold has a *moral* community in mind; he would expand our *moral* boundaries to include soils, waters, plants, and animals, as well as human beings. Leopold's view, then, might not differ in principle from that of Christopher Stone, who has suggested that animals and even trees be given legal standing, so that their interests may be represented in court. Stone sees the expansion of our moral consciousness in this way as part of a historical progress in which societies have recognized the equality of groups of oppressed people, notably blacks, women, and children.

Peter Singer, perhaps more than any other writer, has emphasized the analogy between human liberation movements (e.g., abolitionism and suffragism) and "animal liberation" or the "expansion of our moral horizons" to include members of other species in "the basic principle of equality." Singer differs from Stone in arguing that the question whether animals have *rights* is less important than it appears: "what matters is how we think animals ought to be treated, and not how we employ the concept of a right." He also confines membership in the moral community to beings with the "capacity for subjective experience, such as the experience of pleasure or the experience of pain." But Stone and Singer agree that we have a moral obligation to minimize the suffering of animals and to balance their interests against our own.

Mother Nature vs. Frank Perdue

What practical course of action should we take once we have climbed the spiral of moral evolution high enough to recognize our obligation to value the rights, interests, or welfare of animals equally with our own? In discussing the rights of human beings, Henry Shue describes two that are basic in the sense that "the enjoyment of them is essential to the enjoyment of all other rights." These are the right to physical security and the right to minimum subsistence. These, surely, are basic to animal rights as well. To allow

animals to be killed, to permit them to die of disease or starvation, when it is within our power to prevent it, surely seems not to balance their interests with our own.

Where, then, shall we begin to provide for the basic welfare — the security and subsistence — of animals? Plainly, where they most lack this security, where their basic rights, needs, or interests are most thwarted and where their suffering is the most intense. This is in nature. Ever since Darwin, we have been aware that few organisms survive to reach sexual maturity; most are quickly annihilated in the struggle for existence.

Consider this rough but reasonable statement of the facts, given by Fred Hapgood: "All species reproduce to excess, way past the carrying capacity of their niche. In her lifetime a lioness might have 20 cubs; a pigeon, 150 chicks; a mouse, 1,000 kits; a trout, 20,000 fry; a tuna or cod, a million fry or more; an elm tree, several million seeds; and an oyster, perhaps a hundred million spat. If one assumes that the population of each of these species is, from generation to generation, roughly equal, then on the average only one offspring will survive to replace each parent. All the other thousands and millions will die, one way or another."

The way creatures in nature die are typically violent: predation, starvation, disease, parasitism, cold. If the dying animal in the wild understood his condition, what would he think? Surely, he would prefer to be raised on a farm, where his chances of survival would be good and to escape from the wild, where they are negligible. Either way, the animal will be killed; few die of old age. The path from birth to slaughter, however, is nearly always longer and less painful in the barnyard than in the woods. The misery of animals in nature beggars by comparison every other form of suffering in the world. Mother Nature is so cruel to her children she makes Frank Perdue look like a saint.

I do not know how animal liberationists, such as Singer, propose to relieve animal suffering in nature, but there are many ways we could greatly improve the situation at little cost to ourselves. It may not be beyond the reach of science to attempt a broad program of contraceptive care for animals in nature so that fewer will fall victim to an early and horrible death. One may propose, with all modesty, the conversion of our national wilderness areas, especially our national parks, into farms in order to replace violent wild areas with humane, managed environments. Animals and trees would then benefit from the same effi-

cient and productive technology that benefits us.

My point in raising this argument is to suggest that the thesis that animals have important rights and interests that command our respect has little bearing on the policies it is supposed by some to support, in particular, policies intended to preserve and protect the natural environment. We must ask ourselves whether in fact the kind of policies environmentalists recommend would make animals better off in the long run. I see no reason at all to suppose that they would.

Can Environmentalists Be Hunters?

In a persuasive essay, J. Baird Callicott describes a number of differences between the ideas of Aldo Leopold and those of Peter Singer — differences which suggest Leopold's environmental ethic and Singer's humanitarianism lead in opposite directions. First, while Singer and other animal liberationists deplore the suffering of domestic animals, "Leopold manifests an attitude that can only be described as indifference." Second, while Leopold expresses an urgent concern about the disappearance of species, Singer, consistently with his premises, is concerned with the welfare of individual animals, without

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special regard to their status as endangered species.

Third, wilderness, according to Leopold, provides "a means of perpetuating, in sport form, the more virile and primitive skills. . . ." He had hunting in mind. Hunters, since top predators are gone, may serve an important ecological function. Leopold was himself an enthusiastic hunter and wrote unabashedly about his exploits pursuing game. The term "game" as applied to animals, Callicott wryly comments, "appears to be morally equivalent to referring to a sexually appealing young woman as a 'piece' or to a strong, young black man as a 'buck' — if animal rights, that is, are to be considered on a par with women's rights and the rights of formerly enslaved races."

Hunting is what disturbs animal liberationists as much as any other human activity. Singer expresses disdain and chagrin at what he calls "'environmentalist' organizations which actively support or refuse to oppose hunting, such as the Sierra Club and the World Wildlife Fund. I can appreciate Singer's aversion to hunting, but why does he place the word "environmentalist" in shudder quotes when he refers to organizations like the Sierra Club? Environmentalist and conservationist organizations traditionally have been concerned with ecological, not with humanitarian, issues. They make no pretense to improving the lot of individual animals; they attempt rather to maintain the diversity, integrity, beauty, and authenticity of

the natural environment. These goals are ecological, not eleemosynary. They are entirely consistent with licensing hunters to shoot animals whose populations exceed the carrying capacity of their habitats.

I do not in any way mean to support the practice of hunting; nor am I advocating environmentalism at this time. I merely want to point out that groups like the Sierra Club, the Wilderness Society, and the World Wildlife Fund do not fail in their mission insofar as they devote themselves to causes other than the happiness or welfare

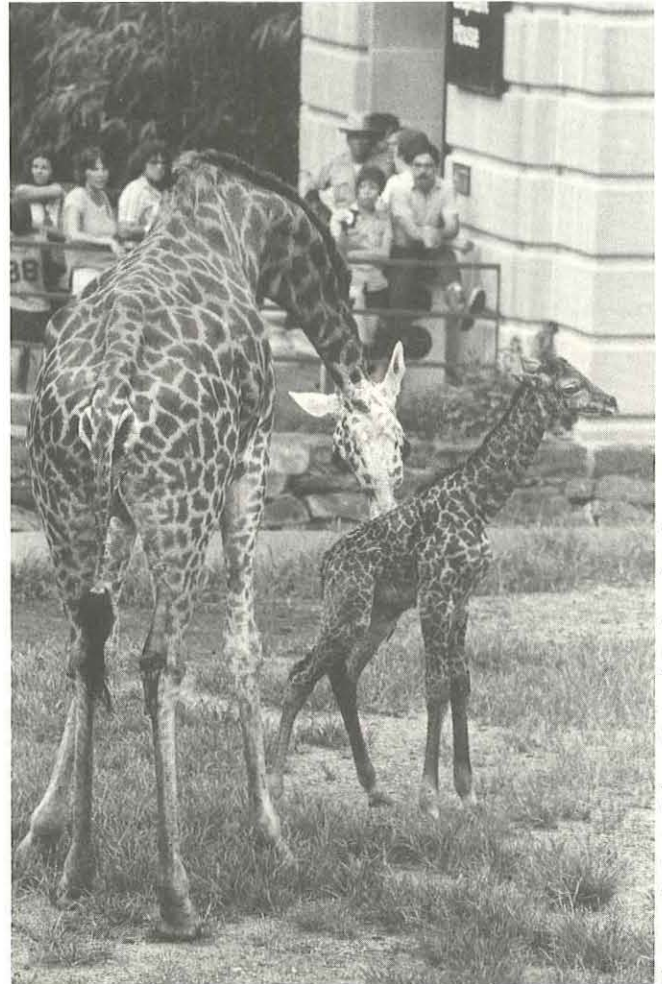
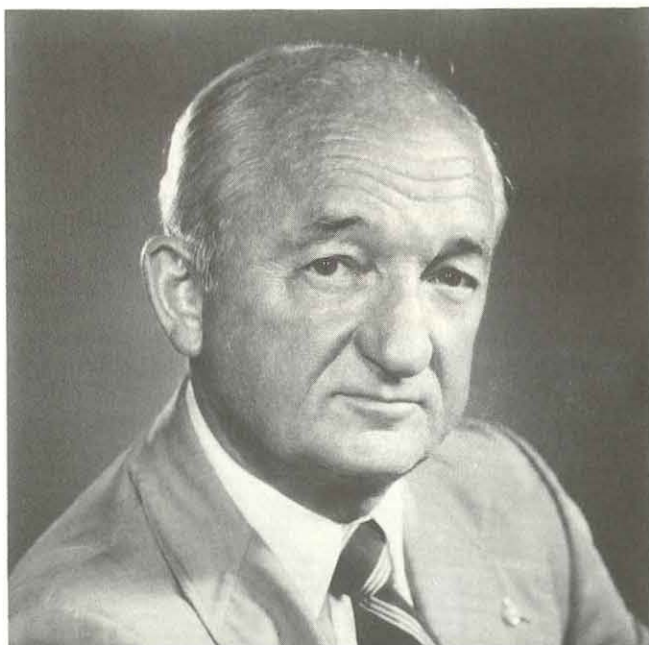


Photo credit Jessie Cohen, National Zoological Park

*Animals safe from the ravages of nature
enjoy life in the zoo.*

of individual creatures; that never was their mission. These organizations, which promote a love and respect for the functioning of natural ecosystems, differ ideologically from organizations that make the suffering of animals their primary concern — groups like the Fund for Animals, the Animal Protection Institute, Friends of Animals, the American Humane Association, and various single issue groups such as Friends of the Sea Otter, Beaver Defenders, Friends of the Earthworm, and Worldwide Fair Play for Frogs.

I proposed earlier that Aldo Leopold views the community of nature as a *moral* community — one in which



Chicken magnate Frank Perdue

we, as members, have obligations to all other animals, presumably to minimize their pain. I suggested that Leopold, like Singer, may be committed to the idea that we should preserve and respect the natural environment only insofar as that promotes the welfare of the individual animals nature contains. This is plainly not Leopold's view, however. The principle of natural selection is not a humanitarian principle; the predator-prey relation does not depend on moral empathy. Nature ruthlessly limits animal populations by doing violence to virtually every individual before it reaches maturity. These conditions respect animal equality only in the darkest sense. Yet these are precisely the ecological relationships which Leopold admires; they are the conditions which he would not interfere with, but protect. Leopold, apparently, does not think that an ecological system has to be a moral system in order to deserve our love. An ecological system has a beauty and an authenticity we can admire — but not on humanitarian grounds.

Animal Liberation and Environmental Law

Muckraking journalists, thank God for them, who depict the horrors that all too often occur in laboratories and on farms, appeal, quite properly, to our conviction that mankind should never inflict needless pain on animals, especially for the sake of profit. When we read stories about man's cruelty to domestic animals, we respond, as we should, with moral outrage and revulsion. When we read accounts of natural history, which reveal as much suffering and slaughter, we do not respond with outrage or indignation. Why not? The reason is plain. It is not suffering per se that concerns us. What outrages us is human responsibility for that suffering.

Moral obligations to animals may arise in either of two ways. Our duties to nonhuman animals may be based on

the principle that cruelty to animals is obnoxious, a principle nobody denies. These obligations, however, might rest instead on the stronger contention that we are obliged to prevent and to relieve animal suffering wherever it occurs and however it is caused; that we are obliged to protect the welfare of *all* animals just because they are sentient beings.

The liberationist must ask: how can I most efficiently relieve animal suffering? The answer must be: by getting animals out of the natural environment. . . . An environmentalist cannot be an animal liberationist; nor may animal liberationists be environmentalists.

Animal liberationists insist, as Singer does, that moral obligations to animals are justified by their distress and by our ability to relieve that distress. Accordingly, the liberationist must ask: how can I most efficiently relieve animal suffering? The answer must be: by getting animals out of the natural environment. Starving deer in the woods might be adopted as pets; they might be fed in kennels. Birds that now kill earthworms may repair instead to birdhouses stocked with food — including textured soybean protein that looks and smells like worms. And to protect the brutes from cold, we might heat their dens or provide shelter for the all too many who freeze.

Now, whether you believe that this harangue is a *reductio ad absurdum* of Singer's position or whether you think it should be taken seriously as an ideal is no concern to me. I merely wish to point out that an environmentalist must take what I have said as a *reductio* whereas an animal liberationist must regard it as stating a serious position. An environmentalist cannot be an animal liberationist; nor may animal liberationists be environmentalists. The environmentalist would sacrifice the welfare of individual creatures to preserve the authenticity, integrity, and complexity of ecological systems. The liberationist must be willing to sacrifice the authenticity, integrity, and complexity of ecosystems for the welfare of animals. A humanitarian ethic will not help us to understand or to justify an environmental ethic. It will not provide new foundations for environmental law.

— Mark Sagoff

This article is drawn from "Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce," forthcoming in the Osgoode Hall Law Journal 22, no. 2 (Summer 1984). The sources cited in this article are: Aldo Leopold, A Sand County Almanac (New York: Ballantine, 1949); Christopher Stone, Should Trees Have Standing? (Los Altos, Calif.: William Kaufmann, 1974); Peter Singer, "All Animals Are Equal," Philosophical Exchange 1 (Summer 1974); Peter Singer, "Not for Humans Only: The Place of Nonhumans in Environmental Issues," in Ethics and Problems of the 21st Century, edited by K. E. Goodpaster and K. M. Sayer (South Bend, Ind.: Notre Dame University Press, 1979); Henry Shue, Basic Rights (Princeton: Princeton University Press, 1980); Fred Haggood, Why Males Exist (New York: Mentor NAL, 1979); and J. Baird Callicott, "Animal Liberation: A Triangular Affair," Environmental Ethics 4 (Winter 1980).

Against Selling Bodily Parts

The transplantation of a human kidney is no longer a rare or highly uncertain process. Over 5000 patients received transplanted kidneys last year, and their prospects for lasting success are bright. Because improved immunosuppressant drugs like cyclosporin have greatly increased the survival rate for transplant patients, the primary barrier to successful transplantation for thousands of patients with end-stage renal failure is now the lack of an adequate supply of transplantable kidneys. Patients often wait years after being listed as prospective transplant recipients, and those years are filled with the discomfort and constraint of dependence on dialysis — each year of which is as costly as the \$40,000 transplant operation. Because of the sharp recent increase in our capacity to transfer living tissues of various kinds successfully from donors to recipients, the large shortage of transplantable materials is growing larger. Controversial economic, political, and moral issues swirl around our efforts to respond to this new situation.

How can we best meet the vital needs of patients who require transplant surgery, while respecting the various related interests and concerns which come into play? We are faced here with choices which, in the words of Richard Titmuss, “lead us, if we are to understand these transactions in the context of any society, to the fundamentals of social and economic life.” The question of how to close the gap between the demand for and the supply of transplantable organs is no less than the question of what sort of society we wish to advocate, endorse, and nurture.

The Role of Government

What should the government do, promote, permit, or prohibit in respect to organ transplantation? The range of possible responses is great. Proposals have been made to presume consent by prospective donors in the absence of clear evidence to the contrary, to establish commercial markets in organs, and to increase the efficiency of present approaches through devices ranging from tax incentives to public education. I am not aware of any proposal yet that organs should be made available regardless of the wishes of the person whose organs are at issue — but at this point it would not surprise me.

Any position on the role of government here must rely on a broader conception of the proper role of government generally. It is not the responsibility of government to be the solution of first resort to the problems of contemporary society; rather, the private sector is our best hope for meeting a broad range of needs. The government has a responsibility to step in only where it must, to safeguard the public interest. Further, the government should exer-

cise great caution in enacting prohibitions on behavior. Only where it can sustain a persuasive justification may it properly constrain the behavior of citizens; it has no business prohibiting actions merely because they are offensive to the sensibilities of a portion of the citizenry, or because they could conceivably lead to more serious abuses in the future. Nor may it require actions simply because they would be in the public interest. Requiring actions (such as the payment of taxes or participation in national defense in wartime) or prohibiting actions (such as violation of the civil liberties of citizens) requires strong justification indeed.

For this reason, the appropriate role for the government in respect to the shortage of organs is catalytic rather than coercive. To require the donation of cadaver organs would be to ride roughshod over the rights of individuals to exercise discretion over the disposition of their bodily parts. Even to presume consent in the absence of dissent would be to place the burden where it does not belong. Those who prefer not to donate organs, for reasons of religion, superstition, or squeamishness, or for no reason at all, would be cast into a defensive position in which they might feel hard pressed to protect themselves and their families against intrusions of a most intimate sort.

Yet the problem remains and grows, so something must be done. An ideal solution would lie in a massive shift in national sentiment about transplantation — a shift that would greatly increase participation in voluntary donation plans and would also greatly diminish the barriers, psychological and economic, to participation by the medical profession in efficient collection and distribution of organs.

The new American Council on Transplantation may become an effective instrument for rationalizing our methods of collecting and distributing organs and of increasing public participation in donation plans — but that will require it to have significant financial and institutional backing, a firm and energetic resolve to meet its objectives, and a fair bit of good luck. Its prospects of success have been greatly enhanced by the passage of HR5580, which, without being coercive or intrusive, fosters a major increase in our structural capacity to achieve an adequate solution based on a voluntary and altruistic response to the plight of potential transplant recipients.

This bill amends the Public Health Service Act to authorize financial assistance for organ procurement organizations; to establish a United States Transplantation Network; to establish a Task Force on Organ Transplantation to “conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues

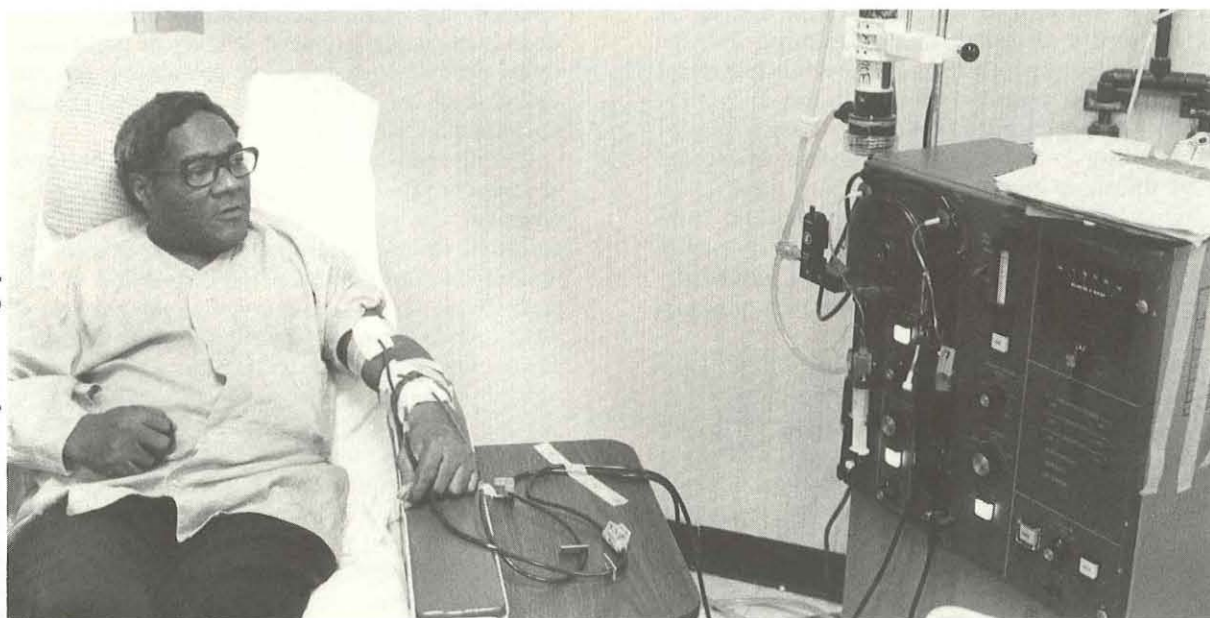
presented by human organ procurement and transplantation"; and to prohibit a commercial market in transplantable organs. This last provision is my present concern.

The approach represented by HR5580 must be given every reasonable chance of success, for the alternatives are grim indeed. One of the worst would be a governmental takeover of the whole domain, responding to national shortages with national criteria, supported by mandatory and intrusive processes of collection. The disadvantages of such a scheme, I trust, need no elaboration here. However, a comparable peril exists on the other side. For another alternative is to allow a commercial market, linking supply and demand through the mechanisms of free enterprise. And the disadvantages of *that* scheme do require some elaboration.

would be naive not to realize that we are at the beginning of the problems associated with our newly developed capacities of medical and surgical intervention.

Jacobs defends his scheme by appeal to humanitarianism, public service, and the American way. He points out that his plan will deliver kidneys to people who need them, and cash to people who need it, quite possibly to their mutual benefit. And with the traditionally admirable flexibility of the free-market system, the scheme can function long before the catalytic efforts of the government or the American Council on Transplantation can take effect. If, as he claims, all related transactions are to proceed by the voluntary actions of fully informed and uncoerced adults, we must pause before concluding that there is a legitimate public interest in prohibiting such exchanges.

Photo credit Ankers Capitol Photographers



Patients often wait years after being listed as prospective transplant recipients, and those years are filled with the discomfort and constraint of dependence on dialysis.

Kidneys for Sale

This is no idle speculation. H. Barry Jacobs of Virginia has established a business for the commercial brokering of kidneys. He has proposed to commission the sale of kidneys from persons in the third world, for whatever price is needed to induce them to sell, and then to broker the kidneys to affluent Americans. The brokerage fees will make the enterprise, in Jacobs's own words, "a very lucrative business."

This plan raises many questions that go beyond the immediate need to increase the supply of kidneys. The demand for transplantation will continue to increase, as will the variety of transplantable tissues. Today, we focus mainly on kidneys, corneas, and livers, knowing that lungs and hearts are also transplantable. But skin, bone, and muscle are transplantable, too, and recent successes in the reattachments of digits and limbs foreshadow the transplantation of such parts in response to major trauma. It

Many assumptions in the Jacobs scheme are open to challenge. The risks to donors are greater than he has admitted. The scheme makes a mockery of informed consent, as is evident to anyone familiar with federal regulations protecting human research subjects — regulations which reflect a sensitive awareness that desperate circumstances can be implicitly coercive and that the provision of excessive inducements to the oppressed can constitute a violation of their autonomy. And there are problems of quality control that might be insuperable. But we miss the most fundamentally important issues if we focus on such weaknesses in the proposal. At stake are important features of the distribution of vital resources in the challenging years ahead.

There are various standards for judging the greatness of a society — by the peaks of its achievements in the arts and culture, or in technology, by the average material standard of living of its people, by the scope of its ter-

ritorial authority, and so on. I have always thought that one appropriate standard for making such judgments is that of how a society treats those whom it treats least well. The analogue at the level of the family is compelling, at least. No matter how we admired the talented, affluent, accomplished family next door, our judgment of them would plummet if we discovered that they had one family member whom they abused, whose interests they ignored, whose needs left them unmoved, and whom they exploited to their own maximum advantage. That discovery would teach us much about their character and integrity — about their sense of justice within a social structure. By the analogous criterion, American society still falls short of its loftiest ideals.

Another criterion for judging the greatness of a society is the way it treats its most seriously disadvantaged. (This criterion is related to, but not the same as, the previous

To distribute vital resources according to ability to pay is to set aside all concern for medical need as the primary determinant of access. It is to . . . abandon efforts to fashion a society in which mutual supportiveness is our response to desperation.

one.) People beset by grinding poverty, malnutrition, and ignorance, like those beset by life-threatening illness, are clearly in highly disadvantaged circumstances. Surely one aspect of the Jacobs scheme is that it is profiteering on the desperation of these two groups. But what better societal response to their plight is there to endorse?

A free-market model is based on the values of competition, individual initiative, and the elasticity of supply and demand in response to market forces. But medical need is no respecter of success in the world of commerce. The poor are more likely, not less likely, to be seriously ill, and their ability to obtain medical care is seriously compromised by their poverty.

To distribute vital resources according to ability to pay is to set aside all concern for medical need as the primary determinant of access. It is to set aside considerations of compassion and cooperation, and abandon efforts to fashion a society in which mutual supportiveness is our response to desperation. It is to sanction the expansion of unfettered commercialism into dimensions of life which could provide the opportunity for a greater sense of community and of national purpose.

The argument for a commercial market in kidneys might have greater force had we put ourselves to the test, and failed. But we are just now acknowledging a new national need and fashioning a constructive response to that need. It is far too soon to judge that response a failure.

The only adequate barrier to the commercialization of life in the proposed manner is a new legislative prohibition. I support that prohibition, and I do so as one reluctant to endorse any unnecessary restriction on individual lib-

erty. Such a prohibition, however, is necessary to test our capacity as a nation to meet the present shortages, and to find ways to deal with future shortages, with due regard for the dictates of liberty and social justice. We are well advised to temper our passionate and worthy defense of liberty with consideration of the social context without which our liberty would be a tragically empty achievement.

An additional reason for supporting the prohibition derives from the symbolic significance of the proposed market in organs. At a time when we urgently need to nurture good relations with the third world, our international credibility would be dealt a severe blow by our tolerance of a plan according to which the poor in underdeveloped countries were exploited as a source of spare parts for rich Americans.

In the third world, it is unlikely that strong restrictive action will effectively prevent the plundering of poor people's parts for profit. Their public health concerns still center on problems of sanitation, nutrition, and infectious disease. If there are to be effective controls, they must be at our end. But it is no surprise, nor inappropriate, that the world's most highly developed nation should bear the burdens of exercising responsibility over medical science's most advanced capacities. If we want the world to be inspired by our example as a humane and just society, we must be prepared to provide that example.

I am not concerned merely with the prospects for international exploitation, and the damage that threatens for our image abroad. I pressed Barry Jacobs in debate to explain why he proposed to seek organs elsewhere, rather than from among America's downtrodden — the street

I am concerned, of course, with what such a scheme would do to those whose destitution and desperation might move them to sell bodily parts in the hope of gaining a foothold for the climb out of poverty. But I am concerned even more about what such behavior would do to the rest of us. . . .

people in New York, the unemployed migratory farm laborer, the inner city destitute, the most impoverished of our Native Americans on reservations. He replied, changing his stance, that he will go abroad for kidneys only if these American sources are inadequate to meet the demand. Thus would he have us turn on our own poor to seek relief for our well-to-do.

I am concerned, of course, with what such a scheme would do to those whose destitution and desperation might move them to sell bodily parts in the hope of gaining a foothold for the climb out of poverty. But I am concerned even more about what such behavior would do to the rest of us, and what it would reveal about our compassion, our commitment to equality, our capacity to make

voluntary efforts in the public interest, and our willingness to face common problems with collective resolve.

That the poor are exploited is unarguable. That their poverty seems intractable is a continuing tragedy of our unprecedentedly affluent society. I hope that history will be able to judge us as a society that never abandoned its struggle to eliminate that poverty, that strove always to enhance its respect for individuals and for their capacity for mutual aid, and that faced the problems of an awesome new technology with humanity and efficiency both,

rather than as merely another commercial opportunity. I believe there is a legitimate public interest in striving to bring this about.

— Samuel Gorovitz

This article is based on testimony presented to the Subcommittee on Investigations and Oversight, Committee on Science and Technology, United States House of Representatives, November 9, 1983. HR5580 was passed by the House on June 21, 1984.

Gays and the Civil Rights Act

When gays themselves speak of "gay rights," they generally refer to the sort of protections found in the 1964 Civil Rights Act rather than to a host of other possible legal and constitutional protections which they do not now possess (for example, the reform of sodomy and solicitation laws and the drive for domestic partner legislation). For gays, gay rights are viewed primarily as protections against discrimination in the private sphere in regard to housing, public accommodations, and especially employment — protections which the Civil Rights Act currently affords racial, ethnic, gender, and religious classes.

Gays have not been particularly successful in acquiring even those limited rights. Only 40 or 50 municipalities have some form of civil rights protections for gays. Wisconsin is the only state to have such protections. In March of 1984 the California legislature passed a gay employment bill only to have it vetoed. The federal gay rights bill has but 74 cosponsors in the House and 8 in the Senate. Gays are now at about the same place blacks were in 1945.

The arguments in favor of gay civil rights cluster into three main groups. The first is a recognition that the general arguments for civil rights legislation indeed apply to gays, sometimes with special force. Second, the status of gays as an invisible minority has the practical consequence that in the absence of these protections, gays are effectively denied access to civic and political rights. Third, gays appear to be relevantly similar to classes already protected by the Civil Rights Act, so that considerations of fairness call for extending its protections to gays.

General Arguments for Civil Rights

It is unfortunate that the original general motives for civil rights legislation have been forgotten in discussions of gay issues. And yet the original reasons continue to provide good and powerful engines in justifying civil rights

restrictions on the private sector and apply at least as well to gays as anyone. There are four such general justifications, some interrelated.

First, civil rights legislation promotes human dignity. Vague as this reason may initially sound, it is the reason the Supreme Court found most compelling as a ground for state action when it unanimously upheld the constitutionality of the Civil Rights Act. No one can maintain a solid sense of self if he is, in major ways affecting him, subject to whimsical and arbitrary actions of others. Jobs, housing, and entertainment are major modes through which people identify themselves to themselves and to others. That these major vehicles of character, personality, and identity can be taken away from a person without regard to any characteristic that is relevant to his possessing them is an outrage against personal integrity deserving remedies from the state. To fire an employee, for instance, on the basis of some trait that has no bearing on his ability to do his job — such as his sexual preferences — is one way to degrade someone and make him feel worthless. Given widespread discrimination (actual or merely perceived) against gays, it is not surprising that gays manifest many of the same self-destructive, self-deluding, self-oppressing patterns of behavior as are shared by other historically oppressed minorities.

Second, there is a general expectation in a non-socialist society like our own that each person is primarily responsible for meeting his own basic needs; employment is the chief means of doing so. Civil rights legislation helps people discharge their obligation to be self-sufficient, without placing any comparable burden on those who are restricted by the legislation (employers, retailers, etc.).

Third, civil rights legislation tends to increase the overall output of goods and services in society, thus contributing to general prosperity. By eliminating extraneous factors in employment decisions, it tends to promote the best fit between a worker's capacities, talents, and skills and the bona fide occupational qualifications of his prospective work. Many gays take dead-end jobs, which do

not use their full talents, in order to avoid reviews that might reveal their minority status. Such people's talents are simply wasted both to themselves and to society. Further, human resources are wasted if one's energies are constantly diverted and devoured by fear of arbitrary dismissal. In the absence of gay civil rights legislation, society is squandering the human resources that closeted gays expend in the day-to-day anxiety involved in leading lives of systematic disguise as a condition for continued employment.

These three preceding general arguments can be pooled into a fourth. Government is generally recognized to have an obligation to enhance those conditions that promote the flourishing of individual lives. Thus, for example, the general rationale for compulsory liberal education is that it ultimately issues in autonomous individuals capable of making decisions for themselves from a field of alternative opinions. Analogously, civil rights legislation promotes those conditions in virtue of which people can begin to lead their own lives guided by their own lights. And because the activities protected by such legislation are so central to people's lives, it achieves this result again without any comparable loss on the part of those whom it restrains. The frustrated desire (or even right) to act whimsically to a disfavored group is easily outweighed by the frustrated desire (or even right) of the disfavored minority to lead self-determining lives. This justification has special import for gays. Imagine the lives of those gays who systematically forgo sharing emotional intimacy and the common necessities of life as the price for putting bread on their table. With the lessening of fear from threat of discovery, gays no longer will need to make trade-offs between the components that go into making a full life.

An Invisible Minority

The status of gays as an invisible minority generates a second cluster of important arguments for gay rights. By invisible minority I mean a minority whose members can be identified only through an act of will on someone's part rather than merely through the observation of a person's appearance or his day-to-day acts in the public domain. Invisible minorities require civil rights protections as a necessary background condition for having reasonably

Billie Jean King — drawing by Michael A. Willhoite



guaranteed access to judicial or civic rights and to the political rights of the First Amendment — rights which are supposed to pertain equally to all.

Civil or judicial rights are rights to the impartial administration of civil and criminal law in defense of property and person. One of the greatest virtues of the American legal system is that its workings are open to scrutiny by public and press. Here trials are not star chamber affairs. But this has the unfortunate side-effect that trials frequently cast the private into the public realm. Those who may face unemployment if their life style is publicized will simply not have available to them as a live option the full remedies of justice. It is unreasonable to expect anyone to give up that by which he lives — his employment, his shelter, his access to goods and services — in order for judicial procedures to be carried out equitably.

Further, in the absence of civil rights legislation, gays as an invisible minority are in practice denied the effective use of the political rights of the First Amendment: freedom of speech, of press, of assembly, of petition, and especially the right of association — the right to join and be identified with other persons for common (political) goals.

In the absence of civil rights protections, even if gays are free from government interference in their political activity, nevertheless they remain effectively denied the freedom to act politically. All effective political strategies involve public action. And a person who is a member of an invisible minority and who must remain invisible in respect to his minority status as a condition of maintaining the wherewithal to live is not free to be public about his minority status or to incur suspicion by publicly associating with others who are open about their similar status. He will be denied the opportunity to express his views in a public forum and to lobby with others of like views to influence political change. By being effectively denied the public procedures of democracy, gays are incapable of defending their own interests on substantial issues of vital concern.

Noel Coward — drawing by Michael A. Willhoite



Treating Like Cases Alike

A third class of arguments for gay rights can be generated if gays are relevantly similar to classes already under the protection of the Civil Rights Act. Considerations of whether gays are or are not relevantly similar have made up the lion's share of the popular and political debate on this issue. The opponent of extending civil rights to gays is confronted with a dilemma here. For if it turns out that being gay is something over which one has little or no control, then being gay will be similar to having an ethnic status. And if being gay is largely a matter of personal moral choice, then it will be like having a religion. And both ethnic and religious groups are protected classes.

If it turns out that being gay is something over which one has little or no control, then being gay will be similar to having an ethnic status. And if being gay is largely a matter of personal moral choice, then it will be like having a religion. And both ethnic and religious groups are protected classes.

If sexual orientation is something over which an individual — for whatever reason — has virtually no control, then discrimination against gays is deplorable, as it is against racial and gender classes, because it holds a person accountable without regard for anything he himself has done. And to hold a person accountable for that over which he has no control is one of the central forms of prejudice.

Looking at the actual lived experience of gays in our society, it becomes fairly clear that sexual orientation is not likely a matter of choice. For coming to have a homosexual identity in our culture simply does not have the structure of decision-making.

On the one hand, the "choice" of the gender of a sexual partner does not seem to express a trivial desire that might be as easily fulfilled by substituting some other object for the desired one. Picking the gender of a sexual partner is decidedly dissimilar, that is, to picking a flavor of ice cream. If an ice cream parlor is out of one's favorite flavor, one simply picks another. And if people were persecuted, threatened with jail terms, shattered careers, and the like for eating rocky road ice cream, everyone would pick another easily available flavor. But gay sex seems not to be like that. If sexual orientation were an easy choice, no one, given society's persecution of gays, would ever be gay.

On the other hand, establishing a sexual orientation does not seem relevantly like making the central and serious life choices by which individuals try to establish who they are. We never see anyone setting out to become a homosexual, in the way we do see people setting out to become doctors and lawyers and bricklayers. We do not see gays deciding, "At some point in the future I want to become a homosexual," and then planning and acquiring the ways and means to that end, in the way we do see people deciding that they want to become lawyers and then planning what courses to take, and what temperaments, habits, and skills to develop in order to practice law. Typically the gay-person-to-be just finds himself having homosexual encounters while initially resisting quite strongly the identification of being a homosexual; only with time, luck, and great personal effort — but sometimes never — does he gradually come to accept his orientation. The experience of coming out to *oneself* has for a gay person the basic structure of a discovery, not the structure of a choice.

Nevertheless, one group of self-identified homosexuals — politically motivated lesbians — holds that sexual orientation, at least in their case, is a matter of choice. If this is so, then sexual orientation becomes relevantly similar to religion, a protected category. A personal moral choice is not a reasonable ground for discrimination even when the private belief in and practice of it has very public manifestations, as when a religious person becomes involved in politics with a religious motive. And to claim that gay sex is in some sense immoral will not suffice to establish a relevant dissimilarity here. For the non-religious and the religious may consider each other immoral in this same sense and the various religious sects may consider each other immoral, and yet all religious belief is protected.

These various arguments have a compelling accumulative force. What is needed is more courage on the part of gays to advance them to legislators and more courage on the part of legislators to rise above popular prejudices to make minority rights against social and government coercion a realized part of our cultural ideals.

— Richard D. Mohr

Richard D. Mohr is Associate Professor of Philosophy at the University of Illinois—Urbana. Some material in this article is drawn from the author's "Gay Rights," Social Theory and Practice 8 (1982) and from an unpublished paper, "Invisible Minorities, Civic Rights, Democracy: Three Arguments for Gay Rights."

Correction

In "Tobacco Smoke: The Double Standard," by James Repace (QQ, vol. 4, no. 1, Winter 1984), the figures on page 7 for comparative risks of death by tornado, pregnancy, drowning, and so forth should be given as cases per hundred million, not per million, as erroneously printed.

THE NEXT ISSUE OF QQ WILL BE THE FALL 1984 ISSUE, VOLUME 3, NO. 3. THERE WILL BE NO SUMMER 1984 ISSUE.

Twenty Years After the Civil Rights Act— Can Consensus Be Restored?

A Conference on the Moral Foundations of Civil Rights Policy
October 18, 19, 20, 1984
University of Maryland

The Civil Rights Act of 1964 has become one of the most influential pieces of legislation this century. It and its progeny were meant to attack and dismantle a legal and institutional system that deliberately excluded minorities and women from full economic and political participation. The rationale for this attack was framed in fundamentally moral terms: to secure equality of rights and opportunity.

Continuing developments in the understanding and enforcement of civil rights law have generated deep controversies about the meaning of those terms. Issues like quotas, comparable worth, bilingual education, and ERA reveal serious divisions of opinion about what it means to secure equality of rights. The ideas of equal opportunity and equal access, once used to animate and propel civil rights policy, get appealed to by both sides of current controversies and seem powerless to generate a common moral understanding that would defuse these debates. Legal tools for attacking

deliberate and exclusionary barriers seem less effective in addressing the overall social disfigurement produced by a history of segregation and subordination. There is no commanding view of how social reconstruction should proceed nor consensus about who should bear the costs of such reconstruction.

The Center for Philosophy and Public Policy, with support from the Ford Foundation, is sponsoring a public conference on the foundations of civil rights policy which will bring together reflective and experienced theorists about, and participants in, civil rights policy to explore why consensus has broken down. Is there no longer agreement about basic values and ends, or does disagreement derive from other sources? Are there grounds for resolving different understandings about the nature and extent of discrimination, disputes about the efficacy of different remedies, and disagreements about the meaning of principles of equal opportunity and social justice?

Thursday evening, October 18

1. Keynote Address — Drew Days III, Yale Law School

Friday morning, October 19

2. Symposium — "Looking at the Principles: Why Can't We Find Consensus on Affirmative Action?"

introduction: Robert K. Fullinwider, Center for Philosophy and Public Policy

speaker: Richard Wasserstrom, philosophy, University of California at Santa Cruz

speaker: William Bradford Reynolds, U.S. Assistant Attorney General for Civil Rights

speaker: Christopher Edley, Harvard Law School

speaker: Orlando Patterson, sociology, Harvard University

Friday afternoon, October 19

3. "Are Our Theories of Justice Gender Neutral?"
speaker: Susan Moller Okin, politics, Brandeis University
commentator: Nancy Hartsock, political science, University of Washington

Friday evening, October 19

4. "Men, Women and Equality: How Should the Law Deal with Gender Difference?"

speaker: Catharine MacKinnon, University of Minnesota Law School

commentator: Leigh Beinen, Office of the Public Advocate, New Jersey

commentator: Rachel Flick, Office of Planning and Evaluation, The White House

Saturday morning, October 20

5. "Hispanics, Bilingualism, and Cultural Integration"
speaker: Jose Cardenas, Director, Intercultural Development Research Association
commentator: Judith Lichtenberg, Center for Philosophy and Public Policy
6. "Pay Equity for Women: Wage Discrimination and the Comparable Worth Controversy"
speaker: Heidi Hartmann, National Academy of Sciences
commentator: Mark Killingsworth, economics, Rutgers University

Saturday afternoon, October 20

7. "Civil Rights in 2004: Where Will We Be?"
speaker: Derrick Bell, Dean, University of Oregon Law School

For further information call or write: Lori Owen, Conference Coordinator, Center for Philosophy and Public Policy, University of Maryland, College Park, MD 20742, (301) 454-6604.

The Center for Philosophy and Public Policy was founded in 1976 to conduct research into the conceptual and normative questions underlying public policy formulation. This research is conducted cooperatively by philosophers, policymakers and analysts, and other experts from within and without the government.

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