

Terrorism

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In Enniskillen, Ireland, a bomb explodes during a memorial service, fatally injuring 11 civilian mourners gathered to honor their dead. Explosives detonated in the crowded Rome and Vienna airports kill tourists heading home for the holidays. A cruise ship is held hostage in the Mediterranean, and an elderly, wheelchair-bound passenger slain. Ordinary people going about their ordinary business are subjected to violent assaults carried out not by any legal authority or warring army, but by secret groups motivated by some political grievance. This is terrorism.

Terrorism horrifies almost all of us, even, sometimes, its perpetrators: the IRA issued an apology after the Enniskillen bombing. International terrorism is “the cancer of the modern world,” says one commentator, “a dynamic organism which attacks the healthy flesh of the surrounding society.” The U.S. State Department calls terrorism “a criminal activity that no political cause can justify.” President Reagan has made the battle against terrorism a rhetorical cornerstone of his foreign policy.

Why does terrorism inspire such revulsion? Why do acts of terrorism horrify us more than other acts of political violence? Fewer than 200 Americans died in terrorist incidents abroad in all the years between 1973 and 1982; the CIA estimates that about 3300 people worldwide were victims of terrorism between 1968 and 1980. These figures pale by comparison with the 200,000 reported killed in East Timor by Indonesians between 1980 and 1984; the more than 30,000 killed in El

Salvador between 1979 and 1982; the 20,000 murdered in Chile in the two years after General Pinochet's 1973 coup—not to mention the civilian casualties in the last dozen of this century's bloody wars. Yet terrorism grips our collective consciousness in a way far out of proportion to the numbers involved.

Judith Lichtenberg, director of the Center for Philosophy and Public Policy's project on the media, suggests that we react this way in part because the horror of terrorism is simply more telegenic: the dramatic nature of many terrorist incidents lends itself to intensive media coverage, which focuses our fear and outrage on one particular kind of violence. "A hijack-

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ing is ready-made news: it occurs *here and now*"; the seizing of American hostages is "a breaking story, an ongoing crisis providing the press with a continual flow of action, suspense, and new information."

It is also, Lichtenberg notes, only human nature to care more about violence when we can place ourselves imaginatively in the place of its victims. Violence targeted at ordinary people makes ordinary people everywhere feel uneasy. When American tourists are gunned down on a holiday abroad, other Americans find themselves thinking, "That might have been me"—however minute the chance of such an occurrence. But while this facility in identifying with the victims of terrorism helps to explain our greater preoccupation with this kind of violence, Lichtenberg argues that it provides no guidance for how we should evaluate terrorism in *moral* terms.

What is distinctively wrong or evil about terrorism compared with other forms of political violence? How wrong or evil *is* terrorism? Is terrorism always beyond the moral pale, or can it ever be justified? What can and should be done to combat it?

Who Is Innocent?

The evil laid at the door of terrorism is that it harms or menaces innocent people to achieve its political ends. Those attempting to justify a given terrorist act (or to deny that it deserves the morally loaded label of "terrorism") argue either that its victims are not innocent in some deeper sense or that the violence is nonetheless justified as the only means to a greater good.

Terrorist acts target civilians; do they target the *innocent*? Robert K. Fullinwider of the Center for Philosophy and Public Policy points out that who is "innocent" is

often precisely the question at issue between terrorist groups and their opponents. Terrorist acts are often directed against political leaders, government officials, civilian agents of occupying powers, or the police—who at least bear some responsibility for the policies that draw the terrorist's ire. Nor are guilt and innocence strictly legal matters. Where the law itself is corrupt or violates our moral standards, we can sympathize with the desire to "take the law into one's own hands," to redress the injustices to which it is obdurately blind. The terrorist, in Fullinwider's view, sees himself as appealing to a "higher law," to morality itself.

In many cases, however, it is difficult to claim that the terrorist's victims are connected in any clear way to the alleged crimes redressed by terrorist violence. What reasonable connection did Leon Klinghoffer, the passenger slain by the *Achille Lauro* hijackers, have to Palestinian grievances against Israel? His only "crime" was to be American and Jewish—an offense against neither law nor morality. According to Fullinwider, "If this is enough of a connection to make [someone a] fair target, then no one is innocent. The 'immunity of the innocent' is emptied as a moral notion." If terrorist violence of this sort is to be justified, some other strategy will be needed to do it.

Of Omelets and Eggs

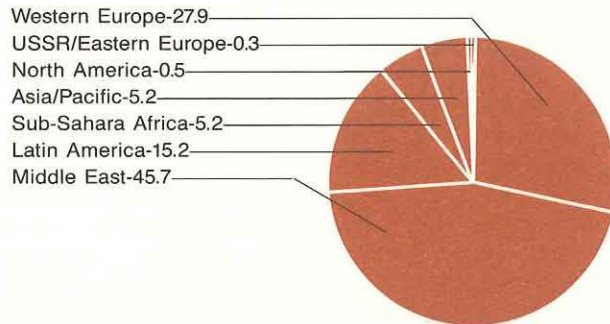
A second avenue for justification is to argue that violence against even the truly innocent is a regrettable but necessary means to achieve some greater good. At least some revolutionary groups are seeking to resist oppression and to promote justice; violence may seem to be their only viable option for advancing these goals in the face of the greater might—and hostility—of their oppressors. The claim here is, quite simply, that terrorism works, and that it is the only thing that works.

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Does terrorism work? According to Walter Laqueur, author of *The Age of Terrorism*, terrorist violence has been strikingly ineffective at producing political change. Individual terrorist campaigns have tended in fact to produce "violent repression and a polarization which precluded political progress." Seen in historical perspective, Laqueur observes, "terrorism has been effective only in very specific circumstances.... In most cases, terrorism, in the longer run, made no political difference one way or another—in some, it caused the exact opposite of what the terrorists hoped and intended to achieve." Even if violence against the in-

Geographic Distribution of International Terrorist Incidents, 1985

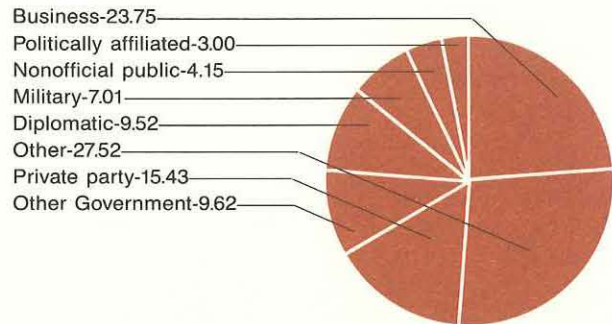
Percent



Source: U.S. Department of State
Patterns of Global Terrorism: 1985

International Terrorist Incidents By Type of Target/Victim, 1985^a

Percent



^a These percentages are based on numbers that are higher than the total number of incidents because of multiple recordings of victims and/or installations attacked.

nocent were an effective tactic of political change, it is almost never the only option available for political transformation, not for a movement with the widespread popular support needed for political legitimacy. Laqueur's historical analysis of terrorism bears out the conclusion that "terrorism frequently occurs where there are other, non-violent political alternatives."

Nor is it clear that most terrorism, even if successful, would actually result in securing greater justice. Today's revolutionary movements, according to Laqueur, often aim at "domination, not liberation; this kind of terrorism is simply one form of nationalist or religious strife." Even where terrorists have been fighting dictatorships for greater political freedom and social justice, success might "well mean the replacement of one type of dictatorship by another, more effective or more charismatic, but more severe; the case of Iran provides a great deal of food for thought."

The Moral High Road

Finally, whatever the claimed efficacy of terrorism, one wants to say that there are some means that we just *don't use*. Civilized people have renounced some means as morally indecent, among them attacks against the truly innocent. Even in warfare, there are limits beyond which we will not go.

But in this century, as in all centuries before, even the most civilized states, with the most robustly moral rhetoric, have repeatedly crossed these uncrossable moral lines. Terrorism is hardly the only example of violence against the innocent for political ends. Attacks upon the innocent, just-war theory notwithstanding,

are a staple of modern-day warfare. The fire bombing of Dresden and the London Blitz were deliberate attempts to raise the toll of civilian casualties, and 120,000 men, women, and children perished in Hiroshima and Nagasaki. These military decisions were defended as hastening the end of the Second World War and so reducing the ultimate costs in human suffering: a noble end was held to justify ignoble means. If Harry Truman could make such a claim, why not Yasser Arafat?

C.A.J. Coady, professor of philosophy at the University of Melbourne, argues that the moral justifiability of terrorist violence should be assessed in the same way as the moral justifiability of violence committed by organized states. But in fact it is not. Coady suggests that "many condemnations of terrorism are subject to the charge of inconsistency, if not hypocrisy, because they insist on applying one kind of morality to the state's use of violence in war...and another kind altogether to the use of violence by...the revolutionary. For one's own state a utilitarian standard is adopted which morally legitimates the intentional killing of non-combatants so that such acts of state terrorism as the bombing of Dresden are deemed to be morally sanctioned by the good ends they supposedly serve. The same people, however, make the move to higher ground when considering the activities of the rebel or the revolutionary and judge his killing of non-combatants [as intrinsically wrong]." Coady resolves the inconsistency by objecting "to the technique of terrorism as immoral wherever or whenever it is used or proposed."

If this standard is adopted, state violence against the innocent may end up looking worse than terrorist

violence. Certainly the figures cited above suggest that state violence is responsible for a far vaster quantity of human misery. If there is some special evil in terrorism, then, it can't lie in the fact that it alone targets the innocent or wreaks a terrible toll in human misery. The special horror of terrorism can't be simply, as Coady quotes a modern-day jingle, that "throwing a bomb is bad, dropping a bomb is good."

The Distinctive Wrong of Terrorism

What, then, makes terrorism special? Does our present preoccupation with it have any rational grounding? Certainly the preoccupation with terrorism is intensified by the special frustrations in trying to deal with it. The current administration has been consumed with the practical problems of terrorism: desperation to obtain the release of American hostages led to the humiliating recourse of an arms deal with the Ayatollah. There seems to be no straightforward way to avenge terrorism without endangering still more innocent bystanders—and without making ourselves into terrorists in the process, since terrorism typically offers no clear target for retaliation and we don't want to be guilty ourselves of indiscriminate violence.

This last may contain the key to what is not only the distinctive frustration but a distinctive evil of terrorism. It is this: terrorism preys on the special vulnerability of those who try to live by a moral code that invests vast moral significance in ordinary, individual persons. The terrorist counts in the first place on the fact that his adversary will indeed be devastated by the death or kidnapping of even a single citizen, willing to jeopardize any number of foreign policy concerns to return one captured journalist to his family. And, second, the terrorist gambles that the same moral code will tie his adversary's hands in responding to terrorist provocation.

We ourselves may violate our own moral code, may stand guilty of war crimes or other monstrous moral wrongs, but insofar as we try to live up to a moral vision that places value on every individual person, terrorism

can be said to hold us hostage in effect just to what is best in us. It achieves its results by exploiting our most deeply held moral convictions. It differs in this respect from the violence states perpetrate in warfare: warfare is carried on by a sheer exercise of raw power, intended to compel the adversary's surrender by brute force alone. A warring army aims to leave the adversary no choice but surrender, by destroying any power to resist. Terrorist violence needs no nuclear bombs, only crudely made car bombs, for its most potent weapon is not its military might, but its adversary's moral sensibilities, its moral conscience and moral code.

Responding to Terrorism

How can we respond to terrorism? One commonly proposed first step is a simple one: insofar as terrorism capitalizes on the media coverage it attracts, we can take steps to deny it any publicity. John O'Sullivan, deputy editor of the *London Times*, argues that by their front-page coverage of terrorism the media "help the terrorist spread an atmosphere of fear and anxiety in society, they provide him with an opportunity to argue his case to the wider public, and they bestow an undeserved legitimacy on him." But Lichtenberg counters that, if anything, media coverage "promotes not terrorism but Rambo-like responses to it." First, "by emphasizing terrorist incidents...to the neglect of other political violence, it exaggerates the significance of terrorism and promotes the view that it constitutes the greatest threat to world peace, civilization, and the rule of law. In addition, the style of most media coverage—long on drama and slogans (*America Held Hostage: Day 412*), short on analysis and explanation—encourages the view that terrorists are irrational psychopaths to whom the only appropriate response is force." And as long as hostage dramas sell newspapers and boost ratings, the media in a free society are not likely to limit coverage of them.

The natural response when struck with terrorism, of course, is to strike back, as the United States has tried to do overtly in the raid on Libya and covertly in various

International Terrorist Incidents by Region, 1981-85

Source: U.S. Department of State
Patterns of Global Terrorism: 1985

Patterns of Global Terrorism: 1985	Number of incidents					
	1981	1982	1983	1984	1985	Total
Total	496	477	485	598	782	2,838
Middle East	97	51	107	205	357	817
Western Europe	215	249	189	232	218	1,103
Latin America	112	96	121	83	119	531
Sub-Saharan Africa	19	16	20	45	41	141
Asia/Pacific	15	28	37	27	41	148
North America	31	32	9	5	4	81
USSR/Eastern Europe	7	5	2	1	2	17

CIA maneuvers and machinations. As we have seen, attempted retaliation can be morally problematic. Michael Walzer, professor at the Institute for Advanced Study in Princeton, reminds us that "counter-terrorism can't be excused just because it is reactive," for "every new actor... claims to be reacting to someone else, standing in a circle and just passing the evil along." Repression and retaliation, Walzer cautions, "must not repeat the wrongs of terrorism, which is to say that they must be aimed systematically at the terrorists themselves, never at the people for whom the terrorists claim to be acting... The refusal to make ordinary people into targets, whatever their nationality or even their politics: this is the only way to say no to terrorism." Lichtenberg agrees that "our claim to moral superiority lies in our refusal to adopt the tactics of terrorism. The outrage we reserve for it is mere hypocrisy if in our zeal to destroy it we become near enough to terrorists ourselves."

Benjamin Netanyahu, Permanent Representative of Israel to the United Nations, insists that a policy of restraint would leave the West at the mercy of terrorism: "In practical terms, an inflexible rule against risking civilian casualties would make any military action virtually impossible... Responsible governments seek to minimize civilian casualties. But they do not grant immunity to an aggressor simply because their response might endanger civilians... An absolute prohibition on civilian casualties affords the terrorist an invincible shield."

The risks—moral and otherwise—that the United States should be willing to run in responding to terrorism depend greatly on what exactly is placed at risk by terrorism. Here Laqueur argues that the threat posed by terrorism seems to be exaggerated. He rejects the metaphor of terrorism as "the cancer of the modern

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world," pointing out that it is neither fatal ("there has not been so far a single case of a society dragged down to destruction as a result of terrorism") nor spreading (the number of terrorist bombings has remained fairly constant over the last twenty years). If this is so, we should perhaps err on the side of protecting innocent human life, wary of eroding the moral difference between perpetrating terrorism and responding to it.

Another approach is to attempt to respond, not to terrorism itself, but to its underlying causes: in Walzer's words, "to address directly, ourselves, the oppression

the terrorists claim to oppose." Laqueur rejects the view, however, that terrorism and oppression are tightly correlated or that "the only known means of reducing the likelihood of terrorism is a reduction of the grievances, stresses and frustrations underlying it." Even if a reduction of grievances would quench terrorist ardor, often the grievances simply cannot be eliminated. Where the demands of national and religious groups are mutually exclusive, for example, "acceding to the demands of one group may mean injustice to another."

"First oppression is made [by the terrorist] into an excuse for terrorism, and then the terrorism is made [by the anti-terrorist] into an excuse for oppression." We cannot let the terrorist intimidate us from acting justly.

Some would even argue that attempts to prevent terrorism by reducing the oppression that animates it are not only unlikely to be successful but in fact aid and abet the terrorist. "There is an argument," Walzer notes, "that we should refuse to acknowledge any link at all between terrorism and oppression—as if any defense of oppressed men and women, once a terrorist campaign has been launched... would give terrorism the appearance of effectiveness, and so increase the likelihood of terrorist campaigns in the future." But, in Walzer's view, this kind of argument just goes the terrorist one better at his own game: "First oppression is made [by the terrorist] into an excuse for terrorism, and then the terrorism is made [by the anti-terrorist] into an excuse for oppression." We cannot let the terrorist intimidate us from acting justly.

The greatest danger terrorism poses for the United States may lie in a double-edged temptation: on the one hand, to over-react, to respond in kind, with equally indiscriminate violence; on the other, to become so jaded by repeated terrorist incidents that threats to innocent human life no longer seem worth resisting. In both cases we violate our moral convictions and compromise our moral vision. In both we make ourselves more like the terrorist.

The sources quoted in this article are: Judith Lichtenberg, "Beneath the Rhetoric of Terrorism," unpublished paper; Robert K. Fullinwider, "Understanding Terrorism," in *Problems of International Justice: Philosophical Essays*, edited by Steven Luper-Foy, Westview Press, forthcoming; Walter Laqueur, *The Age of Terrorism*, Little, Brown, 1987; C.A.J. Coady, "The Morality of Terrorism," *Philosophy*, vol. 60 (1985); John O'Sullivan, "Deny Them Publicity," in *Terrorism: How the West Can Win*, edited by Benjamin Netanyahu, Farrar Straus Giroux, 1986; Michael Walzer, "Terrorism: A Critique of Excuses," in *Problems of International Justice*; Benjamin Netanyahu, "Terrorism: How the West Can Win," in *Terrorism: How the West Can Win*.

Drug Testing in Sports

When Janis Joplin, John Belushi, and a number of other famous entertainers died of drug overdoses, many people were shocked and saddened. But the impact was not the same as when the University of Maryland's star basketball player, Len Bias, died from an overdose of cocaine. Joplin and Belushi were surely more famous, but Bias's death played on the front pages of newspapers for much longer and had a more marked policy impact, generating calls for an overhaul of athletic programs and for mandatory drug testing of athletes.

Perhaps we expect entertainers to live their lives more recklessly than the rest of us, so their drug abuse does not surprise us. But we tend to regard star athletes as more than entertainers. Nobody demands drug testing for actors or musicians, but even before Bias's death, a *Sports Illustrated* poll revealed that 73 percent of the respondents favored drug testing for athletes. Most university sports programs, along with professional baseball, football, and basketball, have instituted drug testing programs. Such programs have been criticized on the grounds that test results are often inaccurate and that testing programs invite abuse. A more fundamental question is whether, risks of error and abuse aside, such invasions of privacy can be justified. Why should athletes be singled out for this kind of scrutiny of their private lives?

Testing Student Athletes

Many people think we should regard athletes differently from other students and be especially protective of them. Red Auerbach, general manager of the Boston Celtics, the professional basketball team that drafted Len Bias the day before he died, expresses this view clearly. "I know that it's an invasion of privacy, but there comes a time when you've got to put this altruistic civil rights stuff down the toilet, find out who's using drugs and take it from there. Athletes are targets because of their leadership. Drug sellers approach them in 50 ways, because they know that if they get an athlete hooked, other students will say, 'Hey, if my hero does it, what the hell; I may as well do it, too.'"

Singling out athletes for such invasiveness of their private lives on the grounds that they are worshiped and emulated cannot be justified. Star athletes surely enjoy the publicity they receive, but they do not ask to be made into role models. Nor should university administrators be encouraging this kind of status. It is sad if youngsters' only collegiate heroes are sports figures. Administrators inadvertently support this state

of affairs by lavishly publicizing all the special requirements they place on their prominent athletes. They press upon athletes a role as special representatives of their institutions. This is hardly a way to encourage kids to leave a basketball court at least long enough to attend their classes. Perhaps universities should be using drug tests to call attention to their Phi Beta Kappas instead, thus reinforcing a healthier kind of role model.

Universities in some instances are requiring their athletes to be tested for performance-enhancing drugs like steroids, amphetamines, and pain killers, as well as for recreational drugs. (The major professional sports, interestingly, test only for the latter.) Universities can thus claim that their concern is for the health and well-being of their athletes, a concern for the athletes themselves. The pressures of competitive sports may place a heavy burden on such young adults, and they may, as Red Auerbach suggests, be a special target for campus drug pushers. There can be no objection to recognizing these problems, trying to avoid them, and offering help to the victims. It is surely tragic to see such gifted young people sacrifice their talents and risk their lives to drugs. But mandatory drug testing cannot be justified by compassion alone; a far better and less invasive strategy would be to de-emphasize the importance of college sports and reduce the pressures placed on student athletes.

Are there any other grounds for singling out collegiate athletes for such invasions of privacy? Some might point to their scholarships as a justification. It is reasonable to attach certain conditions to receiving scholarships; athletes must continue to play their sports, keep up their studies, and keep out of trouble. But these conditions should not include the kind of surveillance that drug testing involves. A scholarship is an award, not a contract. Student athletes are not allowed to bargain freely for salaries or for a share of the revenues they bring to the institution for which they play. Institutions that take advantage of financial need to subject student athletes to excessive scrutiny are exploiting the very young people they claim to be trying to help. Talented young scientists do not forfeit their rights to privacy when they accept academic scholarships, and neither do athletes.

Drug Testing in the Workplace

What about drug testing for professional athletes? Team owners often sign players to multi-year contracts at astonishing salaries. They have a proprietary interest

that individual performances not fall below salary-driven expectations, and so they are clearly concerned that these players perform to their full potentials. The public indirectly pays the players' salaries by their support of the game, which gives them a similar interest. Do these interests justify placing extraordinary demands on athletes? We pay the salaries of the musicians whose records we buy, too, but nobody much cares or thinks we ought to have a say in what *they* do with their personal lives.

How much intrusion into privacy and personal life is justified on economic grounds? In particular, do these reasons justify mandatory drug testing? We can begin to gain a better perspective on this issue by considering the question of drug testing in the workplace.

Spurred on at least in part by public concern over Len Bias's death and drug abuse in sports, President Reagan, in September 1986, issued an "Executive Order for a Drug Free Federal Workplace." The order announced that "The Federal Government, as the largest employer in the Nation, can and should show the way toward achieving drug-free workplaces." It expressed the government's concern for "the well-being of its employees" as well as for "the need to maintain employee productivity." The President, the Vice President, Cabinet members and their staffs, all belled up to the jar to be tested for drugs.

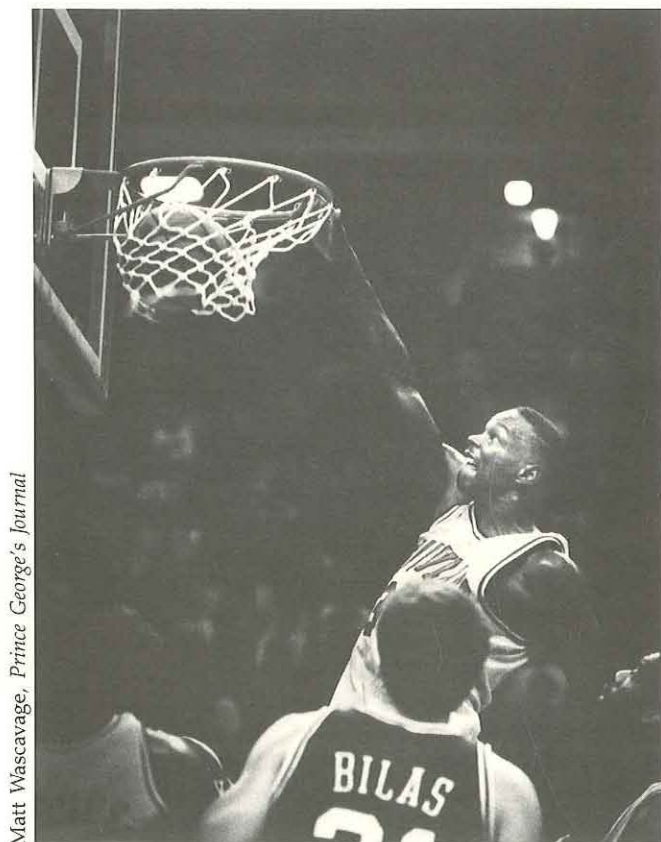
The government cannot order drug testing for all its

employees, however. It is barred by Fourth Amendment guarantees against unreasonable search and seizure, and the Supreme Court has ruled that extracting bodily fluids is an unreasonable search; therefore, the government must show that the conditions are exceptional, or else it must abide by due process guarantees and provide evidence showing probable cause that illegal activities are taking place. Thus, the President's Executive Order requires drug testing only for employees in "sensitive positions," where "danger to the public health and safety or national security... could result from failure of an employee adequately to discharge his or her position." But it invites private firms, which are not bound by Fourth Amendment restrictions, to require drug testing of all workers, whether or not their drug use might directly affect public health and safety.

The moral justification for this broader application of mandatory drug testing programs, however, is weak, especially when weighed against the risks of allowing such invasions of privacy. Consider first the interests of the workers. Drug testing programs are not aimed at the worst abusers; heroin and crack addicts are often not working, and those who are can likely be detected by less draconian means. Drug testing programs are targeted at moderate and light users, whose welfare may not need protecting at all. Many occasional users of illegal drugs manage to consume in ways that are not self-destructive. Not all drug users become heroin addicts; some go on to become senators or judges.

This is not to deny that even occasional use of drugs like marijuana may be bad for people. Smoking, drinking, and even wholesome American activities like jogging or eating apple pie can lead to unhealthy abuse. But the fact that some activities are bad or unhealthy for people does not itself justify paternalistic intervention. How many people would support monitoring to detect whether we are dulling our minds in front of our television sets in the evenings? The people most likely to be detected as drug users by mandatory testing in the workplace are not leading lives into which paternalistic intervention is justified.

Is drug testing justified on economic grounds? Productivity losses due to drug use are hard to measure, but the available data suggest that they are significant though not critical. It is estimated that in 1980 lost productivity and lost worktime due to drug abuse, together with treatment costs, amounted to \$27.2 billion. (By comparison, the similar costs of alcohol abuse in that year were more than twice that, or \$64.2 billion.) It isn't clear that workplace drug testing would reduce these costs, since it fails to reach hard-core drug users, and testing programs themselves are expensive. Several studies, moreover, including one by the National Institute on Drug Abuse, indicate that drug use appears to have peaked in the United States in 1979 and has been declining significantly since then. Historians argue that this kind of pattern is typical, that social concern about drug use increases in periods when drug use is decreasing.



Matt Wascavage, *Prince George's Journal*

The late Len Bias

But mightn't there be enormous potential for productivity gains by forcing even occasional and moderate users to adopt lifestyles that would make them more alert and efficient in their jobs? This concern brings us back to the reason suggested for mandatory drug testing in professional sports. If we are paying athletes millions of dollars, don't we have a right to insist that they perform to the best of their abilities? And don't employers have this right more generally?

They do not. Imagine a striving poet who works to support herself by composing the messages in greeting cards. Can we insist that she give her best creative efforts to her job? Clearly we cannot. So long as she does her job as well as expected or as well as others do it, she is giving it all we can demand. If you pay a lawyer \$150 per hour to represent you, you can demand that she give you the best work she can during that time, but not that she lose sleep at night thinking about your case or exercise in the morning so she will be a little sharper in court. Employers can demand that their workers try hard and do well enough, but that is all. We still have a right to our private lives, even when what we do with our own time has some effect on our work. Consider television again. Should we prohibit workers from watching "Nightline" or David Letterman? Surely staying up late to watch these shows impairs one's job performance the next day. Of course, drug use is illegal, while television viewing is not. But this in itself should not give our employers any special power over us. We do not generally empower employers to serve as a volunteer police force.

Are Professional Sports Special?

Although these general economic reasons do not justify mandatory drug testing, there are, nevertheless, other reasons that may carry weight in particular occupations or professions. The President's Executive Order appeals to reasons of this sort in calling for drug testing for workers in "sensitive positions." We should ask, therefore, whether special reasons exist that would justify drug testing for professional athletes.

For better or worse, professional sports is a unique kind of entertainment business. It provides its customers—predominantly male sports fans—with more than the recreational enjoyment of watching exciting matches and the exercise of great talent. Athletes are also heroes and fantasy figures. We fans spend countless hours of our own youths doing these same activities and imagining ourselves making game-winning plays in front of packed stadiums. We now find ourselves among the crowds watching those who are living out our fantasies, who succeeded in playing our childhood games better than the rest of us. We do not begrudge them their fame or their seven-figure seasonal salaries, because we are thrilled by their accomplishments. The youthful part—or the arrested development—of the typical sports fan allows him to identify with players and their teams and to relive his childhood fantasies. Sports fans care passionately, not when the home team wins, but when *our* team wins. "We're number 1."

League commissioners and presidents also overwhelmingly support drug testing, motivated by a concern with the economic health of the sport as a whole. They understand how fantasy and identification contribute to the popularity of professional sports. They know that profits rely heavily on maintaining a culture that ensures that players are suitable icons for fantasy. The image of the athlete is as important to the health of the business of sports as the excitement of play and competitive balance among the teams. Drug use is one of the many taboos of this culture. Athletes are pressured to be community-spirited; open homosexuality and even political activism are culturally discouraged; and so on.

The public sector is restrained from broad-based drug testing by constitutional guarantees; the private sector should refrain from a respect for the value we place on keeping our private lives private.

Whether enforcing this cultural code through pressure or invasive rules is morally acceptable is a vexing question. We seem to accept the propriety of holding some public figures (e.g., high government officials) to higher personal moral standards than others (e.g., musicians). We accept dress codes and restrictions on behavior in many professions, where there are good reasons for doing so. And what could be more personally invasive than the requirements imposed on those who would enter the priesthood? Perhaps enforcing the culture of the professional athlete can, after all, be shown to be essential to the health and profitability of professional sports. Nobody is required to become a professional athlete, and the economic benefits of polishing the image of the athlete fall to all those involved.

Conclusion

Workplace drug testing seems to be acceptable for workers in certain "sensitive positions": the risks to the public when air traffic controllers or Amtrak engineers are impaired in their performance by drug use may outweigh concerns about privacy. They may be justified for professional athletes, too, given the enormous importance of maintaining an image to the financial health of league sports and the enormous financial rewards reaped by the players themselves. But it is hard to make out a justification for mandatory drug testing of student athletes or of workers generally. The public sector is restrained from broad-based drug testing by constitutional guarantees; the private sector should refrain from a respect for the value we place on keeping our private lives private.

—Douglas MacLean

Judicial Activism vs. Judicial Restraint:

A Closer Look at the Bork Nomination

During the summer and fall of 1987 more public attention has been focused on the professional responsibility of judges than in any period of recent memory. The confirmation battle surrounding Judge Robert H. Bork's appointment to the Supreme Court and his subsequent defeat have provoked a national debate about the professional standards of the judiciary. Nothing in the Bork nomination process can compare in importance to the Senate hearings, perhaps the first nationally televised seminar on judicial responsibility in our history. The centerpiece of those hearings was the testimony of Judge Bork himself, and the key issue in that testimony, to which the interlocutors returned again and again, was the debate over judicial activism and judicial restraint.

What Is "Judicial Activism"?

The terms "judicial activism" and "judicial restraint" have been staples of our political vocabulary for decades. They are used frequently, sloppily, and in a sloganeering fashion, and the first question that confronts us is whether they still mean anything at all (assuming they ever did). One cynical answer is that their meaning is all too clear: in current political discourse "judicial activist" is a euphemism for "liberal," "judicial restraint" for "conservative." Perhaps this is so; but such a narrow and partisan political reduction of the debate should be condemned. Talk of judicial activism and judicial restraint pretends to be about principle, not party politics. If the "principles" one appeals to are merely code-names for partisan positions, however, the aspiration to principled argument is a sham, a charade of high-mindedness.

It is, moreover, a charade that can hope to succeed only if the key terms "activism" and "restraint" at one time possessed some other, relatively non-partisan, and explicitly jurisprudential meaning that the current political debate is aping. It is that other meaning that we urgently need to understand.

The basic problem is that the terms do not have just one meaning; in our recent history alone it is possible to find at least seven different, only partially overlapping, uses of the term "judicial activism."

1. Particularly in the 1960s and 1970s, accusations of judicial activism were hurled in connection with the broad use by federal trial judges of their injunctive power to effect so-called "structural remedies" for constitutional violations. The most notorious and divisive structural remedy was court-ordered school busing and (more generally) court-supervised school desegrega-

tion. But structural remedies were also used to implement prison reform as a cure for Eighth Amendment violations, as when federal Judge Frank Johnson took over the entire Alabama prison system, and for other purposes as well.

2. This first sense is commonly confused with over-eagerness to strike down legislation on constitutional grounds. Actually they are very different. Structural remedies don't respond just to unconstitutional legislation, but also to other illegal practices that officials are unwilling to reform; and conversely, aggressive constitutional review implies nothing about the kind of remedy a judge chooses.

3. Aggressive constitutional review of legislation is itself frequently confused with judges creating new constitutional rights. The latter charge is a particularly bitter one, often leveled against the Warren Court by its critics; it surfaced frequently in the Bork hearings. Yet of all the meanings commonly attached to the term "judicial activism," this is the least useful and coherent. The reason is that talk of "new rights" simply begs the question. Any time a novel legal question appears before the Supreme Court, the winner emerges with a right that has never been explicitly declared before. If that is all that is meant by "new rights," the Court could avoid creating them only by going out of business. "New rights" must therefore mean something more like new general rights, such as the right to privacy. But the Court's opinion will attempt to show why even the "new" general right was implicit in prior law, and hence was *not* a novelty.

Thus, the criticism claiming that a court has engaged in creating new rights must simply be a confused way of saying that these rights were not implicit in the law, that is, that the judge interpreted the law incorrectly. If that is what is meant, why not just say so? It should be clear, moreover, that mistaken interpretation of the law is a danger that any judge can stumble into, including proponents of judicial self-restraint.

4. The most prominent meaning of "judicial activism" in the Bork hearings had to do with the theory of constitutional interpretation. A judicial activist in these terms is a judge who engages in making constitutional law that cannot be firmly tied to clear constitutional language or to the intent of the Framers. And Judge Bork insisted that he is a proponent of judicial restraint because he would not do this; instead he would interpret the Constitution by appealing to original intent. The debate between non-originalism (or, as lawyers call it, "non-interpretivism") and originalism

is thus another meaning of judicial activism versus judicial restraint, clearly distinct from the three we have just canvassed.

5. Non-originalism is in turn often confused with substituting the judge's own morality for the law. Clearly they are different. To say, as the non-originalist does, that constitutional interpretation must appeal to information or values not explicit in the language or the Framers' intent in no way suggests that those values must come from the judge's own morality. Some non-originalists tell the judge to look to community morality, or tradition, or to the evolving state of the law, all of which might be alien to the judge's own morality.

6. Seventh Circuit Judge Richard A. Posner has proposed another meaning for judicial activism/judicial restraint in his award-winning book *The Federal Courts*. For Judge Posner, judicial restraint should be defined as the attempt to limit the power of the courts over other governmental institutions while judicial activism is the attempt to increase the power of the courts vis-a-vis the other branches. Non-originalism and "the judge's own morality" can be pressed into the service of either activism or restraint as Posner understands these.

7. Last (and least), some critics equate judicial activism with result-oriented judging, that is, tailoring legal principle to fit the judge's prior convictions about how he wants the case to come out. But this is simply abusive: it equates judicial activism with prejudice or with infidelity to law.

Evaluating Judicial Activism

Is activism a bad thing? As our discussion so far

should make clear, that will depend on what you mean by "activism." We can simplify the problem by considering just three principal meanings of "activism": Judge Posner's notion of courts increasing their own power over other governmental institutions; non-originalist constitutional interpretation; and moralistic judging.

Judge Posner thinks that we need judicial restraint today because activist decisions, in his sense, cannot meet a "publicity test" he proposes: "a decision is principled if and only if the ground of decision can be stated truthfully in a form the judge could publicly avow without inviting virtually universal condemnation by professional opinion." And, Judge Posner believes, no judge could come right out and say that he or she was attempting to increase the power of the courts over other governmental institutions.

Here Posner appears to have blurred the distinction between the *aim* of a decision and its *side-effects*. It is true that no judge could publicly avow that he had decided a case *in order* to enhance the power of the courts—we do not easily tolerate judicial empire-building. But more typically the enhancement of judicial power over other institutions is not the aim or ground of decision—it is an incidental side-effect. Judge Johnson did not run the Alabama prison system for the sake of running the prison system, but because officials refused to correct constitutional violations: that, not a desire to grab power, was the ground of Johnson's decision. And so it is in the end unclear that judicial activism emerging merely as a by-product of the courts' decisions fails the publicity test after all.

While other stronger arguments on behalf of judicial restraint could be offered, Posner himself is quite con-



Drawing by Ross; © 1971
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"If you please, Mr. Justice, would you mind not saying, 'Of course we could be wrong?'"

vincing in rebutting many of them. He points out that judicial activism does not make big government bigger, since the courts' extra power comes at the expense of other governmental branches; that even though courts are not majoritarian or representative institutions, this shows only that it is a mistake to think of our constitutional system as majoritarian and representative, since the Constitution obviously created the courts; and that while courts are not very good at running institutions such as prisons, other branches of government may not be any better. At best, "judicial self-restraint is a contingent, a time-and-place-bound, rather than an absolute good," because in some historical situations the other branches of government are badly in need of checks and balances while in others they are not.

Original Intent

What of the debate between non-originalism and originalism, which figured so prominently in the Bork hearings? Originalists, recall, insist that vague constitutional provisions be filled in by appealing to the intent of the Framers, whereas non-originalists will look to values or information found elsewhere, for example in our present-day moral understanding.

At first glance, originalism seems very persuasive, little more than insisting that when you read an eighteenth-century novel and come across an unfamiliar word you should look it up in an eighteenth-century dictionary rather than a contemporary Webster's. For what is a document other than the concrete expression of its authors' intentions?

Nevertheless, there are powerful objections to appealing to Framers' intent. The primary problem is an obvious one. Even if we can find out what individual Framers intended, how can we figure out the "group intention" of the Framers as a collective body? There is no such thing as a group mind, and we may suspect that there is no such thing as a group intention either. To construct a group intention out of information about

can be determined only by making a lot of conventional or even arbitrary choices. But that proves that the originalist, no less than the non-originalist, is incapable of answering a constitutional question without importing a lot of contemporary theoretical baggage into the enterprise. And we are likely to be a lot more confident about the values the non-originalist appeals to,

To construct a group intention out of information about individual intentions we will need some rule of combination. Do we count the intentions of Framers who opposed a measure? What of those who supported it but only as a regrettable compromise?

such as our contemporary moral understanding, than we are about how to answer the various questions concerning group intentions. So the originalist may well turn out to be marching us onto a shakier and more controversial limb than the non-originalist.

An even more devastating problem for the originalist arises from the fact that Framers' intentions can be concrete or general, and these may be incompatible. Take a simple example based on the Seventh Amendment guarantee of a jury trial for civil matters involving more than \$20. On its face, nothing could be clearer. But suppose we ask whether we should interpret this in 18th-century dollars or today's dollars. In today's dollars the amount of money would be much higher.

Let us try to answer the question by appealing to Framers' intent. Their *concrete* intent could not be clearer: to guarantee jury trials if more than \$20 was at issue. But their *general* intent might have been this: to make sure that jury trials would be available when the amount at issue was significant, but to permit courts or legislatures to deny jury trials for trivial disputes. For at the close of the 18th century \$20 was a significant amount of money. Nowadays, however, a \$20 litigation is almost too trivial even for small claims court; so if we respect the Framers' concrete intention we violate their general intention, and vice-versa.

If this sounds far-fetched, please remember that Judge Bork invoked the same argument in his testimony. Senator Specter asked whether, given his commitment to originalism, Judge Bork would have had to vote against the *Brown* decision, since the historical evidence suggests that the framers of the Fourteenth Amendment did not intend it to preclude school segregation. Judge Bork replied that their *general* intention was to ban race discrimination; their *particular* belief was that separate-but-equal was not invidious race discrimination; but, since we are convinced that they were wrong about the particular belief, we respect their general intention by rejecting their concrete intention.

Even if we can find out what individual Framers intended, how can we figure out the "group intention" of the Framers as a collective body? There is no such thing as a group mind, and we may suspect that there is no such thing as a group intention either.

individual intentions we will need some rule of combination. Do we count the intentions of Framers who opposed a measure? What of those who supported it but only as a regrettable compromise? Or because of log-rolling? As Ronald Dworkin points out, moreover, it seems up for grabs whether to count a Framer's *hopes* or his *expectations* about how a clause will be interpreted as his intentions. The moral is that "Framers' intent"

Now, in fact this line of argument amounts to abandoning originalism—first because it picks and chooses among the historical views of the Framers, taking some seriously while rejecting others, but second because it seeks a general intention, an overarching idea that is largely independent of the historical minutiae. How do we determine the general intention of a provision? The best evidence, it seems, is in the language of the provision itself, understood in such a way as to yield a plausible general principle. We reconstruct the Framers' general intention, that is, by finding the most reasonable reading of their language we can; but at this point originalism has simply become non-originalism, and the debate is over. For now we see that even the originalist must interpret ambiguous constitutional language in such a way that it seems most reasonable.

Most reasonable to whom? Isn't this simply smuggling in the judge's own values? A first reply to this ultimate objection is that the alternative to the judge interpreting vague language according to his or her own standards of what is most reasonable is the judge interpreting vague language according to his or her own standards of what is *less* reasonable—and that seems merely perverse.

A more satisfactory reply is that it is indeed wrong for judges simply to cite some value as though it were an authority like a statute or prior case: that would be usurpation. Rather, a judge shows that a principle is reasonable by reasoning to it rather than from it—by argument rather than by fiat.

Can values be established by argument, by reason? Well, we do argue with others about questions of value, and sometimes we even persuade or are persuaded. That suggests that the answer is yes. Some, however, including Judge Bork, deny that values are susceptible to reasoned discourse. In his best-known work of constitutional theory, Bork wrote: "There is no principled way to decide that one man's gratification is more worthy than another's or that one form of gratification is more worthy than another. . . . [T]he judge has no basis other than his own values upon which to set aside the community judgment embodied in the statute. That, by definition, is an inadequate basis for judicial supremacy."

Can value-judgments be the conclusions of reasoned arguments, or are they simply expressions of "gratification," the brute fact that one thing pleases me and another does not? This is the oldest, and perhaps still most unsettled, question of moral philosophy. It is a surprising yet reassuring fact that the issue of judicial activism, on its surface an intensely practical matter of public concern, may ultimately turn on this subtle and disturbing question of moral theory. Surprising, because we do not often expect that theory will matter so much; reassuring, because it convinces us that even apart from its undeniably crucial political aspect, the public debate over judicial activism turns on a matter of perennial importance.

—David Luban

Excluding the Elderly: A Reply to Callahan

Setting Limits: Medical Goals in an Aging Society (New York: Simon and Schuster, 1987) is the latest word on how to treat the problem of geriatric care for growing ranks of older Americans. In this thought-provoking and ambitious book, Daniel Callahan defends a proposal to disenfranchise the elderly from government support for life-extending medical services once they have reached a natural life span. The proposal includes two key components: first, persons who have attained a natural life span are not entitled to receive government-financed life-extending medical treatment; second, once a natural life span is reached, government should only pay for medical care devoted exclusively to improving quality of life by relieving pain and suffering.

The springboard for Callahan's discussion is an indictment of contemporary culture, which he thinks fails to furnish a true picture of the meaning and

significance of old age and death. Some, the "modernizers of old age," believe that the physical processes of aging should be aggressively resisted and that the aged ought to remain actively involved in life and persistently struggle against decay and demise. This group is galvanized by the medical profession and the impressive biomedical technology it flaunts. A closely aligned group, the "anti-ageists," deplore the ageism of social policies that exclude the old. Demanding "age equity," they aim to remove the social and political obstacles to carrying out the modernizers' mission.

According to Callahan, both modernizers and anti-ageists are motivated by an idealized picture, which casts old age as "a kind of endless middle age." This suggests to Callahan that their goal is not modernizing old age but banishing it and in the process dismissing the important questions we as a society need to address: e.g., what is the significance of old age? what

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is the proper place of death in old age? Despite the efforts of the modernizers and anti-ageists, however, most cultures, including our own, manifest the belief that "death at the end of a long and full life is not an evil, that indeed there is something fitting and orderly about it." This points, Callahan thinks, to a "perennial human need to find a way of envisioning the fullness of a life and an acceptable conclusion to that life."

The first bold move Callahan makes in developing this cultural insight is to refurbish and refine the ideas of a natural life span and a tolerable death. On Callahan's definition, a tolerable death occurs at that stage in a life span when one has experienced the possibilities life affords (or more life will not enable one to do so), one has met or had ample time to meet moral obligations to dependent family members, and one's death will not involve great suffering or tempt others to despair and rage at the finitude of human existence. Correspondingly, a natural life span is a span of life in which life's possibilities have on the whole been achieved and after which death may be understood as a sad, but nonetheless relatively acceptable event. Callahan maintains that by the age of sixty-five most of us will have lived a natural life span and certainly we will have done so by our late seventies or early eighties.

Callahan next advances an argument that government should desist from financing life-extending medical services for elderly persons who have achieved

a natural life span. The argument begins by defining the relationship between a natural life span and a tolerable death: if a person has lived a natural life span then that person's death would be tolerable. If a person's death would be tolerable, this suggests that letting death occur—e.g., by denying Medicare support for life-extending medical treatment—is tolerable, too. Since persons attain a natural life span somewhere between their mid-sixties and early eighties, it is tolerable for government to refuse to pay for life-extending medical treatment for the elderly: old people are not entitled to receive reimbursement from government for any medical intervention, technology, procedure, or medication whose ordinary effect is to forestall the moment of death. A denial of Medicare coverage will be acceptable once "a full-scale change in habits, thinking and attitudes" takes place—i.e., once a social consensus about natural life span and tolerable death is brought to the fore. A consensus like this would have obvious advantages in the current context of an aging society and an economic downturn. It is important to note, however, that Callahan's argument presupposes that even if the current context were different and resources were abundant, it would still be unwise for us to provide the elderly with life-extending medical care beyond the point of a natural life span.

As it stands, Callahan's argument for age rationing does not rule out the possibility of allowing people to use their own resources to purchase life-extending

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medical treatment. His position is rather that old people are not *entitled* to life-extending medical care, not that it is wrong for them to get such care. The point here is that government can legitimately refrain from financing such treatment. In other words, Medicare and Medicaid policies that exclude the elderly from life-extending medical care are morally tolerable.

There are a number of reasons for doubting the

If someone has lived a natural life span then that person's death may be tolerable, but it is not necessarily tolerable. Whether a person's death is tolerable also depends upon what quality of life that person can expect in the future.

soundness of this argument. These reasons concern the practical implications of the approach. In all fairness to Callahan, it should be pointed out that he regards the practical details and implications of his proposal to be read in the "tentative vein in which written," to be "taken seriously not literally." Still, it is precisely here that the cogency of his principles can be evaluated. It is here that they must bear fruit.

Let us imagine, then, that a cultural agreement of the sort Callahan envisions has been realized. Suppose Sue is a widow who enjoys good physical health and is mentally alert. She takes tremendous pleasure in a painting hobby, in visits from great-grandchildren, and in watching afternoon television shows. Suppose further that Sue is eighty-two and that she depends upon Medicare and Medicaid to cover her health expenses. On Callahan's proposal for age rationing, if Sue suffers a cardiac arrest, then the fact that she has had a long life history should militate against government financing of rescue measures designed to extend her life—e.g., cardiac pulmonary resuscitation, coronary bypass surgery to replace clogged arteries, or various medications.

It is useful to imagine as vividly as possible what implementing Callahan's proposal would involve. Suppose Sue's attack begins while she is at home. Sue calls an ambulance because she thinks her chest pains may be warning signs of a heart attack. After arriving at a hospital emergency room, Sue completes forms asking about her medical history, her age, and her insurance carrier. Shortly afterwards, she experiences shortness of breath and sharp pains in her chest; she murmurs, "Don't let me die!" and then passes out. The attending physician immediately picks up her chart, sees that she is eighty-two and dependent on Medicare, and decides to conform with hospital policy prohibiting life-extending treatment for indigent patients who are no longer eligible for Medicare reimbursement—having lived beyond, say, age seventy-five.

Is the reasoning supporting this policy sound? I do

not think it is. Sue is entitled to receive government-financed life-extending medical care despite her age. A number of considerations inform this judgment: (1) Sue's life is good, (2) people inevitably disagree about when an individual should be allowed to die or be kept alive, and (3) Sue prefers to live. Moreover, (4) the means to keep Sue alive are ready at hand and are neither extravagant nor especially costly nor in short supply. Let us review each of these considerations in turn.

(1) A first objection to Callahan's proposal is that whenever the lives of elderly persons are enjoyable this is a reason to make life-extending treatment available to them. If someone has lived a natural life span then that person's death *may* be tolerable, but it is not *necessarily* tolerable. Whether a person's death is tolerable also depends upon what quality of life that person can expect in the future. Even though Sue has reached a natural life span, allowing her death by refusing to pay for the treatment she needs is intolerable, in part because Sue is not decrepit or mentally incompetent. Her life has not lost its dignity or pleasure. Arguably, it is permissible for government to refrain from Medicare support for life-extending treatment when quality of life falls below a certain minimal level. However, a large portion of the elderly population enjoys relatively good health and a fairly high quality of life. A government policy of denying these people Medicare support for life-extending medical treatment is wrong-headed. After all, suppose some genetic engineering technology were discovered that enabled us to increase the average life span from the mid 70s to mid 90s and also enabled us to live as sprightly in our 90s as we now do in our 70s. If that technology were cheap and abundant, why should the fact that its ordinary effect is to extend life count against Medicare support for it?

(2) Nor does it seem possible to regain the cultural consensus regarding ideal old age and death that Callahan invokes. One reason for doubting that such

There is hubris in the belief that as a society we know more about how to treat old people than they know themselves. The alternative is to think that wherever possible, we should let individuals make their own health-care decisions.

a cultural agreement can be reached is that what makes death and old age good or tolerable may be inherently individual. The philosopher and geriatrician Christine Casell cautions against forming generalizations about what people want from geriatric medicine: "One person wants comfort and help in confronting pain and frailty and another is more interested in pride and independence than in treatment for swollen ankles."



Likewise, for some elderly dying, "the fight to continue living has intrinsic meaning in itself and should continue as long as there is breath; these people believe doctors should be helpers in that fight"; but others want no part of ambulances, doctors, or hospitals. Even if conceptions of old age and death are not inherently individual, surely there is an enormous diversity of conceptions in contemporary American culture.

(3) Putting aside the question of whether it is *possible* to achieve a cultural consensus, we should also ask whether it is *desirable* to found public policy on such a consensus. This goes to what is most troubling about the advice Callahan proffers. What is most troubling is not the recommendation to *forge* a consensus, but instead the recommendation to *enforce* a consensus. It is a bad idea to design a restrictive Medicare policy and thereby deny individuals latitude in making their own health-care decisions. In the case of Sue, death is intolerable most of all because Sue wants to live. Even if Sue's preference to extend her life is at odds with a cultural consensus on the significance of old age and death, it would be wrong to deny her the right to be wrong. Even if indefinitely extending the lives of old people is unwise, still less wise is the suggestion to coercively cut them off from life-extending care. There is hubris in the belief that as a society we know more about how to treat old people than they know themselves. The alternative is to think that wherever possible, we should let individuals make their own health-care decisions.

(4) In closing I want to stress the importance we give and should give to factors such as the availability, extravagance, cost, and abundance of life-extending medical resources in our debates about how best to allocate them. To do this, it is useful to consider one further example. Suppose Sabina is diagnosed with some fatal disease at age seventy-three, for which there is an inexpensive and easily available cure. It would be perverse to say to her: we will not pay for treatment to extend your life because you have already lived a natural life span. But we will pay whatever it costs to alleviate the suffering you will experience as disease spreads throughout your body. Yet Callahan's proposal appears to bring this result, because it recommends that beyond a natural life span we finance only health care that is devoted exclusively to relief of pain and suffering.

What makes such a policy perverse is not that Sabina is entitled to receive from government whatever she needs to sustain her life. It is rather that government has a duty to underwrite a decent minimum of health care, and what counts as a decent minimum must be relative to information about the cost and supply of medical goods. The imagination strains at picturing a Medicare or Medicaid system that would cover expensive and rare pain-cure pills and computer-assisted rehabilitative treatment but not cheap drugs or routine surgeries, if these latter are primarily life-extending. The cost and supply of medical goods determine, in part, the kinds of care we can and should offer people.

Because we frame discussions in this way, we understand that in an aging society there simply may not be enough medical care or enough public funds to purchase medical care for everyone who needs it. We already accept the task to design and live with a fair method for distributing scarce medical resources.

But a situation in which we are *forced* to deny people the means to extend their lives because the means are costly and in short supply is very different from a situation where we *choose* to deny people these means because we decide that their requests for more life are unwise. The latter choice is not one we should make lightly or at all. As individuals who age and die, we should each try to envision what old age and death will be like for *us* and to form ideas about how we would like our old age and death to be. This process can be

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facilitated by a public *debate*; it would be hampered by a public *consensus*. It can also be fostered and encouraged by a health-care system that empowers people to carry out their plans for old age and restricts them only to the extent justice demands.

These objections notwithstanding, *Setting Limits* is an important and impressive achievement. It is a deliberately confrontational book, a book which challenges its readers to question long-held assumptions about old age and health care.

—Nancy S. Jecker

Christine Casell is quoted from her article, "The Meaning of Health Care in Old Age" in Thomas Cole and Sally Gadow, eds., *What Does It Mean to Grow Old?* (Durham, N.C.: Duke University Press, 1986).

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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